

**CITATION:** Ross v. The Corporation of the City of Markham, 2025 ONSC 6586  
**COURT FILE NO.:** CV-24-00004945-0000  
**DATE:** 20251124

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** MARTIN ROSS, Applicant

**AND:**

THE CORPORATION OF THE CITY OF MARKHAM and THE CHIEF  
BUILDING OFFICIAL OF THE CITY OF MARKHAM, Respondents

**BEFORE:** THE HON. MR. JUSTICE J.R. McCARTHY

**COUNSEL:** A. Bouchelev, for the Applicant

A. Rintoul, for the Respondents

**HEARD:** November 14, 2025

**COSTS ENDORSEMENT**

- [1] The parties appear before me on the outstanding issue of costs.
- [2] On November 18, 2024, I dismissed the applicant's emergency application with reasons.
- [3] The Respondent City was entirely successful on the matter and is presumptively entitled to costs, which it seeks on a substantial indemnity basis in the amount of \$25,150.41 inclusive of disbursements and HST.
- [4] The Applicant does not dispute the City's entitlement to costs but suggests the more modest amount of \$9,000 on a partial indemnity basis.
- [5] I find that the amount sought by the Respondent is entirely fit, justified and proportionate.
- [6] In my reasons, I found the application to be nothing more than a collateral attack on the earlier decision of my sister Fraser J, a decision which was upheld by the Ontario Court of Appeal. Those prior decisions had served to confirm the City's rights under an easement agreement in respect of the Applicant's property.
- [7] In dismissing the application, I made findings that the thrust of the application was to enjoin the City from doing precisely what the prior decisions had already authorized it to do. I found the matter subject to the doctrine of *res judicata*. In addition, I found that there was no serious issue to be tried, that the relief sought would, in any event, serve no practical purpose and finally, that there was no basis for the order sought relating to the Land Registrar.

- [8] The application was unreasonable and ill-advised. It should not have been brought. It had no chance of success. It sought, without benefit of appeal, to essentially do an “end run” around the decision of both this court and the highest court in the province. The application amounted to an abuse of process. It sought to prevent or delay the City from taking steps which were entirely within its rights and which had been specifically authorized by two levels of court. The Applicant sought to re-litigate previously decided facts and issues.
- [9] To make matters worse, the application was brought on short notice with the Applicant serving voluminous materials only a day before the return date and waiting until the minutes preceding the hearing proper to serve his factum. The Respondent was required, not just to digest and sift through hundreds of pages of materials and exhibits, but to prepare weighty responding materials which had to address baseless allegations of bad faith and improper conduct against individuals at the City.
- [10] This type of conduct should not be tolerated by the courts. When, as here, litigation is brought as a collateral attack on previously decided matters or where abuse of process, tactical maneuvering, attempts to embarrass or to frustrate the exercise of clearly defined and authorized rights lie at the heart of the proceeding, a costs sanction should follow.
- [11] In my view, such a sanction is entirely fit and appropriate and should result in the imposition of costs on the higher scale.
- [12] The costs sought by the Respondent are proportionate to both the importance of the matter for the City (which was looking to exercise its legal, authorized and affirmed rights) and the serious nature of the relief sought (injunctive).
- [13] The amount suggested by the Applicant would not advance the principle of indemnity. The City was required to retain and pay competent and expert counsel to respond to the relief being sought. It was reasonable, and could have reasonably been expected, that multiple counsel would be required to properly respond to the application.
- [14] For the above reasons, it is ordered that the Applicant Martin Ross pay to the Respondent The City of Markham the sum of \$25,150.41 as costs of the application.

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J.R. McCARTHY J.

**Date:** November 24, 2025