

CITATION: Corporation of the City of St Catharines v. Al-Kadhee, 2025 ONSC 6265
COURT FILE NO.: CV-25-00063323-0000
DATE: 2025-11-25

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
Corporation of the City of St Catharines) Barry Cox, counsel for the Applicant
)
Applicant)
)
- and -)
)
Huda Al-Kadhee) Self-represented
)
Respondent)
)
) **HEARD:** September 18, 2025

2025 ONSC 6265 (CanLII)

THE HONOURABLE JUSTICE A. J. OHLER

REASONS FOR JUDGMENT¹

- [1] This is an application by the City of St. Catharines (“the City”) for a Closing Order pursuant to s. 447.1 of the *Municipal Act, 2001*, R.S.O. c.25 (“the Act”) in respect of 5 Duke Street (“5 Duke”), a semi-detached residence in downtown St. Catharines.
- [2] The respondent, Huda Al-Kadhee is the owner of 5 Duke.
- [3] Section 447.1 of the Act permits a municipality to bring an application for an order closing a premise to any use because of activities which constitute a public nuisance.
- [4] The City argues that beginning in mid-2023, there has been a marked increase in noise, garbage, property standard by-law violations and criminal activity at 5 Duke. According to the City, 5 Duke has been occupied by a series of transient individuals, whose occupation has resulted in numerous calls for emergency assistance and by-law violations, which has impacted the surrounding community, constituting a public nuisance for the purposes of the Act.

¹ On September 22, 2025, the parties were advised in writing that the application was granted with reasons to follow. These are those reasons.

- [5] The respondent did not file any materials in response to the application but appeared on the hearing and made submissions.
- [6] On September 22, 2025, I granted the City's application and issued a closing order, with reasons to follow.

Background Facts

- [7] 5 Duke is a semi-detached residence, located in a residential area of downtown St. Catharines. It is close to Montebello Park, which has a children's playground and hosts various civic events and festivals throughout the year.
- [8] The City filed a voluminous application record, consisting of affidavits from community members and representatives of various first responders detailing events at the property.

Community Members

- [9] Several community members and residents on Duke Street swore affidavits detailing the activities at 5 Duke.
- [10] Danielle Williams lives next door to 5 Duke. The two properties are semi-attached, sharing a common wall. Ms. Williams moved into her home in 2020. At that time, 5 Duke was divided into two living units. The respondent lived upstairs and rented out the ground floor.
- [11] Ms. Williams believes that 5 Duke is now a place where people go to buy and use drugs.
- [12] Beginning in 2023, Ms. Williams has seen people making very short visits inside 5 Duke and leaving visibly intoxicated. Some of these people toss drug paraphernalia – including used needles – over the fence into her backyard.
- [13] Ms. Williams is regularly disturbed by screaming and yelling from 5 Duke. She has heard what she believes to be violent events and personally observed a knife fight in the street outside her home.
- [14] In December 2024, she was the victim of a break-and-enter and her roommate's valuables were stolen. Ms. Williams includes as an exhibit to her affidavit a cell phone video of her roommate confronting the respondent about the break-in. On the video, the respondent admits that he was aware of the break-in and that someone from 5 Duke was responsible for the crime. Ms. Williams has spent over \$3,000 on a security system to protect her home.
- [15] Ms. Williams' concerns are reflected in the affidavits sworn by other residents of the neighbourhood.
- [16] Residents regularly find discarded drug paraphernalia – including used needles – on the street outside 5 Duke. They regularly encounter heavily intoxicated persons leaving 5

Duke, some of whom trespass onto surrounding residential properties. The behaviour of these heavily intoxicated persons is often erratic, threatening, and intimidating.

- [17] Garbage regularly accumulates outside 5 Duke, then blows onto surrounding properties. Many residents have noticed a marked increase in the number of rats, racoons, possums and skunks in the neighbourhood.
- [18] Residents are regularly disturbed by the sounds of people screaming and yelling from inside 5 Duke. They are very much aware of the numerous occasions on which first responders have attended at the property. These calls, usually late at night or overnight, disturb the quiet of the neighbourhood.
- [19] Residents are particularly concerned about a generator on the back porch running at all hours of the day and night. 5 Duke and many of the surrounding homes are older buildings with wooden frames. Residents are very concerned about the risk of fire.
- [20] Some residents report that after the property was “cleared” by police in January 2025, the situation seemed to improve. By the end of March, the situation had again deteriorated. None of the residents see the respondent at 5 Duke very often anymore.

By-Law Enforcement

- [21] Beginning in the summer 2023, 5 Duke has been the subject of numerous complaints to the City’s by-law enforcement office.
- [22] Between July 2023 and April 2025, the City issued 11 Orders to Comply with garbage by-laws. During this period, the City was obliged to conduct remedial clean up of the property on seven separate occasions, resulting in the removal of a total of 66.7 cubic yards of waste, at a cost of approximately \$14,000. The garbage removed has included household garbage, broken furniture, loose recyclables, tires, propane tanks, used needles, animal waste, and other biohazardous material.

City of St Catharines Fire Department

- [23] As detailed in the affidavit of Jessica Williams, Fire Inspector with the City of St Catharines Fire Department, 5 Duke is at least 100 years old and has a wooden structure.
- [24] Between May 2023 and January 2025, there have been 20 fire department calls for service at 5 Duke.
- [25] There have been two fires inside 5 Duke.
- [26] In May 2023, a fire started on the kitchen stove. The responding fire crews discovered there were no working smoke alarms in the building. The next day, a fire prevention officer installed smoke alarms.

- [27] In May 2024, fire crews responded to a second fire in the house. This fire had been deliberately set. The fire crew discovered that again, there were no working smoke alarms. A fire prevention officer attended and again installed smoke alarms.
- [28] In August 2024, Ms. Williams inspected 5 Duke. Again, there was no working smoke alarms in the residence. Ms. Williams guessed that between 10 and 15 people were living at the property. There were used needles, naloxone kits and drug paraphernalia scattered throughout. The front door hallway was filled with garbage and impassable. There was no hydro. Instead, an extension cord ran from the upper floor, across an alley, to an apartment. Garbage blocked the stairs to the basement. A generator sat in the living room. Ms. Williams returned that same day to install more smoke alarms. She cautioned the occupants not to run the generator inside the house.
- [29] In September 2024, neighbours complained that a generator ran on the fire escape at all hours of the night. In November 2024, there was a garbage fire in the backyard. In January 2025, there were reports of the strong odour of kerosene emanating from 5 Duke.
- [30] Ms. Williams believes that 5 Duke is a significant fire hazard to neighbouring properties.

Niagara Emergency Medical Services

- [31] Niagara Emergency Medical Services (“Niagara EMS”) provides paramedic and ambulance services to the City. Niagara EMS Commander Ryan Pearson deposed that between July 31, 2023 and November 30, 2024, Niagara EMS attended 5 Duke 30 times. The reasons for the calls for assistance included inflicted injuries, drug overdose and withdrawal.

Niagara Regional Police Service

- [32] Sgt. Robert Richardson, a member of the Niagara Regional Police Service (“NRPS”) deposed that 5 Duke is connected to the St. Catharines “drug subculture,” i.e. that multiple persons known to police have lived at, bought, and sold drugs from the property.
- [33] Between May and December 2023, there were seven calls for police service at 5 Duke. In 2024, there were more than 50. Between January 1 and May 15, 2025, there were 11.
- [34] The calls for service included attending as backup for fire and paramedics, responding to noise complaints from the surrounding community. The noise complaints have included screams of persons in distress or engaged in acts of self-harm and/or physical altercations. Police have also responded to reports of criminal activity, including a multi-person knife fight in the street and suspected drug trafficking.
- [35] On occasions when police were permitted to enter 5 Duke, they observed makeshift weapons and drug paraphernalia. On other occasions, police have encountered persons suffering from serious injuries. At times, police have attended multiple times on a single day.

The Respondent's Efforts to Control Activities at 5 Duke Street

- [36] According to Sgt. Richardson, police have removed unwanted persons from 5 Duke on more than one occasion.
- [37] In December 2024, the respondent told police that there were people living at the property whom he did not wish to be there anymore. The goings-on at 5 Duke reached the point where the respondent could no longer live there.
- [38] On January 8, 2025, police responded to reports of a fight in front of 5 Duke. Officers spoke to the respondent, who told police he was struggling with various issues at the property. The respondent declined the assistance of police to remove uninvited or unwanted persons. The next day, the respondent called back to request police “clear” the property.
- [39] When the property was “cleared,” 5 Duke was in a very poor state. There was no electricity and most of the windows on the second floor had been broken or boarded up. The inside was littered with broken furniture, garbage and hypodermic needles.
- [40] On January 18, 2025, police attended again to remove unwanted persons from the property.

September 4, 2025 – Reports of Shots Fired at 5 Duke Street

- [41] On September 4, 2025, police responded to an anonymous call that shots were fired inside 5 Duke. There was a bullet hole in a piece of plywood that had been used to board up a window. The respondent spoke to police that day and advised that there were no casings or bullets inside the residence. He was not sure if the bullet was fired at the unit from the street or from within the unit out to the street.

Consent of the Chief of Police

- [42] William Fordy, NRPS Chief of Police, filed an affidavit providing his consent to the order sought by the City, as required under section 447.1(2) of the Act.

Law

- [43] Section 447.1(1) of the Act provides:

(1) Upon application of a municipality, the Superior Court of Justice may make an order requiring that all or part of a premises within the municipality be closed to any use for a period not exceeding two years if, on the balance of probabilities, the court is satisfied that,

(a) activities or circumstances on or in the premises constitute a public nuisance or cause or contribute to activities or circumstances constituting a public nuisance in the vicinity of the premises;

(b) the public nuisance has a detrimental impact on the use and enjoyment of property in the vicinity of the premises including, but not limited to, impacts such as,

(i) trespass to property,

(ii) interference with the use of highways and other public places,

(iii) an increase in garbage, noise or traffic or the creation of unusual traffic patterns,

(iv) activities that have a significant impact on property values,

(v) an increase in harassment or intimidation, or

(vi) the presence of graffiti; and

(c) the owner or occupants of the premises or part of the premises knew or ought to have known that the activities or circumstances constituting the public nuisance were taking place or existed and did not take adequate steps to eliminate the public nuisance.

[44] Pursuant to s. 447.1(9), the police service with responsibility for the municipality “shall bar entry to all entrances to the premises” until the order has been suspended or discharged.

[45] The Act also provides for suspension of a closing order. Under section 447.1(7), a person who has an interest in a closed premises may apply to the Superior Court for an order suspending that order. If the court is satisfied that the proposed use of the premises will not result in activities and circumstances constituting a public nuisance, the court may suspend the closing order to permit use for a period of time and on conditions as may be specified by the court.

[46] The Act also provides for discharge of a closing order. Under section 447.1(8), a person who has an interest in the premises may apply for the discharge of a closing order, if the court is satisfied that circumstances have changed to the extent that the premises will not be used in a manner that will result in activities and circumstances constituting a public nuisance.

[47] Nothing in the plain wording of the Act restricts the application of s. 447.1 to a property used for commercial purposes. That said, since s. 447.1 was enacted, there has been only

one closing order issued for a residential property: *Kenora (City) v. Eikre Holdings Ltd*, 2018 ONSC 7635 (“*Kenora*”).

- [48] In *Kenora*, the City sought a closing order for an illegal boarding house located on the second and third floors of a commercial building in downtown Kenora. Fourteen tenants were living in the property, while numerous transient individuals visited the property on a regular basis. Affidavit evidence established that the boarding house had become the central area for drug transactions in downtown Kenora. In the five years preceding the application, there had been over 850 calls for police service. In the three years preceding the application, there had been 19 calls for emergency fire department service. Persons frequenting the property engaged in assaults, aggressive panhandling, threatening, harassing and intimidating behaviour, trespassed onto neighbouring properties, and caused excessive noise. The respondents did not contest the order and conceded they had lost control of the property. The court was satisfied that the City presented an overwhelming case for a closing order.
- [49] I am satisfied that there is a precedent for issuing a closing order for a residential property. There is no question that the order sought by the City is serious. The effect of the order will be to treat the respondent as a trespasser to his own property.

Do the activities or circumstances on or in 5 Duke constitute a public nuisance?

- [50] Public nuisance is not defined in the Act.
- [51] In *Ryan v. Victoria (City)*, [1999] 1 S.C.R. 201, the Supreme Court of Canada defined public nuisance at para. 52 as “any activity which unreasonably interferes with the public’s interest in questions of health, safety, morality, comfort or convenience.” The conduct must constitute “an attack upon the rights of the public generally to live their lives unaffected by inconvenience, discomfort or other forms of interference.”
- [52] In *Ryan v. Victoria (City)*, the court identified five factors to be considered in determining whether a particular activity rises to the level of a public nuisance. These factors, at para. 53, include:
- (a) the inconvenience caused by the activity;
 - (b) the difficulty in lessening or avoiding the risk;
 - (c) the utility of the activity;
 - (d) the general practice of others; and
 - (e) the character of the neighbourhood.
- [53] The City argues that the evidence that the activities at 5 Duke constitute a public nuisance is overwhelming.

- [54] The respondent did not contest the evidence filed by the City and did not file any evidence in response, but made submissions opposing the City's application.
- [55] The respondent advised that he bought 5 Duke in 2016. Until the summer of 2023, 5 Duke was a lovely home and he had no issues with any of his tenants.
- [56] The respondent conceded that at various times over the past year and a half or so, the activities and circumstances at 5 Duke fit the definition of public nuisance. As far as he is aware, the persons actually causing issues at 5 Duke were not his tenants, but other persons who visited the property. Some of these people are dangerous. At various times over the past year and a half or so, he has been under duress. As a result of his own personal struggles, he was unable to deal with issues as they arose.
- [57] The respondent advised that the situation at 5 Duke improved over the summer of 2025 and at the time this application was argued, is no longer occupied by any tenants. Given the property was vacant, the respondent submitted it was unfair that this application should proceed now.
- [58] After the respondent's submissions, counsel for the City advised the court that he received a message from Ms. Williams, who was attending the hearing remotely from her home. Ms. Williams advised counsel that she could hear voices and the sound of dogs barking inside 5 Duke as the hearing proceeded.
- [59] There is no question that the order sought by the City is serious. The effect of the order will be to close a residential property to any use. The respondent will be treated as a trespasser to his own property.
- [60] I acknowledge that much of the evidence relied on by the City is somewhat dated. Most of the affidavits filed were sworn in March, April and May 2025. This application was heard in September. That said, there was no affidavit evidence from the respondent detailing how the situation has improved between May and September.
- [61] Considering the evidence as a whole, the submissions of counsel and the respondent, I find that the activities and circumstances on or in 5 Duke constitute a public nuisance.
- [62] The goings-on at 5 Duke have caused more than mere inconvenience to the surrounding properties.
- [63] Beginning in mid-2023, 5 Duke Street has been the site of regular criminal activity of no value or utility to the community. 5 Duke is a place where persons can buy, sell and use drugs. Individuals visiting 5 Duke to consume drugs sometimes leave heavily intoxicated, behaving in an erratic and sometimes threatening manner. Some of these individuals trespass on surrounding properties. Some of these individuals discard drug paraphernalia and used needles in the neighbourhood. I am satisfied that as a "drug house" the comings and goings of various individuals have interfered with the rights of the public to live their lives without discomfort or other forms of interference.

- [64] There have been more than 72 calls for police, 30 calls for paramedics and 20 calls for the fire department at 5 Duke as variously described in the affidavits filed. The sheer number of calls for emergency response to the property is evidence that the goings-on at 5 Duke interfere with the rights of the public generally to live their lives unaffected by inconvenience and discomfort.
- [65] As a result of the criminal activity and illicit drug use at 5 Duke, the general state of the property has declined, causing unreasonable interference with the public's interest in questions of health and safety.
- [66] 5 Duke presents fire safety issues. Not only have there been actual fires at the premises, at times the property has not had electricity, resulting in resort to alternate sources of heat, including a gas-powered generator. The generator has run on the porch at all hours of the day and night, disturbing the peace of the neighbourhood. Fire inspectors have observed the exits blocked by garbage and debris. Smoke detectors have been installed on multiple occasions, only for them to be removed. As a 100-year-old wooden structure, 5 Duke presents a hazard to its occupants and surrounding properties.
- [67] 5 Duke presents public health issues. Garbage, including biohazardous materials and hypodermic needles, regularly accumulates on the property, attracting vermin. The garbage blows to surrounding properties, forcing neighbours to clean it up. The City has removed over 60 cubic yards of garbage, at considerable expense.
- [68] I find that the activities and circumstances surrounding 5 Duke constitute a public nuisance for the purposes of a closing order.
- [69] In the absence of any evidence establishing that the situation has improved and taking into consideration the very recent report of gunshots at 5 Duke, I have no difficulty finding that the public nuisance at 5 Duke persists.

Is the public nuisance emanating from the property having a detrimental impact on the surrounding community's use and enjoyment of their property?

- [70] I am satisfied that the public nuisance described above is having a detrimental impact on the surrounding community's use and enjoyment of their properties.
- [71] Section 447.1(1)(b) lists the categories of public nuisance that may result in a closing order, including
- (i) trespass to property,
 - (ii) interference with the use of highways and other public places,
 - (iii) an increase in garbage, noise or traffic or the creation of unusual traffic patterns,
 - (iv) activities that have a significant impact on property values,

(v) an increase in harassment or intimidation; and

(vi) the presence of graffiti.

- [72] The activities at 5 Duke fit several of the above-noted categories of public nuisance. Individuals attending at 5 Duke trespass onto surrounding properties.
- [73] By discarding needles and other drug paraphernalia onto the street and sidewalk, visitors to 5 Duke interfere with the use of public spaces, i.e. the street and sidewalk.
- [74] There has been an increase in garbage, attracting vermin. The numerous calls for emergency services contribute to noise and traffic.
- [75] Finally, severely intoxicated persons have behaved in an intimidating manner.

Does the respondent know, or ought he to be aware of the public nuisance taking place and has he failed to take sufficient steps to eliminate it?

- [76] In his submissions, he acknowledged that at various times, the activities at 5 Duke constituted a public nuisance. The requirement of knowledge has been met.
- [77] I accept that the respondent has attempted to control the goings-on at 5 Duke, including by seeking the assistance of police to “clear” the property of unwanted persons. I accept that some of the persons attending 5 Duke are dangerous and that the respondent has at times been under duress.
- [78] The respondent advised the court that as of the date this application was argued, the property was vacant and under control.
- [79] That said, the respondent did not file any materials in response to this application, leaving the court without any evidence that the situation has improved. The most up-to-date affidavit evidence details a report of shots having been fired at 5 Duke, only two weeks before this application was argued.
- [80] In the absence of any evidence that the activities and circumstances at 5 Duke have improved, I cannot find that the respondent has taken sufficient steps to put an end to the public nuisance I have found.
- [81] Given that the three statutory prerequisites have been satisfied, a closing order shall issue.

Notice, Duration and Terms of the Closing Order

- [82] During the hearing of the application, I sought submissions on the date the order should be effective, taking into account the need to give notice to any persons currently occupying 5 Duke.

- [83] The City sought that the order be effective as soon as possible. The respondent advised that there was no one living at the property, and he did not require any time to remove his own personal belongings.
- [84] Had 5 Duke been legally tenanted, it would have been necessary to provide time for the tenants to arrange for new accommodations. In *Kenora*, the court provided almost four months for the tenants in an illegal boarding house to find new accommodations. In this case, given the respondent's submission that no one is currently residing in the property with his permission, it is not necessary to delay the effective date of the closing order.
- [85] The City sought a closing order for a term of up to two years.
- [86] I am not satisfied that an order closing 5 Duke for two years is necessary in all the circumstances of this case. The City did not provide any evidence on this application in support of a two-year term, but instead argued that the order had to be of sufficient length to permit the individuals who would otherwise frequent 5 Duke to understand that they are no longer welcome.
- [87] In my view, a closing order of 12 months is sufficient for this purpose. This is a serious order. It has the effect of rendering the respondent a trespasser to his own property. The order should not be any longer than reasonably necessary to provide a significant break in use of the property to ensure that the public nuisance does not resume.
- [88] Accordingly, the following Order issued on September 22, 2025:
1. This court declares that the activities taking place at the property municipally known as 5 Duke Street, St. Catharines, Ontario (hereinafter referred to as "the Premises"), as more particularly described in the Application Record herein, and the sequelae of these activities, has constituted, and continues to constitute a public nuisance in the vicinity of this Premises;
 2. And this court declares that the above-referenced activities have had and continue to have a detrimental effect on the use and enjoyment of the surrounding community of its own property, due to:
 - (i) Trespass to property, with respect to residences in the vicinity of the Premises;
 - (ii) An increase in garbage and noise in the vicinity of the Premises;
 - (iii) An increase in harassment or intimidation of the members of the community from those coming and going from the Premises;
 - (iv) Ongoing criminal activity and open drug use emanating from the Premises, impacting the health, safety and welfare of members of the community surrounding the Premises;

3. And this court further declares that the Respondent, and the occupants of the Premises knew or ought to have known that the activities and circumstances constituting a public nuisance at the Premises were taking place or existing, but that they did not take sufficient or any steps to eliminate the public nuisance.

4. This court orders that it is just, appropriate and in the public interest that a Closing Order pursuant to s. 447.1 of the *Municipal Act, 2001* R.S.O. C. 25 be made with respect to the Premises to any use for the period of 12 months, commencing September 22, 2025, provided that nothing in this Order is construed to prevent:
 - a. Any work to the Premises necessary to comply with this Closing Order;
 - b. Any repairs or maintenance to the Premises by or on behalf of the Applicant, or specifically authorized by the Applicant, that may be required; and,
 - c. Any cleanup or remediation to the Premises, carried out by or on behalf of the Applicant, or specifically authorized by the Applicant to deal with and/or ameliorate and current life safety, fire safety or public health issues that may arise;

5. And this court orders pursuant to s. 447.1 of the *Municipal Act, 2001* that the Premises shall be and hereby is closed to any use and vacated for a period of 12 months commencing September 22, 2025;

6. And this court further orders that a permanent injunction is hereby granted, pursuant to s. 433 of the *Municipal Act, 2001*, preventing anyone with notice of this Order from using or permitting the use of the Premises in a manner that constitutes a public nuisance.

7. And this court further orders that, pursuant to s. 447.1(9) of the *Municipal Act, 2001*, the Applicant, including its By-Law Enforcement forces, and/or Niagara Regional Police Service, and their respective employees and agents, are specifically empowered to physically bar entry to all entrances to the premises until such time as the Closing Order has been discharged or suspended;

8. And this court further orders that the Niagara Regional Police Service is specifically empowered to arrest and/or apprehend anyone found present

on the premises other than for the purpose of enforcing this Order, on the basis that they are trespassing;

9. And this court further orders that nothing in this order shall derogate from or impede the right of the Applicant, the Niagara Regional Police Service, and/or their agents, employees and contractors to enforce the City of St Catharines by-laws, to carry out their statutory duties, to enforce the law, and to exercise the powers conferred upon them by statute, by-law and this Order.

10. And this court further orders that this Order shall be posted conspicuously at the Premises.

A.J. Ohler, J.

Date Released: November 25, 2025

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BETWEEN:

Corporation of the City of St Catharines

Applicant

– and –

Huda Al-Kadhee

Respondent

REASONS FOR JUDGMENT

A.J. Ohler, J.

Date Released: November 25, 2025