

**COURT FILE NO.:** CV-21-00000003-0000  
**CITATION:** Miner-Tremblay et el. v. Rintoul, 2025 ONSC 7068  
**DATE:** December 16, 2025

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

Diana Lynne Ester Miner-Tremblay and	)	
Debra Jean Hazel Bowes	)	
	)	
<i>Plaintiffs</i>	)	<i>Matthew G. T. Glass</i>
<i>(Defendants by Counterclaim)</i>	)	Counsel for Plaintiffs
	)	
- and -	)	
	)	
	)	
Kevin Donald James Rintoul, aka Kevin	)	
James Donald Rintoul and Karen Frances	)	
Rintoul	)	
	)	
	)	
<i>Defendants</i>	)	<i>Kelli-Anne Day</i>
<i>(Plaintiffs by Counterclaim)</i>	)	Counsel for Defendants

**REASONS FOR DECISION ON COSTS**

**JOHNSTON, J.**

[1] These are Reasons for Decision on Costs following Trial and my Decision dated June 6, 2025.

[2] The case was highly contentious and litigious. The subject of the litigation was a small strip of land locked between the properties of the Applicants and Defendants. The value of the land was never established at trial, but it can hardly be disputed the value was nominal. The costs incurred, as reported in the Bills of Cost, are grossly disproportionate to the outstanding issues.

[3] This case should not have proceeded to trial, it cried out for saner ‘heads’ to resolve the matter, perhaps in some creative manner, several come to mind.

[4] The Defendants actual costs according to their Bill of Costs was \$137,000.00, while the Plaintiffs actual costs are reported as \$121,610.00. This is utterly and completely disproportionate to the issues in dispute. All parties in this matter, from the Court’s perspective, were willing participants. The Court sat through 12 days of trial, valuable court time spent on the matter, where serious cases involving Family Law and criminal matters were placed on hold.

[5] In the conduct of the trial, I find fault with both sides. The Court could also bear criticism for not demanding more accountability through exercise of its trial management function. I accept this criticism. In defence of allowing this “runaway trial” to continue, it is difficult sometimes to limit proceedings when counsel persist that the time is necessary. A trial Judge has the disadvantage of not knowing the case like the lawyers do. Nonetheless, this case is an example of the need for accountability from all actors in the system. There was a lack of willingness to compromise, failing to recognize the inevitable. The Plaintiffs pursued damages, knowing they presented little to no evidence upon which the claim could be evaluated and therefore no chance of success. The Defendants equally engaged in a manner that had no real prospect of success. The counter claim had little chance of success, as did the claim for adverse possession.

[6] In keeping with the manner this case unfolded, the parties engaged in significant emails to the Court after exchange in written cost submissions.

[7] I will deal with some of the issues raised in the email exchanges on the cost issue:

1. The Defendants written cost submissions significantly exceeded the page limit I placed on the parties. Instead of consulting opposing counsel and/or seeking authorization, the Defendants simply filed the brief in excess of the limit and asked permission, after the fact. It is likely, had the Defendants requests permission to file 10 pages instead of 5, the Court would have consented. There were a number of issues they felt needed to be addressed.
2. The submissions of both counsel border on personal attack. It is one thing to suggest conduct that was not helpful in the conduct of the trial, it is another to “attack” other counsel [I acknowledge the inference is mine and not direct].
3. Ms. Day seeks to provide further submissions on the conduct of the Plaintiffs’ first counsel Mr. Mirsky, alleging personal, professional and ethical misconduct. I decline to permit any further time, money or resources to be spent on this file. Mr. Mirsky is no longer counsel and has no opportunity to respond to the allegations against him. While it is conceivable, on the appropriate facts, raising these issues, at this stage sometimes could be appropriate. But not in this case. If misconduct is alleged against counsel there are other available forums, which would afford the alleged conduct to be explored and the lawyer to make reply. Many of the allegations referred to did not occur in the presence of myself

as trial Judge. It would be a violation of principles of natural justice to address the concerns in this forum, without the right to be heard.

## **Positions of the Parties**

### **Plaintiffs**

[8] The Plaintiffs argue they were successful at trial and the Defendants failed in their counter claim. In exercising discretion under section 131 of the *Courts of Justice Act* to award costs, the Court may consider in addition to the result, offers to settle and facts set out in Rule 57.01 of the Rules of Civil Procedure. The Defendants in this case should have expected to pay costs on a partial indemnity scale if they were unsuccessful. The Plaintiffs argue their costs between two counsel were reasonable and on a partial indemnity scale. They are \$72,966.00 plus HST and disbursements. The Plaintiffs say the trial focused on the boundary dispute and not damages, the monetary claims were “always secondary or ancillary in nature”. The Plaintiffs defend their choice of jurisdiction, because Small Claims Court does not have jurisdiction to deal with property boundary disputes. The Plaintiffs describe the issues as “important and were required to be addressed for the current and future owners of the lands”. The Plaintiffs say it was the Defendants who could have challenged the location of the boundary under the *Boundaries Act*, RSO 1990 c B 10 (a more streamlined and cost effective approach). The Defendants complicated the issues with claims of survey errors and claim of adverse possession.

[9] The Plaintiffs refer to their Offers to Settle dated May 8, 2023, which included claims of removal of encroachments and fence (entire fence) \$40,000.00 costs and \$30,000.00 for occupancy and punitive damages. A second offer dated November 17, 2023, offer included removal of the encroachments, the Plaintiffs construct a new fence and receive \$30,000.00 for costs and loss of occupancy and punitive damages and costs as assessed. The Plaintiffs state the offers were not better than

trial, but demonstrate they were attempting to resolve and to compromise. They made an offer mid trial, which included costs and carving out the disputed lands from what the Defendants claim.

### **Defendants**

[10] The Defendants argue each party ought to pay their own costs and no award. The Defendants base their position on the following:

1. Results at trial were mixed.
2. The inefficient procedure/jurisdiction selected and then changed by the Plaintiffs, and
3. The conduct attributable to the Plaintiffs through the litigation.

[11] The Defendants argue the case belonged before the Ontario Land Tribunal, where all affected land owners would have had notice and each bear their own costs. The 12 day trial was expensive and failed to resolve the Garagans portion of the fence. The amount sued for in damages was significant compared to the amount awarded (\$2,000.00 nominal damages). Further, the Plaintiffs added “spurious claims” for both pecuniary and non pecuniary damages that they refused to abandon (but made no real effort to prove at trial). The Offers were not as good as the results. The Offers from the Plaintiffs were conditional on payment of substantial damages, including punitive damages, which were not ordered. The Defendants offers ought to be considered, as it represented an actual compromise. The inference is the litigation was a desire to punish the Rintoul’s. There was animus displayed by the Plaintiffs and one of the parties spouse. The Defendants ask the Court to consider unreasonable conduct by the Plaintiffs, both before and during trial, including failure to address the Request to Admit, objection to taking a “view”, which the Court ordered, attempts to repeatedly refer to evidence ruled inadmissible, lack of preparation, not ready to cross examine the Defendant expert,

Mr. Tom MacDonald. The Plaintiffs continued to press demands for punitive and exemplary damages. Any cost ordered should take into account the Defendants financial circumstances, which they say are limited.

### **Analysis**

[12] The way this trial was conducted was not efficient and not reasonable. The real issue was the dispute between neighbours of the location of the lot line. The location mattered only to the parties. It was a very small amount of land in dispute compared to the land each party owned. It was a cloud on title, but an agreement could have easily rectified the issue.

[13] This matter should have been before the Ontario Land Tribunal. The Plaintiffs were overly aggressive in commencement of the proceeding in this Court. They justify the decision to be in the Superior Court of Justice on the basis of the monetary claim. The fact is, while damages were alleged, virtually no evidence was presented. Accordingly, the result on the damage issue was inevitable.

[14] The Defendants could have previously chosen to dispute the survey by application to the appropriate tribunal. They did not do so. But, the Plaintiffs could have proceeded before the Tribunal. The Defendants may or may not have made the claim for adverse possession. The answer will never be known, because the Plaintiffs commenced the matter in the Superior Court of Justice.

[15] As mentioned above, the time spent at trial, the money each side paid their own counsel is utterly and completely not justified. Both sides bear responsibility for the cost and time incurred.

[16] I agree the Plaintiffs were successful on the main issue on the location of the boundary. In the normal course of events, they are entitled to costs on a partial

indemnity scale for their claim regarding the boundary and for successfully opposing the Counter Claim.

[17] However, the matter should not have been brought to Court. Instead of streamlining the trial, it was protracted.

[18] The Plaintiff at the commencement of trial caused delay by not properly addressing the Request to Admit. Counsel was not prepared to conduct cross examination of Mr. Tom MacDonald, this caused delay.

[19] The Plaintiffs changed counsel. I make no comment on the decision to do so. However, the Plaintiff incurred significant cost in a second lawyer “coming up to speed on the file”. The Defendants ought not bear any of those costs.

[20] The Court finds current counsel for the Plaintiffs acted appropriately and streamlined matters. But the trial time leading up to that point was anything but streamlined.

[21] Due to the Plaintiffs conduct, I exercise my discretion and grant no award for fees of counsel.

[22] I will allow a cost award for some of the Plaintiffs disbursement costs. The expert evidence would have been important whatever forum the matter was addressed in. Accordingly, I Order the Defendants to pay to the Plaintiffs disbursements in the sum of \$25,000.00 plus HST.

[23] The Defendants could afford to engage in this litigation, incurring their own significant costs. They own property. They brought their own claims, which were not successful. The Plaintiffs incurred costs to defend. I reject the argument they should pay not costs.

[24] I make no distinction between the two Defendants on costs. Each chose the path they chose. The counter claim was made by both Defendants. There is no reason they should not be jointly and severally liable for the \$ 25,000.00 plus HST.

*Justice JM Johnston “signed virtually”*

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The Honourable Mr. Justice J.M. Johnston

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Kevin Donald James Rintoul, aka Kevin James  
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