

CITATION: *Castle Hill Neighbourhood Association v. Morse*, 2026 ONSC 895
COURT FILE NO.: CV-25-00742522
DATE: 20260212

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Castle Hill Neighbourhood Association, Applicant

AND:

Jerome R. Morse, Respondent

BEFORE: Schabas J.

COUNSEL: *Tanya Walker, Dora Konomi and Jiayu Li*, for the Applicant


David Trafford, for the Respondent

HEARD: In writing

COSTS ENDORSEMENT

- [1] On August 5, 2025, I allowed an application brought by the Applicant to enforce restrictive covenants and architectural controls against a homeowner, the Respondent, Jerome Morse. My Reasons can be found at *Castle Hill Neighbourhood Association v. Morse*, 2025 ONSC 4522.
- [2] The Applicant seeks costs on a full indemnity basis, citing cases under the *Condominium Act*, 1998, S.O. 1998 c. 19, which have granted full indemnity costs “because the balance of the unit holders are blameless and should not have to bear the legal costs of securing the compliance of one of the unit holders”: *York Region Standard Condominium Corporation No. 972 v. Lee*, 2021 ONCA 914 at para. 14; *Wentworth Condo Corp. and Brendan Taylor*, 2014 ONSC 59 at paras. 23 and 24.
- [3] The Respondent opposes costs on any elevated scale, arguing that the Applicant is not a condominium, and therefore s. 134(5) of the *Condominium Act* does not apply. Counsel for Morse argues that there is no conduct justifying an award of substantial or full indemnity costs. He also takes issue with the amount sought, arguing that costs were unnecessarily increased by moving for an *ex parte* injunction and otherwise running up expenses.
- [4] In my view, the Applicant’s position is well-founded. Castle Hill is a corporation which manages the common interests of homeowners within the Castle Hill community in Toronto, including upholding restrictive covenants and architectural controls and ensuring that property owners in the community comply with the Association’s By-laws. While it may not be a corporation under the *Condominium Act*, it functions in largely the same way and for the same purposes, such that there is no reason in principle to distinguish this case from a condominium case and the rationale for full indemnity costs applied in those cases.

- [5] The Respondent's reference to s. 135(4) of the *Act* is irrelevant. It simply states that any award of damages or costs made against an owner may be added to the owner's share of the common expenses. It does not address scale of costs. Section 134(3) does provide a ground to award "costs incurred by the applicant" which has been interpreted to include costs on a full indemnity basis. However, costs remain in the discretion of the court and the principle that blameless unit holders should not have to bear the costs of securing compliance of another unit holder is what drives the courts to order full indemnity costs in such cases. As Milanetti J. stated in *Wentworth Condo Corp.* at para. 24, "the balance of the condominium owners should not be faced with the legal expense of the intransigence of one of the unit holders. When people choose to live in a close community neighbourhood, they are bound to accept the responsibility of fairness and decency to their neighbours."
- [6] In my view, therefore, it is appropriate in this case to award full indemnity costs.
- [7] Turning to quantum, the Applicant's injunction motion was well-founded and granted by Koehnen J. Although the Applicant's total costs are considerably higher than those found in the Respondent's Bill of Costs – e.g., 112.9 hours compared to 57.7 hours – it is well-accepted that the party pursuing an application often bears a higher burden of the costs. It should also be borne in mind that Morse, a lawyer himself, spent considerable time on the matter which is not reflected in his Bill of Costs.
- [8] In short, having reviewed the competing Bills of Costs, and having concluded that costs should be on a full indemnity basis, the costs sought by the Applicant are fair and reasonable and reflect what the Respondent ought reasonably to have expected to pay if unsuccessful: *Boucher v. Public Accountants Counsel for Ontario*, 2004 CanLII 14579 (ON CA), 2004 CanLII 14579 (Ont. C.A.). I have also had regard to the factors set out in Rule 57.01(1) of the *Rules of Civil Procedure*, the principle of proportionality (R. 1.01(1.1)), and the need to balance the indemnity principle with the fundamental objective of access to justice.
- [9] Accordingly, I award costs to the Applicant, as requested, in the amount of \$72,980.13, including HST and disbursements.


Paul B. Schabas J.

Date: February 12, 2026