

CITATION: Ahokas v. Gross, 2025 ONSC 6683
COURT FILE NO.: CV-24-0067-00
DATE: 2025-11-28

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Ulla Ahokas and Mauri Ahokas, Applicants

AND:

Vello Gross and Vaughn Gross, Respondents

BEFORE: Brochu J.

COUNSEL: C. Carr, for the Applicants

J. Thompson and N. Melchiorre, for the Respondents

HEARD: Written submissions

ENDORSEMENT ON COSTS

OVERVIEW

[1] The Applicants brought an application seeking a declaration that they had an equitable easement of proprietary estoppel over land owned by the Respondents for the purpose of accessing their property. In the alternative, a declaration that the Road in question was an “access road” as defined by the *Road Access Act*, R.S.O. 1990, c. R.34 (the “Act”).

[2] The application was dismissed. I found that the Applicants failed to establish a claim for an equitable easement in proprietary estoppel over the Respondents’ property. I also found that the “Road” was not an “access road” as defined by the *Road Access Act*: see *Ahokas v. Gross*, 2025 ONSC 4966, at paras. 108-110.

[3] As the successful party, the Respondents seek their costs on a substantial indemnity basis.

[4] I have found that the Respondents are entitled to costs on a partial indemnity basis.

[5] The following are my reasons.

PARTIES' POSITIONS

The Respondents

[6] The Respondents submit that they were wholly successful in opposing the Applicants' application and should be awarded costs on a substantial indemnity basis.

[7] Counsel for the Respondents has filed a Bill of Costs, setting out partial indemnity fees (65%) of \$23,699.37, substantial indemnity fees (85%) of \$30,991.49, and full indemnity fees of \$36,460.58 (all fees are inclusive of HST). Disbursements are \$901.76 inclusive of HST.

[8] The Bill of Costs shows that both Mr. Melchiorre, who has 21 years of experience, and Mr. Thompson, who has 3 years of experience, worked on the file.

The Applicants

[9] The Applicants request that this Court exercise its discretion and make no costs order.

[10] It is advanced that this was a unique situation where the Applicants had no choice but to seek judicial determination. A Court application was the only hope for the Applicants' family to access their property.

[11] In the alternative, Counsel for the Applicants suggests that a fair and reasonable costs award if of \$5,000.00 (inclusive of HST and disbursements).

LEGAL CONSIDERATION AND ANALYSIS

[12] An award of costs is a matter in the discretion of the judge by virtue of s. 131(1) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (“*CJA*”).

[13] The factors to be considered when fixing costs are set out in r. 57 of the *Rules of Civil Procedure*, and include, in addition to the result and any offers to settle, the principle of indemnity and the amount of costs an unsuccessful party could reasonably expect to pay. The factors also include the amount claimed and recovered, the complexity of the proceeding and the importance of the issues. The court may also consider the conduct of the parties, whether any step in the proceeding was inappropriate, whether appropriate admissions were made. Rule 57.01(1)(i) also allows the court to consider “any other matter relevant to the question of costs.” Read in conjunction with s. 131 of the *CJA*, the court therefore has wide discretion.

[14] Costs hearings are a summary proceeding and not a precise mathematical exercise.

[15] The court must consider the principle of proportionality set out in r. 1.04 (1.1) of the *Rules* and the overriding principle of reasonableness discussed in *Boucher v. Public Accountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.), at 37-38.

Should the successful party be entitled to costs?

[16] I find that this is not a matter in which the court should deviate from the presumption that the successful party should be entitled to their costs.

[17] The Applicants advanced that there should be no costs as they had no choice but to bring an application and that the Respondents refused to consider any resolution offer.

[18] Unfortunately, these types of actions are often matters in which a court application is required: such does not result in an automatic denial of costs to the successful party.

[19] The offer advanced by the Applicants was to contribute to the maintenance of the Road in exchange for access. The Respondents' evidence and position throughout this proceeding was that they never consented or acquiesced to the Applicants entering onto their property. Consequently, the nature of the offer to contribute to the maintenance of the Road was a nonstarter.

[20] It is also advanced that the Respondents' questionable conduct impacted due process and violated the *Act* and should therefore preclude costs. Considering my findings that the Road was not an "access road" as defined by the *Act*, this argument carries no weight.

Scale of costs

Complexity of the Proceedings

[21] This matter was not overly complex. However, it was complicated to an extent by the number of reliefs initially advanced by the Applicants.

[22] In their submissions, the Applicants indicate that the reliefs overlapped and that the Respondents were advised prior to the application hearing that they would not be pursuing the abandoned forms of relief. As a result, they state that no additional costs needed to be expended in research and preparation. The Respondents dispute these assertions and state that they were only

advised that some reliefs would be abandoned at the application hearing, resulting in no saving in time for research and preparation.

[23] I note from a review of the Applicants' factum, prepared shortly before the application hearing, that it includes a request for all reliefs, including the reliefs that were eventually abandoned.

[24] The concepts of law that govern the reliefs sought may have had some overlapping features; however, they remain distinct reliefs. And the Respondents were required to respond and address each relief advanced by the Applicants. They were therefore required to spend the required time in researching and responding to these reliefs in preparation of their factum and for the hearing.

Importance of the Issues

[25] There is no question that the issues in this proceeding were important to both parties. It involved both the Applicants' and the Respondents' rights to access and enjoyment of their respective properties.

Substantial Indemnity Costs

[26] The Respondents submit they should be awarded costs on a substantial indemnity basis.

[27] Substantial indemnity costs may be warranted in two circumstances: (1) if an offer triggers the costs consequences of r. 49 and (2) where a party has engaged in reprehensible, scandalous or outrageous conduct in the proceeding: see *Balogh v. R.C. Yantha Electric Ltd.*, 2020 ONSC 2051,

at para. 14; *McFlow Capital Corp. v. James*, 2020 ONSC 6167, at para. 14, both citing *Davies v. Clarington (Municipality)*, 2009 ONCA 722, at paras. 28-29.

[28] There is no r. 49 offer, as a result the first circumstance has no application in this case.

[29] In support of their position, the Respondents advance that the Applicants' pre-litigation and litigation conduct constituted conduct that unnecessarily lengthened the duration of the proceeding and was improper, vexatious and unnecessary as set out in rr. 57.01(1)(e) and (f).

[30] There is some evidence of reprehensible conduct on the part of the Respondents, such that they continued to access the property after being told repeatedly that they were trespassing.

[31] The Respondents also alleged that several trees were cut down and stacked in piles as though someone were attempting to create a trailhead, and that a gate/barb wire had been erected on the Respondents' property at the end of the Road near the Applicants' property. The Respondents are insinuating that this was done by the Applicants. However, the evidence offered on this issue is quite vague. It is an assumption that is advanced by the Respondents. Furthermore, there was no specific evidence as to the extent/number of trees cut and whether there were any damages to the property resulting from these actions that were allegedly perpetrated by the Applicants.

[32] I find that the conduct of the Applicants in this matter does not compare to the conduct outlined in *Balogh* and *McFlow Capital Corp.*, both referenced by the Respondents, in support of their request for substantial indemnity costs.

[33] I further find that, in the circumstances of this matter, the conduct does not reach the level that would be required to substantiate a higher award of costs.

[34] This is a matter in which partial indemnity costs should be awarded.

Quantum of costs

[35] The Applicants submit that a fair and reasonable costs award is \$5,000.00, all-inclusive. However, they do not provide a comparison as to what was expended on their end.

[36] This Court has previously noted that there is no requirement that an unsuccessful party who is not seeking costs file a bill of costs, although it is preferable that they do so. To attack the quantum of costs of the successful party as excessive, without producing one's own Bill of Costs is "no more than an attack in the air": Shaw J., in *Man-Shield (NWO) Construction Inc. v. Macdonald*, 2017 ONSC 684, at para. 41, citing Winkler J., as he then was, in *Risorto v. State Farm Mutual Automobile Insurance Co.* (2003), 64 O.R. (3d) 135 (Ont. S.C.).

[37] I find that the hourly rates ranging over the three years of ongoing litigation from \$325.00 to \$365.00 for Mr. Melchiorre, with 19 to 21 years of experience and from \$100.00 to \$240.00 for Mr. Thompson, with 1 to 3 years of experience to be within a reasonable range.

[38] There is likely some duplication of time between senior and junior counsel. These costs should not be borne by the opposing party.

[39] I also note some tasks performed by counsel, were more of a clerical nature, such as formatting, and could have been assigned to a clerk. Furthermore, this is not a matter that required the attendance of two lawyers at the hearing.

COSTS ORDER

[40] The Applicants shall pay the Respondents' costs on a partial indemnity scale fixed at \$18,000.00 inclusive of HST, plus disbursements of \$901.76 inclusive of HST.

“original signed by”
The Hon. Madam Justice C.M. Brochu

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Released: November 28, 2025