

CITATION: Bennett et al v. Chadwick et al., 2025 ONSC 3603
NEWMARKET COURT FILE NO.: CV-23-601-00
DATE: 20250618

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)	
)	
PAUL BENNETT and ROBERTA)	
BENNETT)	
)	Colin A. Brown, for the Applicants
Applicants)	
)	
– and –)	
)	
KIMBERLY CHADWICK and)	Alex Ciccone, for Chadwick
CRESSVIEW LAKES CORPORATION)	
also known as CRESSVIEW LAKES)	Paula Lombardi, for Cressview
)	
Respondents)	
)	Heard: May 30, 2025 (in-person)
)	

2025 ONSC 3603 (CanLII)

REASONS FOR DECISION

EDWARDS RSJ.:

Overview

- [1] The Applicants seek a declaration that they have a right-of-way over property owned by the Respondents. The Applicants also seek an order requiring the Respondents to remove a fence that the Applicants suggest has impeded their access to the right-of-way. The Applicants also seek relief in the form of an oppression order against the Respondent Cressview Lakes Corporation (hereinafter “Cressview”).

- [2] While much law was cited in argument this is entirely a factual dispute where my findings of fact determine the issues.

The Facts

- [3] The Applicants are shareholders of Cressview. Cressview is a non-profit corporation. In June 1960, Cressview obtained property on a Plan of Subdivision in the area of Cressview

Lakes. Cressview issued 16 share certificates which granted their holders membership in the corporation and exclusive possession of one or more lots (the “Cressview Lands”) on the certificate. The Cressview Lands consist of a total of 19 lots.

- [4] The Applicants’ membership in Cressview is attached to Lots 45, 51 and 52 of the Cressview Lands. The Applicants memberships were transferred to them in or about August 15, 2013.
- [5] The Respondent Kimberly Chadwick (“Chadwick”) is also a member of Cressview and her membership is attached to Lot 46 of the Cressview Lands. Chadwick’s membership was transferred to her in November 2021.

Access to Lot 52

- [6] In or about 1960 it was determined that access to Lot 52 could only be achieved via water. In order to rectify this situation, at the first annual meeting of Cressview held on February 12, 1961, by unanimous resolution of the shareholders, it was resolved that the owner of the share certificate entitled to exclusion possession of Lot 52 (Harry Harper) “should have access to Lot 52 by using the present roadway over Lot 45 and Lot 46 presently owned by Frank Smith.” The access point to the right-of-way pursuant to this unanimous resolution of the shareholders was on Lot 45. The right-of-way then progressed over Lot 46 until it provided access to Lot 52. I will refer to this as the 1961 Resolution.
- [7] On June 9, 1974, the right-of-way was described in a handwritten agreement (the Agreement) between the members of Lot 46 and Lot 52. The Agreement states:

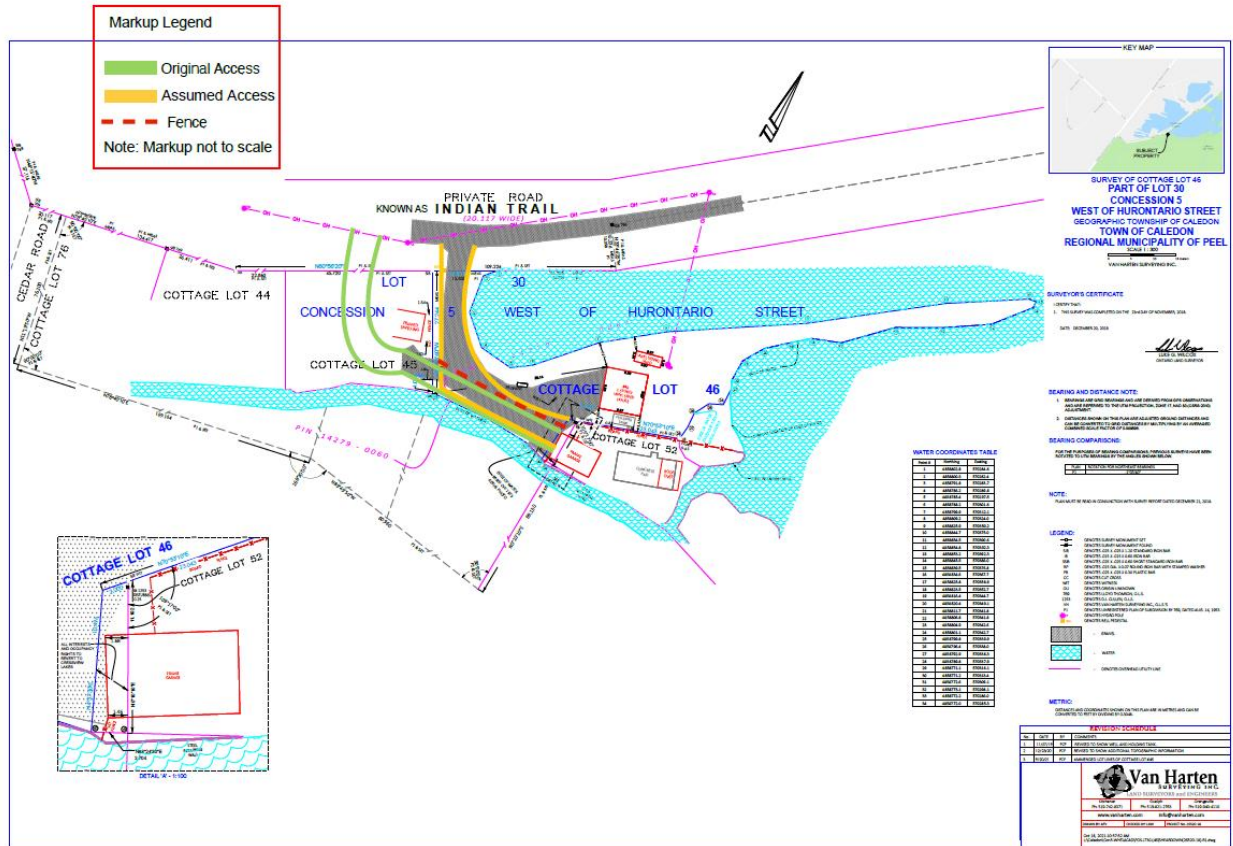
Right-of-way shall be granted across lot 46 as access to lot 52 as long as these lots exist.

- [8] The Respondents argue the Agreement represented an endorsement of the 1961 right-of-way which traversed across Lot 46 from Lot 45 to Lot 52.

The Nature of the Dispute

- [9] Whether the right-of-way access is on Lot 45 or Lot 46 the access allows the Applicants to get from Indian Trail to their cottage on Lot 52.
- [10] What is not in dispute in this application is that the Applicants have a right-of-way over the Respondents’ property. What is in dispute is where the right-of-way exists. What is in dispute is the point at which the right-of-way is accessed from Indian Trail.
- [11] The sketch reproduced below shows in green where the Respondents say the original point of access to the right-of-way was located. The point of access is on Lot 45.

- [12] The point of access marked in yellow is what the Applicants argue is the point of access that they argue has existed for some considerable period of time. That point of access is on Lot 46; the lot owned by the Respondents.
- [13] Marked in red is the location of where a fence has been erected by Chadwick. By erecting the fence it is now impossible to access Lot 46 and gain access to Lot 52.



- [14] The Respondents argue that the right-of-way marked in green is not obstructed by the fence. The right-of-way that is accessed off Lot 45 traverses Lot 45 and crosses the bottom of Lot 46 to access Lot 52. What is marked in green is what the Respondents argue is the right-of-way contemplated by the 1961 Resolution and the Agreement. The Respondents argue that the Applicants continue to have access over the right-of-way evidenced by the 1961 Resolution and the Agreement and that their access to Lot 52 is in no way impeded by the fence.
- [15] The Applicants argue that they have had the right-of-way over the Respondents' property using the right-of-way marked in yellow. What is marked in yellow for the most part is a driveway that Chadwick and her predecessors have used to gain access to their cottage from Indian Trail.

- [16] As a result of issues that arose between the Applicants and the Respondents, Chadwick erected a fence along her property line that the Applicants now say interferes with where they say the right-of-way is located. If the right-of-way is where the Applicants' say it is, i.e., in the area marked in yellow, then it is beyond dispute that the fence would block that right-of-way.
- [17] The 1974 Agreement does not show where the right-of-way is located. A photograph entered into evidence found at Case Center B-2-889 purports to show the access point to the right-of-way marked in green.
- [18] The Applicants take the position that with the erection of the fence, their ability to access their property on Lot 52 has been impacted to the point where they cannot access their property other than by foot.
- [19] The Respondents argue that the right-of-way between the fence line and what is referred to as the creek is approximately 12 feet wide. The Respondents filed a photograph as part of their responding motion materials found at Case Center B-2-961 which shows a pick-up truck at the end of the right-of-way/driveway. The Respondents argue this photograph confirms that a pick-up truck can safely traverse the right-of-way that is marked in green which traverses the bottom portion of Lot 46.
- [20] What this court is called upon to determine is where the original point of access to the right-of-way was located and whether or not there was any agreement between the parties that would have changed that access point marked in green to the access point marked in yellow, i.e., from Lot 45 to Lot 46.
- [21] The Cressview minutes dating back to 1961 leave no doubt that the point of access to the right-of-way over Lot 46 had to be on Lot 45, i.e., what is marked in green. I say this because the minutes specifically refer to Lot 45 as where the point of access is located.
- [22] If the original point of access is found on Lot 45 the only other issue this court has to determine is whether or not the point of access was ever changed to Lot 46, i.e., what is marked in yellow.
- [23] The Applicants maintain that they have enjoyed regular unimpeded access across Lot 46 with access from Lot 46 - not Lot 45 (marked in yellow). The Applicants argue the right-of-way they now ask this court to endorse allows them an unrestricted right-of-way over the Chadwick driveway.
- [24] Underlying the dispute between the parties is the alleged use of what is marked in yellow by the Applicants. Specifically, the Respondents allege that the Applicants have used Lot 46 to store property belonging to the Applicants. While counsel for the Applicants concedes that it would be improper for the Applicants to use the right-of-way for storage their position is that they have never done what is alleged, i.e., store their property on Lot 46.
- [25] Factually the evidence does not support the Applicants position they never stored their property on Lot 46. This issue was addressed in Minutes of a regular shareholders meeting

of Cressview dated September 26, 2021(see Case Centre Page B-2-874 para 9). These Minutes leave little doubt that the actions of the Applicants improperly storing their property on Lot 46 was a source of consternation for the former owner of Lot 46. The continued storage by the Applicants of their property has also been a source of consternation for Chadwick. The refusal of the Applicants to be a “good neighbour” and remove their property from Lot 46 resulted in the fence being built.

- [26] The Applicants argue they have enjoyed a long-lasting right-of-way over the Chadwick driveway (what is marked as the yellow right-of-way). Chadwick concedes she originally did grant permission to use her driveway to access Lot 52. Chadwick (like the predecessor owner of Lot 46) revoked her permission to use the driveway because the Applicants refused to comply with her requests to remove their property from Lot 46.
- [27] The Applicants purchased the share to Lot 52 in August 2013. They rely on the evidence of the former owner of the share for Lot 46, Gord Gallant, to support their argument that there has been access across Lot 46 via the right-of-way in marked in yellow since 2000 when Mr. Gallant purchased the share to Lot 46. There is however no sworn evidence from Mr. Gallant to support the position of the Applicants. The information from Mr. Gallant is found in an unsworn statement marked as an exhibit to Mr. Bennett’s affidavit sworn January 31, 2023. The unsworn statement of Mr. Gallant could not be cross-examined upon. I place no weight on this statement.
- [28] There is no admissible evidence that the Applicants have enjoyed a continuous and uninterrupted right-of-way or licence across Lot 46. The evidence in fact supports the conclusion that the former owner of the share for Lot 46, and now the Respondent Chadwick, had both given permission to the Applicants to use the driveway on Lot 46 marked in yellow. When the Applicants began to use Lot 46 for storage of their property that permission was revoked.
- [29] Ultimately the Applicants are the authors of their own misfortune. Had they been good neighbours and not used the right-of-way for an improper purpose this litigation would not have been necessary. Had they been good neighbours and removed their property from the driveway/right-of-way this litigation and the erection of the fence would not have been necessary.
- [30] The Applicants argue that their access to Lot 52 has been restricted by reason of the fence erected on Lot 46. In cross-examination Mr. Bennett conceded he has accessed Lot 52 by using the right-of-way that begins on Lot 45 (highlighted in green). His position is that the Applicants’ access across Lot 45 can only be achieved by walking. The Applicants argue they cannot drive a vehicle across the right-of-way as it is grown over with vegetation not having been used in years.
- [31] As it relates to that portion of the right-of-way that crosses from Lot 45 onto Lot 46 (marked in green) Mr. Bennett argues that a vehicle cannot safely travel on that part of the right-of-way as it is not safe to do so. There is however evidence that demonstrates that a large pick-up truck has in fact traversed this portion of the right-of-way without issue. I do not accept

the Applicants evidence that this portion of the right-of-way is unsafe for the purposes of driving a car or pick-up truck.

- [32] In essence, what the Applicants seek is the convenience of using the driveway across the Respondents property on Lot 46 to gain access to Lot 52. The Respondents take no issue with the Applicants using the right-of-way marked in green provided the Applicants access the right-of-way from Lot 45 and then travel on that portion of the right-of-way marked in green across Lot 46.
- [33] I do not doubt that accessing the right-of-way on Lot 45 may create some short term inconvenience for the Applicants as the right-of-way may be overgrown. There is no evidence that the right-of-way cannot be restored to its original state. The only issue then is accessing the right-of-way across Lot 46. The evidence establishes that a pick-up truck can in fact access that portion of the right-of-way. I do not accept the Applicants' evidence that this cannot be done safely.

Disposition

- [34] It follows from the factual findings made above that the right-of-way that provides access to Lot 52 is the right-of-way that has as its point of access Lot 45-not Lot 46. For the sake of greater certainty the right-of-way is the one marked in green not the one marked in yellow. It also follows from these factual findings that the fence does not impede access to Lot 52 and as such the fence does not have to be demolished. There is no merit to the oppression claim as there is no evidence to support that claim. The Applicants were given every opportunity to remedy the issues that came before this court. They chose not to do so. The application is dismissed with costs.
- [35] I am prepared to receive written submissions as it relates to the issue of costs limited to three pages in length with the Respondents submission due July 12, 2025 and the Applicants due July 20, 2025. Counsel are encouraged to resolve the issue of costs.

Regional Senior Justice Edwards

Released: June 18, 2025

CITATION: Bennett et al v. Chadwick et al., 2025 ONSC 3603
NEWMARKET COURT FILE NO.: CV-23-601-00

ONTARIO

SUPERIOR COURT OF JUSTICE

PAUL BENNETT and ROBERTA BENNETT

Applicants

– and –

KIMBERLY CHADWICK and CRESSVIEW LAKES
CORPORATION also known as CRESSVIEW LAKES

Respondents

REASONS FOR DECISION

Regional Senior Justice Edwards

Released: June 18, 2025