

CITATION: 1353837 Ontario Inc. v. The Corporation of the City of Stratford,
2026 ONSC 4293
DIVISIONAL COURT FILE NO.: DC-24-00000005-0000
DATE: 2026/07/24

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

R.S.J. MacLeod, Nightingale and Shore JJ.

BETWEEN:	)	
	)	
1353837 Ontario Inc.	)	
	)	<i>John Doherty and Tristan Neill, for</i>
Respondent	)	the Respondent
	)	
– and –	)	
	)	<i>Christopher Williams, Timothy Hill,</i>
The Corporation of the City of	)	<i>Codie Mitchell, Andrea Skinner, for</i>
Stratford	)	the Appellant
	)	
Appellant	)	
	)	
	)	
	)	Heard at London: April 22, 2026

REASONS FOR DECISION

- [1] The City of Stratford (the “City”) appeals from the costs award dated January 11, 2024, made by Member Blais of the Ontario Land Tribunal (the “Tribunal”) under s. 32(2) of the *Expropriations Act*, R.S.O.1990, c.E.26 (the “Act”). See *135837 Ontario Incorporated v. Stratford (City)*, 2024 CanLII 19686 (ON LT).

- [2] After a lengthy expropriation compensation proceeding, the Tribunal ordered the City as the expropriating authority to pay 135387 Ontario Inc. (“135”) its costs on a solicitor/client basis to the date of the City’s June 15, 2018, offer to settle and its partial indemnity costs thereafter.
- [3] The Tribunal simultaneously ordered that 135 pay the City its costs for the entire proceeding on a partial indemnity basis.
- [4] The Tribunal also ordered both 135 and the City to pay each other’s costs of the costs motions themselves.
- [5] The City, on this appeal, requests an order setting aside the Tribunal’s order of costs requiring it to pay 135’s costs for both the expropriation proceeding and its motion for costs.

Factual Background

- [6] In 2008, the City, in order to facilitate a satellite campus for the University of Waterloo, decided to expropriate 11.42 acres of lands then owned by 135 (the “Expropriated Lands”). 135 had acquired the lands by mortgage foreclosure proceedings in 2001 for \$250,000 according to the land transfer tax affidavit sworn by 135’s directing officer.
- [7] The Expropriated Lands contained only a derelict building with no viable existing or prospective business and, because of their contamination, had extensive environmental issues.
- [8] The City served its notice of expropriation on June 16, 2009, indicating that the transfer of possession would occur on September 18, 2009.
- [9] In September 2009, the City obtained an appraisal by Bower Appraisal Services Inc. (the “Bower Appraisal”) estimating the fair market value of the Expropriated Lands as though clean was \$4,300,000. However, because the remediation costs to make them usable were between \$7,900,000 and \$16,000,000, the Expropriated Lands, according to the Bower Appraisal, only had a nominal or speculative value of \$500,000. That number was subsequently revised to \$290,000 in November 2020 after Bower acknowledged a mathematical error in its initial report.
- [10] Before 135 commenced its claim for compensation under the *Act*, the City served 135 on September 11, 2009, with an offer of compensation under s. 25

of the *Act* in the amount of \$500,000. The Bower Appraisal was supported by various other expert reports including planning, financial, feasibility, environmental and building condition reports which were also provided to 135 well before the commencement of its claim.

- [11] Despite this offer and the City's notice of expropriation, 135 refused to grant possession of the Expropriated Lands to the City. Rather, it commenced a court application to indefinitely extend the possession date and the City brought a counter application seeking a firm possession date.
- [12] In order to proceed with the satellite campus, the City agreed to settle its possession application by entering into minutes of settlement with 135 on January 10, 2010. The City had served an amended s. 25 offer that it would pay 135 and the mortgagee as "owners" of the Expropriated Lands pursuant to the *Act* a total advance payment of \$4,500,000. 135 accepted the amended offer under s. 25(b) of the *Act* with the result that the City eventually advanced funds of \$5,024,629 with \$746,070 being paid to 135 and \$4,277,920 to the mortgagee. The mortgagee then released its claim to compensation under the *Act* and was not a party to the compensation proceeding. The City retained the right to reclaim those funds from 135 in the future if the compensation award at the hearing resulted in a lower award.
- [13] Unknown to the City at the time, 135 had three appraisals in its possession that were largely consistent with the Bower Appraisal confirming that the fair market value of the Expropriated Lands, if not contaminated, was between \$2,000,000 to \$5,750,000. All of those appraisals indicated they did not take into account the Expropriated Lands being contaminated requiring substantial remediation. One report stated that the remediation costs were significantly less (at around \$1 million) than the much higher amounts suggested in the Bower Appraisal report.
- [14] Two and a half years later on July 17, 2012, 135 commenced its compensation proceeding seeking \$25,000,000 as the fair market value of the Expropriated Lands and additional business and other losses of \$7,900,000.
- [15] On June 27, 2013, the City offered to settle the proceeding on the basis that it would pay \$2,435,000 to 135 in addition to the \$4,500,00 expropriation payment it made in 2010 for a total of \$7,000,000 plus reasonable legal appraisal and other costs. 135 did not accept the offer and the City revoked it on October 4, 2017.

- [16] On June 15, 2018, the City offered to settle on the basis that it would pay \$1,435,000 to 135 in addition to the \$4,500,000 expropriation payment in 2010 for a total of \$6,000,000. The offer remained open for acceptance until five minutes after the start of the hearing. 135 did not accept that offer.
- [17] On April 13, 2021, the City offered to settle on the basis that it would pay 135 the sum of \$5,339,920 in addition to the \$4,500,000 expropriation payment for a combined total of \$10,207,058.82 plus costs in accordance with s. 32 of the *Act* to the date of the offer. This offer also stated it expired five minutes after the start of the hearing. The June 15, 2018, offer also remained open for acceptance. 135 did not accept that offer.
- [18] The 26-day expropriation hearing proceeded before Vice-Chair Jacobs from April to June 2021 involving 32 witnesses, of which 19 were expert witnesses. Relying on an updated appraisal report, 135 sought \$22,700,000 for fair market value compensation and approximately \$1,070,000 for disturbance damages and business losses.
- [19] The Jacobs' decision of October 15, 2021, reported at 1353837 *Ontario Incorporated v. Stratford (City)*, 2021 Can LII 101820 (ON LT), accepted the Bower Appraisal that the fair market value of the Expropriated Lands, if clean, was \$4.3 million. However, because of the substantial remediation costs for the contaminated property to make them usable, the Jacobs decision found that the Expropriated Lands had only a nominal speculative value of \$290,000 plus \$51,683 in disturbance damages. The City's expropriation payment made to 135 in 2010, and its subsequent settlement offers substantially exceeded the Tribunal's determination of the compensation owing by the City. The Jacobs' decision dismissed all other claims of 135.
- [20] The appeal by 135 of that decision was dismissed by the Divisional Court on November 25, 2022.

Costs Decision of Member Blais

- [21] The costs motions proceeded before Member Blais as Vice-Chair Jacobs had retired from the Tribunal when the parties sought the determination of costs of the compensation proceeding.
- [22] The relevant portions of the *Act* that were under consideration are as follows:

32 (1) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Tribunal and the amount awarded by the Tribunal is 85 per cent, or more, of the amount offered by the statutory authority, the Tribunal shall make an order directing the statutory authority to pay the reasonable legal, appraisal and other costs actually incurred by the owner for the purposes of determining the compensation payable, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with this subsection and the tariffs and rules prescribed under clause 44 (d). 2017, c. 23, Sched. 5, s. 35.

(2) Where the amount to which an owner is entitled upon an expropriation or claim for injurious affection is determined by the Tribunal and the amount awarded by the Tribunal is less than 85 per cent of the amount offered by the statutory authority, the Tribunal may make such order, if any, for the payment of costs as it considers appropriate, and may fix the costs in a lump sum or may order that the determination of the amount of such costs be referred to an assessment officer who shall assess and allow the costs in accordance with the order and the tariffs and rules prescribed under clause 44 (d) in like manner to the assessment of costs awarded on a party and party basis. 2017, c. 23, Sched. 5, s. 35.

- [23] The City requested partial indemnity costs for the entire proceeding. 135 asked for costs on a solicitor/client scale throughout plus disbursements or alternatively, full indemnity costs to the date of the City's April 12, 2021, offer plus disbursements and on a partial indemnity scale thereafter. Both parties opposed costs awards for the other party.
- [24] The costs hearing was held over four days based on the record containing over 19,000 pages. The Tribunal noted that its costs decision was the 21st decision of the Tribunal and its predecessors concerning 135's compensation claim for the expropriation of its property. The Tribunal noted the extensive and complex background of the contentious proceedings throughout, including appeals to the Superior Court of Justice and Court of Appeal and numerous disputes relating to case management and procedural compliance.
- [25] The Tribunal, at para. 60, confirmed the twofold public policy objectives of costs in expropriation matters. The indemnity principle is that the *Act* is a remedial statute enacted for the specific purpose of adequately compensating those whose lands are taken to serve a public interest and accordingly must be given a broad and liberal interpretation. The second policy or efficiency principle is to encourage early settlement of claims on an equitable basis.

- [26] The Tribunal concluded at para. 61 that it is allowed to control its processes by sanctioning, using costs awards, unreasonable, inappropriate or wasteful conduct by a party during an expropriation proceeding when exercising its discretion under s. 32(2) of the *Act*.
- [27] The Tribunal held at para. 62 that a claimant's failure to meet the 85% threshold under s. 32(1) does not automatically reverse the claimant's onus and entitle the expropriating authority to get its costs, as it would be contrary to the indemnity principle and would not necessarily advance the efficiency principle.
- [28] At para. 63, the Tribunal reasoned that there is no *prima facie* entitlement to costs in favour of the expropriating authority where it makes a fair offer and the claimant unreasonably refuses to accept it. The Tribunal concluded that the approach applicable in civil matters should not indiscriminately be imported into land compensation claims matters as the legislative scheme has an exceptional purpose.
- [29] The Tribunal noted at para. 46 that Rule 1.4 of its Rules provided that if the Rules do not provide for a matter procedure, the Tribunal may adopt or follow the procedures set out in the *Rules of Civil Procedure* where appropriate. More importantly under Part II of the Tribunal's Rules which applies to expropriation procedures, Rule 26.29 provides that if an offer to settle is made and is not dealt with in the *Act*, the *Rules of Civil Procedure* apply.
- [30] The Tribunal concluded at para. 72 that it may draw upon Rule 49 to inform its analysis regarding the criteria for the proper exercise of its discretion in an award of costs under s. 32(2) of the *Act* but that expropriation proceedings are at their core distinct from ordinary civil proceedings.
- [31] The Tribunal found that the City's offers up to and including the June 27, 2013, offer did not have an impact on 135's entitlement to costs in the exercise of its discretion. It was objectively reasonable for 135 not to accept the first offer of September 11, 2009 as it was made jointly to 135 and four other entities, it was unclear and deficient given the mathematical error and 135's expert report was extremely critical of the City's Bower Appraisal including the amount of the cost of remediation being significantly less. The January 10, 2010, offer was not a final offer for the expropriation claim because it was subject to the City reserving its right to seek reimbursement if the final

compensation award was less than the amount offered. The June 27, 2013, offer was withdrawn before the hearing.

- [32] The Tribunal found that 135's refusal or nonacceptance of the City's June 15, 2018, and April 13, 2021, offers was not reasonable and its conduct lacked due diligence. 135 also failed to reasonably reassess the strength of its case in a timely and ongoing manner based on its expert's reports that were stale and focused on attacking the City's position rather than a positive assessment of the merits of 135's claims.
- [33] The Tribunal noted that Vice-Chair Jacobs found that the delays in the proceedings were occasioned by both parties, as well as delays beyond the control of the parties or Tribunal and that the two strong opposing forces of the parties prevented an expeditious conclusion of the matter. The Tribunal found that overall, 135's conduct did not amount to reasonably pursuing its claim without undue delay particularly due to its inaction to prepare its case for significant periods of time.
- [34] The Tribunal concluded at para. 151 that 135's overall conduct, both before and after its refusal or nonacceptance of the City's 2018 offer, was unreasonable, was wasteful of the Tribunal's and City's time and warranted a costs consequence.
- [35] The Tribunal confirmed it had the discretion to award costs against a claimant and also discretion to award costs to a claimant on a scale other than on a solicitor/client basis and to adjust the scale for different periods of the proceeding.
- [36] The Tribunal concluded, based on the indemnity principle, that 135 was entitled to its costs on a solicitor/client basis until it received a proper offer from the City, namely the June 15, 2018, offer. It found that unlike the facts in *Shergar Development Inc. v. Windsor (City)*, 2020 ONCA 490, 135's conduct was not so egregious that it should be denied all costs after unreasonably refusing or not accepting that offer. It found that 135's unreasonable conduct merited some degree of costs consequences by only awarding costs on a partial indemnity scale for refusing or not accepting the offer.
- [37] The Tribunal rejected the City's submission that 135 should not receive any costs after the date of its June 15, 2018, offer but found that it was more

appropriate to award the City its costs throughout the proceeding payable by 135 on a partial indemnity basis. On querying whether it had jurisdiction to award simultaneous costs, counsel for 135 submitted that the Tribunal had jurisdiction to award costs concurrently to both 135 and the City and the City made no contrary submission.

- [38] As a result, the Tribunal awarded 135 its solicitor-client costs of \$1,148,395 up to the date of the City's June 15, 2018, offer and partial indemnity costs thereafter of \$1,317,445 plus disbursements of \$1,243,527. The total costs for the proceeding awarded to 135, including the costs motion, was \$3,709,367.
- [39] The Tribunal also awarded costs of the proceedings to the City on a partial indemnity basis payable by 135 in the sum of \$2,901,380, inclusive of disbursements and the costs motion.

Standard of Review

- [40] Section 31 of the *Act* provides that an order of the Tribunal may be appealed to this court on a question of law or fact or both.
- [41] On a question of law, the standard of review is correctness.
- [42] As to the exercise of the Tribunal's discretion in ordering costs, the exercise of discretion is not reviewed on a correctness standard and is afforded significant deference: see *Shergar* at para. 22 and *Popack v. Lipszyc* (2016), 129 O.R. (3d) 321, [2016] O.J. No. 857, 2016 ONCA 135 (C.A.), at para. 25.
- [43] The Court of Appeal in *Shergar* (decided post-*Vavilov*) continued to rely on the reasoning set out in *Popack* which held that discretionary orders under appeal involve balancing of competing interests.

In most cases, the existence of a discretion implies that different judges can reasonably arrive at different results. Consequently, appellate courts will defer to the exercise of discretion at first instance absent a clearly identifiable error in the application of the law, a material misrepresentation of the relevant evidence, or a result that is clearly wrong in the sense that it is not defensible on the application of the relevant law to the facts....

- [44] The Court of Appeal in *Konig v. Hobza*, 2015 ONCA 85 at para. 44 confirmed that the Supreme Court of Canada in *Hamilton v. Open Window Bakery Ltd.*, 2004 1 S.C.R. 303, 2004 SCC 9 at para. 27 made it clear that an appellate court will not interfere with discretionary costs awards generally unless the award reflects an error in principle or is plainly wrong.
- [45] Courts have confirmed that it will intervene in costs decisions of other administrative tribunals only if the tribunal made an error in principle or its decision was plainly wrong. *Casella v. Ontario College of Chiropodists*, 2024 ONSC 899 at para. 27; *Kitmitto v. Ontario (Securities Commission)*, 2024 ONSC 1412 at para. 170; *Kennedy v. College of Veterinarians*, 2018 ONSC 3603 at para. 24; *The Law Society of Upper Canada v. Watson*, 2026 ONCA 372 at para.38
- [46] 135 submits that the Tribunal’s costs decision is also subject to significant deference by reason of s. 13(4) of the *Ontario Land Tribunal Act*, 2021, S.O., c.4 which provides as follows:
- 13(4) Unless the Tribunal’s failure to comply with the rules, or its exercise of discretion under the rules in a particular manner, causes a substantial wrong that affects the final disposition of the proceeding, neither the failure nor the exercise of discretion is a ground for setting aside a decision of the Tribunal on an application for judicial review or on appeal.
- [47] The “rules” referred to in s. 13(4) in our view refer to the practice and procedural rules the Tribunal is authorized to implement under s. 13(1) which provides as follows:
- 13(1) The Tribunal may make rules governing its practices and procedures, including rules that,
- a) provide for and require the use of hearings or of practices and procedures that are alternatives to traditional adjudicative or adversarial procedures;
- b) provided for specified circumstances in which participation in mediation or other dispute resolution processes by parties to a proceeding is mandatory;

c) provide for and require notice to be provided in any particular manner;

d) authorize the Tribunal to combine two or more proceedings or any part of them, or hear two or more proceedings at the same time;

e) authorize a Tribunal to appoint a person from among a class of parties to a proceeding to represent the class where, in the opinion of the Tribunal, the parties have a common interest; or

f) govern the making of orders under section 10 and the exercise of powers under the orders.

[48] The Tribunal's costs award under appeal before this Court was not made in the exercise of its discretion under its practice and procedure rules but rather under s. 32 (2) of the *Act*, as set out above and therefore s.13(4) does not apply.

[49] Accordingly, I have considered this appeal from the Tribunal's costs award on the basis of whether the Tribunal made an error in principle or was plainly wrong.

Analysis

[50] The City's position is that the Tribunal erred in the interpretation and application of Rule 49.10. Rule 49.10 (2) of the *Rules of Civil Procedure* provides that where a defending party achieves a better result at trial than the amount of its Rule 49 offer, the plaintiff is entitled to its partial indemnity costs to the date of the offer and the defending party is entitled to its costs incurred from the date of the offer forward, unless the court orders otherwise.

[51] The City submits that because the City's offers to settle exceeded the ultimate compensation award and because of 135's unreasonable conduct and failure to accept the City's offers, the Tribunal ought to have awarded the City its costs of the entire proceedings and disentitle 135 to any of its costs.

[52] The City submits that the Tribunal departed from a long line of Rule 49 cases without a principled basis in making what it states was an unprecedented order of costs, which nullifies the effectiveness of Rule 49 offers as a reliable tool to encourage settlement. For the reasons below, I disagree.

- [53] The Tribunal, following *Shergar*, properly recognized the differences between the costs regimes for civil proceedings and expropriation proceedings, balancing the indemnity principle and the efficiency principle as noted above.
- [54] Rule 26.29 of the *Ontario Land Tribunal Rules of Practice and Procedure* states that if an offer to settle is made and is not dealt with in the *Act*, the *Rules of Civil Procedure* apply.
- [55] A similar provision was applicable at the time of the *Shergar* decision under r. 141 of the *Ontario Municipal Board Rules*.
- [56] The City in its factum referred to the jurisprudence dating back to 1976 in *Re Rotenberg et al. and Borough of York (No.2)* 1976 Canlii 735 (Ont. C.A.) whereby the courts and the Tribunal have applied the costs framework of Rule 49.10 to expropriation cases including awarding costs, usually on a solicitor client basis, to the date of the municipality's settlement offer.
- [57] The facts in *Shergar* also involved a claimant's unreasonable conduct in delaying the compensation proceeding and its refusal to accept the City's offer of compensation that far exceeded the ultimate award made. Similar to the Tribunal decision in *Shergar*, the Tribunal in this case awarded costs to 135 on a solicitor-client basis until the date of the City's Rule 49 June 15, 2018, offer in keeping with the jurisprudence under the *Act*.
- [58] The Tribunal in this case noted that the Tribunal in *Shergar* did not apply Rule 49.10, which would have provided that *Shergar* receive only partial indemnity costs to the date of the City of Windsor's Rule 49 settlement offer, and that the City receive its partial indemnity costs from that date forward. That reasoning and decision was upheld by this Court and the Court of Appeal at para. 38. The Tribunal in this case similarly concluded it was entitled to draw upon Rule 49.10 (2) to inform its analysis, but it need not or should not follow it rigidly or formulaically.
- [59] This Court in *Shergar* at paras. 105 and 106 confirmed that the Tribunal's discretionary authority to award costs under ss. 32(1) and 32(2) is not constrained or fettered in any manner nor does any conflict arise between the terms of these provisions and Rules 49.10 and 57.01.

- [60] Accordingly, there was no error in principle in the Tribunal's award to 135 of its solicitor-client costs up to and including the date of the City's Rule 49 June 15, 2018, offer nor was that decision plainly wrong.
- [61] I come to the same conclusion with respect to the Tribunal's decision to award 135 its costs on a partial indemnity basis after the date of that offer.
- [62] As noted above, the Tribunal's discretion to make that costs award was not constrained or fettered in any manner. It considered, but in its discretion, departed from the provisions of Rule 49.10, finding that 135 should only be entitled to partial indemnity costs thereafter because of its unreasonable conduct rather than no costs. The Tribunal also ordered that the City was entitled to its costs on a partial indemnity basis for the entire proceeding, not just from its June 15, 2018, settlement offer.
- [63] It did so for two reasons. The first was on the basis that 135's refusal to accept the City's proper settlement offer of June 15, 2018, and its unreasonable conduct throughout the proceeding were not as egregious as the facts in *Shergar* such that it should be denied any costs after that date.
- [64] That reason should not be considered in isolation. The second and perhaps more significant reason was because the Tribunal found it was more appropriate to address and effectively sanction 135's unreasonable and wasteful conduct by awarding the City its costs payable by 135 throughout the entire proceeding on a partial indemnity basis and not just from the date of its Rule 49 offer of June 15, 2018.
- [65] Rule 49.10 (2) would not normally allow the City its costs before the date of its June 15, 2018, offer. The Tribunal found that it was objectively reasonable for 135 not to accept the City's first September 11, 2009 offer as it was made jointly to 135 and four other entities, it was unclear and deficient given the mathematical error, and 135's expert report was extremely critical of the City's Bower Appraisal including the amount of the cost of remediation being significantly less. In addition, that offer made before the commencement of the expropriation proceeding would not be an offer that falls within this Rule. *Scanlan v. Standish*, (2001) 57 O.R.(3d) 767, 155 O.A.C. 96 (C.A.).
- [66] The second January 13, 2010, offer of the City was not a final offer and was subject to adjustment and reimbursement by 135 if the compensation award

was less than the amount advanced. The City's June 27, 2013, offer was revoked in October 2017.

- [67] The City has not established any error in principle or that the Tribunal's decision was plainly wrong in its finding that 135's conduct resulting in delays in the expropriation proceedings was less egregious compared to the facts found in *Shergar*. There was adequate support for those findings on the evidence before it. The Tribunal noted that the initial Vice Chair Jacobs' decision found that the delays in the proceedings were occasioned by both parties, not just 135, as well as delays beyond the control of either of them or the Tribunal. The Tribunal noted that the strong opposing forces of the parties prevented an expeditious conclusion of the *lis* between them.
- [68] The Tribunal recognized at para. 140, as conceded by 135, that all the aggravating factors in *Shergar* need not be present before costs are not awarded to 135 and/or against it in favour of the City. In my view, the Tribunal did not conclude as the City submitted, that 135 could only be denied costs after the City's June 15, 2018, offer under Rule 49.10 if the facts were as egregious as those in *Shergar*.
- [69] Rather, what is apparent is that the Tribunal decided it was more appropriate in this case to address 135's unreasonable conduct by awarding 135 its costs after the June 18, 2018 offer on a reduced partial indemnity basis but at the same time requiring 135 to pay the City's costs on a partial indemnity basis from the outset until the date of that offer and also thereafter for the balance of the proceeding.
- [70] The result in effect required 135's entitlement to only partial indemnity costs after the date of that offer to be offset to some extent by its obligation to pay the City's partial indemnity costs incurred before that date because of its unreasonable conduct, neither of which was normally contemplated by Rule 49.10.
- [71] Accordingly, the Tribunal did consider the unreasonable conduct of 135 throughout the proceeding including not accepting the City's Rule 49 offers of June 15, 2018, and April 13, 2021, and, in its discretion, reasonably sanctioned 135 by making the costs order it did.

- [72] Lastly, the City did not object to the submissions that the Tribunal had discretion to award costs concurrently to both 135 and the City and on their respective costs motions.
- [73] I find the City has not established that the Tribunal's costs decision falls outside of the range of possible acceptable outcomes which are defensible in respect to the facts and law.
- [74] The Tribunal in its discretion was entitled, on the evidence before it, to address the issue of 135's unreasonable conduct when assessing costs under s. 32(2) of the Act by reducing its post June 15, 2018 costs to partial indemnity costs only, and simultaneously requiring 135 to pay the City's costs throughout the entire proceeding on a partial indemnity basis.
- [75] The Tribunal's decision is to be afforded significant deference even though this Court or other Tribunal members could have reasonably arrived at a different result. I do not find that the discretionary costs award reflects an error in principle or is plainly wrong.

Conclusion

- [76] The City's appeal is dismissed.
- [77] The parties have agreed that the successful party would be entitled to costs of \$15,000 all inclusive for the appeal. The City shall accordingly pay those costs to 135.

Nightingale J

R.S.J MacLeod

Shore J

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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BETWEEN:

1353837 Ontario Inc.

Respondent

– and –

The Corporation of the City of Stratford

Appellant

REASONS FOR DECISION

R.S.J. MacLeod, Nightingale and Shore JJ.

Released: July 24, 2026