



City of  
**Peterborough**

## **Closed Session**

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**To:** Members of the General Committee

**From:** David J. Potts, City Solicitor

**Meeting Date:** January 12, 2026

**Report:** Conclusion of Litigation – Northcrest Neighbours v. City of Peterborough et al; Superior Court File No. CV-25-113, Report LSOCS26-003

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### **Subject**

To report to Council regarding the conclusion of litigation against the City in the Superior Court of Justice respecting By-laws 25-051 and 25-052.

### **Recommendation**

That Council receive for information Conclusion of Litigation – Northcrest Neighbours v. City of Peterborough et al; Superior Court File No. CV-25-113, Report LSOCS26-003, dated January 12, 2026 of the City Solicitor.

### **Executive Summary**

- Northcrest Neighbours for Fair Process Ltd. (NNFP) commenced an application in the Superior Court of Justice against the City seeking declaratory and other relief respecting By-laws 25-051 and 25-052 (Application) which, if successful, would prevent a proposed 52-suite transitional housing development at The Brock Street Mission Peterborough's property at 738 Chemong Road (Development).
- The City opposed the Application and brought a motion for security for costs.
- NNFP then brought a motion for an "interlocutory declaration" and for an interlocutory injunction which would have the effect of halting the Development

by preventing the City's Chief Building Official from issuing a building permit pending a hearing of the Application on its merits.

- The City's motion for security for costs was granted by the Court on November 20, 2025. The Court also granted the City and Brock Mission their costs of the City's motion.
- The parties then settled the terms on which NNFP would abandon its motion for interlocutory relief and its Application (including the City's and Brock Mission's entitlement to their costs of NNFP's abandonment) and the City's and Brock Mission's entitlement to their costs of the City's security for costs motion. Ms. McNeilly and NNFP consented to an Order requiring them to pay the City and Brock Mission the all-inclusive agreed sum of \$22,500 on account of costs.

## Background

### Closed Meeting

This report is for the part of the January 12, 2026 meeting of General Committee to be closed to the public pursuant to paragraph 239(2)(f) of the Municipal Act, 2001, "advice that is subject to solicitor-client privilege, including communications necessary for that purpose". The report's recommendation will be included in the agenda for the open session of General Committee on January 12, 2026. The General Committee's resolution respecting this report will be included in the agenda for the open session of Council on January 19, 2026.

### Council Approves Funding for the Development

On November 18, 2024, General Committee considered Report CSSS24-024, New Brock Mission Housing Project, which outlined a proposed 50-suite transitional housing development at The Brock Street Mission Peterborough's (Brock Mission) property at 738 Chemong Road (Development). General Committee unanimously resolved as follows:

- a) That Report CSSS24-024 be received for information.*
- b) That the city shall provide a letter confirming the provision of \$250,000 to be applied towards the costs of a business plan and preliminary studies, reports and plans in support of a proposed 50-unit supportive housing project being advanced by Brock Mission and further that the said monies be derived from the Social Services Reserve.*
- c) That Council direct staff to collaborate with Brock Mission in preparing an application for municipal incentives under the Affordable Housing Community Improvement Plan (AHCIP), to be presented for council approval at a future date.*

At its meeting on February 3, 2025, Council unanimously approved General Committee's resolution including respecting the City's \$250,000 financial commitment toward the Development.

### **Mayor's Direction to Staff**

On February 3, 2025, in accordance with Part V1.1 of the Municipal Act, 2001, Mayor Leal directed City staff respecting the Development as follows (MDEC25-001):

1. *Prepare a by-law to amend The City of Peterborough Zoning By-law 97-123, as amended, as it affects the land municipally known as 738 Chemong Road by rezoning the subject lands from Residential District 3 Exception 55 (R.3-55) in such a way to facilitate construction of an apartment building, for the purposes of transitional housing, containing up to 52 dwelling units and up to six storeys in height.*
2. *Prepare a by-law to exempt the Brock Mission Transitional Housing Project at 738 Chemong Road from Site Plan Control By-law 11-081, as amended.*
3. *Satisfy the public notice and public meeting requirements of subsections 34(10.7), 34(12)(a) and 34(18) of the Planning Act, R.S.O. 1990 and ensure a public meeting is convened for Council to consider the Zoning By-law amendment.*
4. *Provide a memorandum to the Mayor outlining the Director of Planning, Development and Urban Design's opinion of the planning merits, if any, for the aforementioned proposal to rezone the subject lands and to exempt the subject lands from site plan control.*

### **Opposition to Development**

On February 11, 2025, Sarah McNeilly, Consultant, V Formation (Ms. McNeilly) wrote to Councillor Parnell expressing her opposition to the Development. Ms. McNeilly authorized Councillor Parnell to share her communication with City staff. Following are excerpts:<sup>1</sup>

*I am writing to express my strong opposition to the proposed Brock Mission transitional housing project at 738 Chemong Road. This development sets a **dangerous municipal precedent**, threatens long-term **city planning integrity**, and contradicts fundamental **urban growth management principles**. I urge you to stand against it.*

*This project is being forced directly into my neighbourhood, in front of my home, where I will wake up every day and see it through my windows. My neighbourhood is already home to Cameron House, which provides both*

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<sup>1</sup> Underscoring and bolded text in the original.

*emergency shelter and transitional housing. Adding another high-density transitional housing project here would increase the area's transitional housing capacity by 550%—a burden that no other neighbourhood in Peterborough has been asked to bear. Why should my neighbours and I disproportionately absorb the city's transitional housing while other neighbourhoods remain untouched?*

*[...] I urge you to: Demand fair distribution of transitional housing across Peterborough, instead of concentrating it in my neighbourhood.*

### **Council Receives Mayor's Reasons**

On February 20, 2025, the Mayor provided to the City Clerk and to each member of Council a copy of each of the proposed by-laws referred to above and the Mayor's reasons for proposing the by-laws to Council for Council's consideration and vote, all pursuant to Part VI.1 of the Municipal Act, 2001. Following are excerpts from the Mayor's reasons:

*Adding 52 units of transitional housing, run by a capable and trusted provider in Brock Mission, is a crucial next step for our community's response to homelessness.*

*[...]*

*Brock Mission's project has already been endorsed in principle by this Council through our decision to provide them with \$250,000 to cover some of the initial costs associated with getting their project off the ground. The proposed location on Chemong Road is in one of our Strategic Growth Areas, which our Official Plan has designated for intensification.*

*Brock Mission's experience and reputation in our community is well known, and they have clearly signalled to me that they will operate in a way that has minimal impact on the surrounding neighbourhood. The residents will be individuals who have been in a shelter for some time and are ready to take the next step.*

### **By-laws are Passed**

At a meeting of Council on February 24, 2025 the following motion carried on a vote of four (4) in favour and seven (7) against:

*That respecting Strong Mayor Decision MDEC25-1, By-laws 25-051 and 25-052 (as updated) to exempt development from Site Plan Control and to amend the Zoning at 738 Chemong Road, be approved.*

By-laws 25-051 and 25-052 to enable the Development (By-laws) were approved because they were proposed by the Mayor to Council for consideration and a vote pursuant to subsection 284.11.1(2) of the Municipal Act, 2001 and because more than

one-third of the members present voted in favour of the By-laws pursuant to subsection 284.11.1(4) of the Municipal Act, 2001.

### **Litigation is Threatened**

On March 28, 2025, the City's in-house lawyers were advised by a Belleville lawyer, Mark Pedersen (Mr. Pedersen), that he was retained to commence a Superior Court application (Application) to challenge the validity of the By-Laws on the basis that the Development was not "housing" for the purposes of Part V1.1 of the Municipal Act, 2001 and the regulation thereunder.

On April 1, 2025, Mayor Leal, pursuant to Part V1.1 of the Municipal Act, 2001, directed the City's in-house lawyers to oppose the threatened litigation.

On April 1, 2025, the City's lawyers were advised by Mr. Pedersen that Ms. McNeilly would be commencing the Application. The City's lawyers advised Mr. Pedersen that the Application would be opposed and that the costs of the Application would be a live issue. That is, if the City were to successfully oppose the Application, the City would seek the costs to which it would normally be entitled pursuant to the Rules of Civil Procedure (generally on a "partial indemnity" basis equating to approximately 60% of actual costs). Costs are always in the discretion of the presiding judge.

On April 9, 2025, Mr. Pedersen advised that instead of Ms. McNeilly bringing the Application, a corporation, Northcrest Neighbours for Fair Process Ltd. (NNFP), would be the "formal Applicant". On April 9, 2025, the City conducted a corporate record search confirming that NNFP had been created (i.e. incorporated) on April 8, 2025, with Ms. McNeilly as the sole officer and director. The City later learned that NNFP had been incorporated by Mr. Pedersen's law firm.

### **Litigation Commenced**

On April 25, 2025, the Superior Court proceeding against the City was commenced by the issuance of a notice of application naming NNFP as applicant (represented by Mr. Pederson) and the City as the sole respondent. The Application was scheduled by Mr. Pederson on a "non-urgent" basis (matters taking less than one hour to argue) to be heard on June 10, 2025. The City responded filing a notice of appearance to preserve the City's right to participate in the Application and indicating that the City would be represented by Scott Seabrooke, Solicitor, of the City's Legal Services Division.

### **City's Motion for Security for Costs**

A preliminary issue was that the newly-incorporated NNFP appeared to be a corporation without assets created for the sole purpose of avoiding responsibility for any award of costs against NNFP that the Court may make if NNFP were ultimately unsuccessful in its Application (the risk flagged by the City's lawyers on April 1, 2025). The Rules of Civil Procedure provide a mechanism by which a respondent (i.e., the City) can make a motion to the Court to ask the Court to require an applicant (i.e., NNFP) to pay money

into the Court as security for the payment of any future cost award against the applicant if the applicant is ultimately unsuccessful.

On May 7, 2025, the City's lawyers offered to Mr. Pederson that Ms. McNeilly need only provide a personal undertaking to pay up to \$7,500. The personal undertaking would avoid the delay and expense (for both parties) of a motion by the City for security for costs. The City's offer was not accepted.

On May 27, 2025, the City served on NNFP a notice of motion for security for costs (Security for Costs Motion) which was to be scheduled in advance of NNFP's Application, which itself was at that time scheduled for June 10, 2025. The City initially sought \$10,000 as security for costs or such other amount as the Court considered to be just. The amount sought was consistent with a review of caselaw involving similar circumstances.

On June 10, 2025, the Court adjourned the hearing of the main Application *sine die* (i.e., indefinitely/ without a specific return date) and the parties were directed to request a civil conference with a judge to schedule matters.

On June 16, 2025, the City withdrew its offer to accept \$7,500 by way of a personal undertaking from Ms. McNeilly. The City also served on NNFP the City's motion record for the Security for Costs Motion. The Security for Costs Motion was scheduled on a "non-urgent" basis, the same level of urgency as the Application had been scheduled. However, the City scheduled its Security for Costs Motion for a "long motion", meaning argument would be expected to exceed an hour, with a triage court date obtained in February, 2026, which was the earliest date that was available at that time.

### **NNFP's Motion for Interlocutory Injunction**

On July 2, 2025, NNFP then brought a motion returnable July 7, 2025 on an urgent basis for an interlocutory declaration or, in the alternative, an injunction (Interlocutory Relief Motion) which, if granted, would have the effect of halting the Development by preventing the Chief Building Official (CBO) from issuing a building permit pending a hearing of NNFP's Application on its merits. The City's lawyers responded, filing materials and opposing the Interlocutory Relief Motion scheduled for July 7, 2025, because it would take more than one hour to argue, would require the addition of Brock Mission as a necessary party to the Application and because it was, in essence, an attempted end-run around the City's Security for Costs Motion.

On July 7, 2025, Justice C. Smith agreed with the City's position that the Interlocutory Relief Motion would take more than one hour to argue and found that it was necessary for NNFP to notify Brock Mission and the CBO of the proceeding. NNFP was also ordered to pay the City \$500 in costs for the July 7, 2025 attendance (i.e. the cost for the time wasted in having to attend that date). Justice Smith also directed that the Interlocutory Relief Motion could be set on an "urgent" basis by the trial coordinator. Justice Smith's endorsement is attached as Appendix A.

### **Timetable Order**

NNFP then made a request to the Court that its Interlocutory Relief Motion be scheduled urgently. The trial coordinator arranged for an attendance on July 22, 2025 before Regional Senior Justice M. Edwards. Brock Mission was given notice and its Executive Director, Bill McNabb, attended. Justice Edwards directed that the parties agree on a timetable order or submit competing timetable orders by July 24, 2025.

On July 24, 2025, NNFP and Brock Mission agreed to the City's proposed order (Timetable Order) which, in addition to setting a timeframe for steps in the litigation, also required the addition of Brock Mission and the CBO as parties to the Application. The Timetable Order is attached as Appendix B. It was the City's lawyers' view that Brock Mission was a "necessary party" to the litigation because it owned the property to which the By-Laws applied and the Interlocutory Relief Motion would affect Brock Mission's Development. While that issue had been raised by the City's lawyers with Mr. Pedersen months prior, it was only in consenting to the Timetable Order that NNFP finally agreed to the addition of Brock Mission and the CBO as respondent parties to the Application. After Brock Mission was formally added to the Application, it retained Cobourg lawyer Phillip Crannell (Mr. Crannell) to represent it.

The Timetable Order provided expedited deadlines for completing several typical litigation steps, including providing affidavits, conducting cross-examinations on affidavits and obtaining transcripts of same, and preparing written argument. The City, CBO (also represented by the City's lawyers), Brock Mission, and NNFP substantially complied with the Timetable Order deadlines which culminated with the exchange of written argument on September 29, 2025.

### **Unincorporated Neighbours' Association Meetings**

On September 24, 2025, NNFP provided to the City minutes of meetings of an unincorporated neighbours' association comprised of individuals including Ms. McNeilly who lived in the vicinity of the Development. The minutes were for meetings during the period March to August, 2025 and were provided pursuant to an undertaking to do so given on behalf of NNFP during cross-examination on an affidavit provided by Ms. McNeilly in response to the Security for Costs Motion. The principal reason for the undertaking was the absence in NNFP's responding materials to the Security for Costs Motion of financial information or explanation of the association's relationship with NNFP.<sup>2</sup> The meeting minutes note the following:

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<sup>2</sup> NNFP's failure to provide evidence of its assets was central to Justice Woodley's analysis on the Security for Costs Motion. See Appendix C, Woodley Decision, ¶¶41-47, 52 and 74(c).

- The reasons for opposing the Development related to the perception that transitional housing would cause “*neighbourhood impacts such as loitering, drug use*” and the “*potential downside risk of home values dropping*”.<sup>3</sup>
- A letter and petition had been drafted to the Canada Mortgage and Housing Corporation (CMHC) seeking to discourage CHMC from funding Brock Mission’s Development. Members of the association were invited to sign the petition.
- Ms. McNeilly “*proposed launching a GoFundMe campaign, leveraging the “bully mayor” narrative*” to “*target a broader public audience*” as a means of more effectively fundraising to oppose the Development.
- Fundraising yielded \$51,396 as at August 18, 2025.

The minutes were silent on the City’s May 7 offer to accept a \$7,500 personal undertaking in lieu of the Security for Costs Motion.

### **Hearing of Security for Costs Motion**

On September 29, 2025, before the City had filed its written argument (called a factum) pursuant to the Timetable Order, the Court advised that the Interlocutory Relief Motion and the Security for Costs Motion were scheduled for argument two days later on October 1, 2025. At that point NNFP agreed that the City’s Security for Costs Motion could proceed first.

Given the events that had transpired since the original filing of the Security for Costs Motion (e.g. the urgent Interlocutory Relief Motion filed by NNFP), the City increased the amount it was seeking for security for costs from \$10,000 to \$30,000. The increased amount was requested in the City’s factum which was served on NNFP prior to the hearing of the Security for Costs Motion.

On October 1, 2025, Justice S. Woodley presided at the hearing of the City’s Security for Costs Motion. At the outset of the hearing, Justice Woodley commented that the Security for Costs Motion ought to proceed first. The issue of which motion should be argued first was left unresolved in the Timetable Order. NNFP had previously taken the position that both motions should be heard at the same time while the City’s lawyers viewed it as appropriate that the Security for Costs Motion proceed and be decided first.

The parties’ arguments before Justice Woodley on the City’s Security for Costs Motion took nearly the entire Court day. At the outset, Justice Woodley noted that the costs in civil litigation are significant and that the fees incurred by the various parties would be

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<sup>3</sup> The stated reasons for opposing the Development are consistent with Justice Woodley’s finding that NNFP’s Application “*is not public interest litigation. Instead, the application is a matter of local interest to neighboring property owners who are concerned about the possible deleterious effects that the proposed facility will have on their property values and lifestyles.*” See Appendix C, Woodley Decision at ¶74(e).



quite high, likely already in the range of \$150,000 based on the materials she had seen (i.e. the Security for Costs Motion and the Interlocutory Relief Motion).

Of note, immediately following Mr. Seabrooke's oral argument in the morning, Mr. Crannell commenced his submissions advising the Court that Brock Mission had just received a preliminary funding commitment for the Development of approximately \$20,000,000.

After listening to argument from all parties, Justice Woodley indicated in open Court at the end of the day that she was leaning toward granting the City's Security for Costs Motion and encouraged the parties to resolve the issue of security for costs such that NNFP's Application could proceed to the next steps.

Accordingly, as at October 1, 2025, Council's unanimous \$250,000 funding approval, CMHC's preliminary funding commitment of \$20,000,000 and the Development itself were at risk by reason of NNFP's Interlocutory Relief Motion and its Application opposing the Development.

### **Additional Efforts to Resolve Security for Costs**

On October 2, 2025, in accordance with Justice Woodley's comments about attempting to resolve the security for costs issue so that NNFP could proceed with its case, the City's lawyers attempted further resolution. The City made three offers to NNFP:

- If any natural person with sufficient assets (i.e. any human being, not a corporation), whether Ms. McNeilly or some other person, were willing to provide a personal undertaking to pay a cost award by the Court against NNFP, whatever those costs might eventually be, then the City would consent to the costs of the City's already argued Security for Costs Motion (which would then be moot) being reserved to the Application. The City's lawyers were offering that no immediate financial payment would need to be made, only a solemn promise to pay any amount the court might otherwise order against NNFP and thereby allow NNFP to proceed with its Application. There was no guarantee at that time, or ever, that the Court would make NNFP pay costs (e.g. if NNFP were wholly successful it would be presumed they would pay no costs and instead the City would have to pay costs).
- NNFP could abandon all matters (Interlocutory Relief Motion and Application) for costs of \$25,000.
- NNFP could abandon its Interlocutory Relief Motion for \$10,000 in total costs.

The City's three offers on October 2, 2025 were made before any offer was made by NNFP. The number of different offers was reflective of there being three discreet issues of costs awards for the various steps in the proceedings in addition to the issue of posting security (or providing an undertaking from a real person).

Where an applicant such as NNFP seeks to abandon a Court application it has brought, the Rules of Civil Procedure make the applicant (i.e. NNFP) presumptively responsible for the other parties' costs. Specifically, Rule 38.08(3) provides that "*where an application is abandoned... a respondent on whom the notice of application was served is entitled to the costs of the application, unless the court orders otherwise*". Similarly, if a party brings a motion (ie., NNFP's Interlocutory Relief Motion) and then seeks to abandon its motion, Rule 37.09 provides "*where a motion is abandoned.... a responding party on whom the notice of motion was served is entitled to the costs of the motion forthwith, unless the court orders otherwise*".

Accordingly, on October 2, 2025, if NNFP wished to abandon its Application, the City, CBO, and Brock Mission were presumptively entitled to their costs, subject to the discretion of the presiding Justice and typically on a 60% basis of their costs of (1) the Application, and (2) of the Interlocutory Relief Motion. If the City were successful in its Security for Costs Motion, NNFP would also presumptively be responsible for the costs of that motion as well.

In total, as at October 2, 2025, the City's lawyers had docketed approximately 200 hours on the Application, Security for Costs Motion, and Interlocutory Relief Motion. Following the argument on October 1, 2025, the City's lawyers reasonably expected that the Court would award the City its costs of arguing its Security for Costs Motion. At a modest hourly rate of \$325 and a modestly elevated partial indemnity scale, the City's lawyers realistically expected a cost award for the Security for Costs Motion alone in the range of \$28,000 to \$48,000, inclusive of legal fees and disbursements, with a significant likelihood that Ms. McNeilly would be found by the Court to be responsible for those costs. Brock Mission would likely have had roughly one third to one half as much in fees and very little in disbursements.

NNFP did not accept any of the City's three October 2 offers and instead sought to abandon its Application "without costs" (i.e. asking that the City and Brock Mission forgo the three costs awards to which they would otherwise have presumptively been entitled and asking that the City waive in excess of \$7,000 it spent on disbursements in responding to the Application).

On October 3, 2025, Mr. Pederson also advised the City that Brock Mission's CHMC funding would continue to be at risk by NNFP's Interlocutory Relief Motion and Application:

*It is our understanding, based on Mr. Crannell's statement to the Court on Wednesday, that Brock Mission has tentative confirmation from CMHC that funding has been granted.*

*Further, we understand, again based on Mr. Crannell's statement to the Court on Wednesday, that Brock Mission expects firm confirmation from CMHC that funding has been granted by EOD, today.*

*This imminent access to funding means that construction can proceed in the very near term. This turns the risk of harm to my client from speculative to concrete – of course, you have your arguments about the sufficiency/nature of such harm; those arguments remain live. However, my client no longer, now, needs to confront the uncertainty of when construction will proceed in convincing the Court, on its injunction Motion, that a certain irreversible consequence is about to be brought about.*

*We extended the below Offer,<sup>4</sup> now, as a means of ‘uncomplicating’ Brock Mission’s access to the funds in issue. Access to the said funds will be in jeopardy if this matter persists and our client’s injunctive relief is granted. Further, such funds will be in jeopardy if and when my client’s Application is heard.*

### **Justice Woodley’s Decision**

On November 20, 2025, Justice Woodley rendered her decision (Appendix C: Woodley Decision). The first of the City’s October 2 offers (the offer to accept a personal undertaking to permit NNFP to proceed with its case and reserve the issue of costs to Application) was, by its terms, withdrawn. The Woodley Decision granted the City the relief it sought in the Security for Costs Motion requiring that \$30,000 in security for costs be paid into court by NNFP if it wished to pursue its Application.

The Woodley Decision necessarily addressed the merits of NNFP’s Application and found its merits to be “limited”. Justice Woodley noted that the passage of the By-Laws under Part VI.1 of the Municipal Act, 2001 required that Mayor Leal have acted legally and in good faith. Justice Woodley noted that Mayor Leal attested to believing the By-Laws could potentially advance the provincial priority of building residential units, being the legal authority for the passage of the By-Laws, and further noted as it related to good faith that even Ms. McNeilly believed Mayor Leal when he indicated it was his belief that the Development was a proper exercise of powers under Part VI.1 of the Municipal Act, 2001 (i.e. that the By-Laws could potentially advance the provincial priority of building residential units).<sup>5</sup>

Justice Woodley also specifically found:<sup>6</sup>

*The within application is not public interest litigation. Instead, the application is a matter of local interest to neighboring property owners who are concerned about the possible deleterious effects that the proposed facility will have on their property values and lifestyles [...] The litigation is specific to the area and the property use. It does not affect the public at large. Municipalities and charitable/not-for-profit organizations should not be unnecessarily exposed to*

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<sup>4</sup> This is a reference to NNFP’s proposal that it abandon its Application without any responsibility for costs as noted above.

<sup>5</sup> See Appendix C, Woodley Decision at ¶¶66 to 69.

<sup>6</sup> See Appendix C, Woodley Decision at ¶74(e).

*litigation by nominal corporate applicants simply because the implementation of municipal powers is questioned. Such litigation does not necessarily qualify as public interest litigation, and this is especially true in the present case where the merits are questionable and there is evidence that any costs and/or damages assessed will be unrecoverable.*

The Woodley Decision also awarded the City and Brock Mission their costs of the Security for Costs Motion:<sup>7</sup>

*Subject to any offer to settle, as the Respondents are the successful parties, they are entitled to their costs of the motion, which are to be paid within 30 days of the date such costs are determined, in addition to the security for costs ordered.*

*In the event the parties are unable to resolve the issue of costs, the Respondents shall serve and file their costs submissions, limited to three pages, together with any offers to settle, a cost outline, and bill of costs, within 30 days of the date herein.*

### **Settlement of Application & Two Motions (Including Costs)**

As noted above, Justice Woodley contemplated that the parties would seek to resolve the quantum of costs to which Brock Mission and the City were entitled on the Security for Costs Motion, failing which the Court would determine the issue. Also, while the Woodley Decision did not determine the outcome of the Application, Justice Woodley necessarily considered the Application's merits for the purpose of the analysis in the Security for Costs Motion and found that "[t]here appears to be limited merits to the application".<sup>8</sup>

Accordingly, as at November 20, 2025, NNFP's alternatives were:

- a) whether to settle the quantum of costs or to have the Court determine the quantum of costs to which the City and Brock Mission were entitled on the Security for Costs Motion;
- b) whether to pay into Court the sum of \$30,000 on account of security for costs (as a condition of continuing with next steps in its Application including its Interlocutory Relief Motion);
- c) whether to continue with or abandon its Interlocutory Relief Motion (with the likely requirement to pay the City's and Brock Mission's costs if NNFP were unsuccessful or if it abandoned); and

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<sup>7</sup> See Appendix C, Woodley Decision at ¶¶76 and 77.

<sup>8</sup> See Appendix C, Woodley Decision at ¶74(a).

- d) whether to otherwise continue with or abandon its Application (also with the likely requirement to pay the City's and Brock Mission's costs if NNFP were unsuccessful or if it abandoned).

In light of Justice Woodley's finding that the Application had "limited merits", the City proceeded on the assumption that NNFP would now likely wish to abandon its Interlocutory Relief Motion, abandon its Application and to seek an all-inclusive settlement of the City's and Brock Mission's costs of all three: Security for Costs Motion, Interlocutory Relief Motion and of the Application in its entirety. Accordingly, on November 24, 2025, Mr. Seabrooke on behalf of the City proposed an all-inclusive settlement (ie., of all three) in the sum of \$30,000 for which Ms. McNeilly and NNFP would be jointly responsible to pay to Brock Mission and the City. The City and Brock Mission would then determine an allocation of the proceeds as between them. The City's offer was generous as an all-inclusive offer made in good faith to encourage settlement of all three because, as noted, the City's reasonable expectation was that the City would itself be awarded its costs of the Security for Costs Motion alone in the range of \$28,000 to \$48,000 if determined by the Court.

On November 26, 2025, Mr. Pedersen responded offering that NNFP would agree to pay \$17,000 in costs, with \$8,000 to be paid up front and the remainder "*within a reasonable time period*" and that NNFP would otherwise abandon its Application. Notably, this offer did not specify that Ms. McNeilly would be responsible for the cost award. Further, Mr. Pedersen purported to be writing on behalf of his client *and* Ms. McNeilly, drawing a distinction between the two. Mr. Pedersen asserted that he did not represent Ms. McNeilly.

On November 26, 2025, the City proposed an all-inclusive sum of \$25,000 in costs for which Ms. McNeilly and NNFP would be jointly responsible to pay to Brock Mission and the City to be divided between Brock Mission and the City, payable in 60 days.<sup>9</sup>

On December 8, 2025, Mr. Pedersen proposed an all-inclusive sum of \$20,000 in costs for which Ms. McNeilly and NNFP would be jointly responsible to pay to Brock Mission and the City, to be divided between Brock Mission and the City, payable in 60 days.

On December 9, 2025, the City proposed an all-inclusive sum of \$22,500 in costs for which Ms. McNeilly and NNFP would be jointly responsible to pay to Brock Mission and the City, to be divided between Brock Mission and the City, payable in 60 days. The City's offer was accepted.

On December 19, 2025, the Order of Justice J. Di Luca was obtained on the terms of the parties' settlement thereby concluding the Application (Appendix D).

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<sup>9</sup> The usual time for payment of costs is 30 days.

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## Strategic Plan

Strategic Pillar: Governance & Fiscal Sustainability

Strategic Priority: Pursue service excellence in governance to support long-term fiscal sustainability of the City while respecting the impact of decisions on taxpayers

## Budget and Financial Implications

The City incurred out-of-pocket disbursements for Court filing fees, transcripts and other similar disbursements totaling \$8,071.83. The City's share of the \$22,500 costs award is \$15,500 inclusive of its out-of-pocket disbursements. Brock Mission's share is the remaining \$7,000.

## Attachments

Appendix A: July 7, 2025 Justice Smith Endorsement  
Appendix B: July 24, 2025 Justice Edwards Timetable Order  
Appendix C: November 20, 2025 Justice Woodley Decision  
Appendix D: December 19, 2025 Justice J. Di Luca Order

Submitted by,

David J. Potts, B.A., LL.B., C.S.  
Commissioner, Legislative Services and City Solicitor

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Superior Court of Justice

(Name of Court)

at 470 Water Street, PETERBOROUGH, Ontario, K9H 3M3

(Court office address)

Endorsement (Civil)

<b>Date</b>	Plaintiff/Applicant:	NORTHCREST NEIGHBOURS FOR FAIR PROCESS LTD.	<input type="checkbox"/>	Present
			<input type="checkbox"/>	
<b>Jul 07, 2025</b>			<input type="checkbox"/>	
<b>Motion</b>	Counsel:	PEDERSEN, MARK	<input checked="" type="checkbox"/>	Present
			<input type="checkbox"/>	
			<input type="checkbox"/>	
	Defendant/Respondent:	THE CORPORATION OF THE CITY OF PETERBOROUGH	<input type="checkbox"/>	Present
			<input type="checkbox"/>	
			<input type="checkbox"/>	
	Counsel:	SEABROOKE, SCOTT	<input checked="" type="checkbox"/>	Present
			<input type="checkbox"/>	
			<input type="checkbox"/>	
<input type="checkbox"/> Order to go in accordance with minutes of settlement or consent filed.				

1. This matter was the subject of a contested adjournment.
2. Mr. Seabrook advises he will need two hours for his submissions. He also submits two necessary parties need to be added which include Brock Mission, the owner of the subject property, as well as the Chief Building Officer. He believes there is no urgency to the matter, and further, that the applicant is trying to do an end run around the motion for security for costs which is currently scheduled in triage court in early 2026.
3. Mr. Peterson opposed the adjournment. He submits the matter could be dealt with in the time allotted and that an adjournment could ultimately frustrate the motion entirely as the issuance of a building permit during the period of the adjournment could be fatal to his client's case
4. In my view this matter is properly characterized as a long motion. It involves a number of complex issues which are addressed in lengthy materials. The judge hearing the matter requires an appropriate period of time to review

Endorsement (page 2)

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0000

those materials in preparation for the hearing of the motion. The owner of the property, and the CBO, should also have the opportunity to be heard.

5. Accordingly, I am adjourning the matter to a long motion date to be set by the trial coordinator on an urgent basis. In the meantime, Brock Mission and the Chief Building Officer must be promptly served with all materials relating to this motion and be advised of the return date.
6. I am also awarding the respondent its costs thrown away for today which I fix in the amount of \$500.
7. I am not seized of this matter.



SMITH, J

Released: July 7, 2025



Court File No. CV-25-00000113-0000

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

<b>THE HONOURABLE</b>	)	<b>THURSDAY, THE 24<sup>th</sup> DAY</b>
	)	
<b>JUSTICE M. EDWARDS</b>	)	<b>OF JULY 2025</b>
	)	

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

**NORTHCREST NEIGHBOURS FOR FAIR PROCESS LTD.**

**Applicant**

**- and -**

**THE CORPORATION OF THE CITY OF PETERBOROUGH**

**Respondent**



**TIMETABLE ORDER**

**ON HEARING** submissions of counsel for the parties, and on consent of the Chief Building Official of The Corporation of the City of Peterborough and William McNabb the Executive Director for The Brock Street Mission Peterborough, and otherwise on consent of the initial parties,

1. **THIS COURT ORDERS** that the parties shall comply with the timetable attached to this Order as Schedule “A”.
2. **THIS COURT ORDERS** that the Chief Building Official of the City is added as a Respondent to this Application to be represented by Counsel for the City.
3. **THIS COURT ORDERS** that The Brock Street Mission Peterborough is added as a Respondent to this Application.

4. **THIS COURT ORDERS** that the title of the proceeding in all documents issued, served or filed after the date of this order be as follows:

**“NORTHCREST NEIGHBOURS FOR FAIR PROCESS LTD.**

**Applicant**

**- and –**

**THE CORPORATION OF THE CITY OF PETERBOROUGH, CHIEF BUILDING  
OFFICIAL OF THE CORPORATION OF THE CITY OF PETERBOROUGH and  
THE BROCK STREET MISSION PETERBOROUGH**

**Respondents”**

5. **THIS COURT ORDERS** that the parties may, by written agreement, amend the timetable attached to this Order as Schedule “A”. If the parties cannot agree, they may request a Triage Court attendance to speak to any such amendments by emailing the Trial Co-Ordinator at [Peterborough.SCJ.TC@ontario.ca](mailto:Peterborough.SCJ.TC@ontario.ca).
6. **THIS COURT ORDERS** that if any of the parties fail to comply with the timetable attached to this Order as Schedule “A”, the defaulting party’s Motion shall not proceed on the Running List. The non-defaulting party may write to the Court, copied to all other parties, at [Peterborough.SCJ.TC@ontario.ca](mailto:Peterborough.SCJ.TC@ontario.ca) to notify of any such default and obtain a further Triage Court attendance to address compliance with this Order.



---

**Justice M.L. Edwards  
Superior Court of Justice**

### SCHEDULE “A”

<b>Date</b>	<b>Steps to be taken</b>
July 30, 2025	<ul style="list-style-type: none"> <li>• Applicant to file Responding Record on Motion for Security for Costs.</li> </ul>
August 8 2025	<ul style="list-style-type: none"> <li>• Applicant to pay \$500.00 to the Respondent, THE CORPORATION OF THE CITY OF PETERBOROUGH, in costs thrown away pursuant to the Endorsement of Justice Smith, dated July 7, 2025.</li> </ul>
August 18 2025	<ul style="list-style-type: none"> <li>• Applicant to provide Undertaking as to Damages (Rule 40.03).</li> <li>• Applicant to serve added Respondents with all materials filed in the Application and Motion for Interlocutory Relief and the Security for Costs Motion, including a copy of this Timetable Order.</li> </ul>
September 15 2025	<ul style="list-style-type: none"> <li>• Materials, if any, of the added Respondents to be filed with the Court.</li> </ul>
September 22 2025	<ul style="list-style-type: none"> <li>• Cross Examinations on Affidavits, if any, to be completed.</li> </ul>
September 29 2025	<ul style="list-style-type: none"> <li>• Transcripts from Examinations, if any, to be filed with Court.</li> <li>• Factums on Motion for Security for Costs and Motion for Interlocutory Relief to be filed with the Court.</li> </ul>
October 1 2025	<ul style="list-style-type: none"> <li>• Hearing of the Respondent City’s Motion for Security for Costs to be set for 3 hours of argument on the Running List.</li> <li>• Hearing of the Applicant’s Motion for Interlocutory Relief, to be set for 3 hours of argument on the Running List.</li> </ul>

Court File No. CV-25-00000113-0000

**NORTHCREST NEIGHBOURS FOR FAIR PROCESS LTD.**

**vs.**

**THE CORPORATION OF THE CITY OF  
PETERBOROUGH**

**Applicant**

**Respondent**

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

PROCEEDING COMMENCED AT PETERBOROUGH

**TIMETABLE ORDER**

The Corporation of the City of Peterborough  
500 George Street North  
Peterborough, ON K9H 3R9

**Scott Seabrooke**  
LSO #70743M

Telephone: (705) 742-7777 ext. 1898

Email: [sseabrooke@peterborough.ca](mailto:sseabrooke@peterborough.ca)

Lawyer for the Respondent

**CITATION:** *Northcrest Neighbours v. City of Peterborough et al.*, 2025 ONSC 6414

**COURT FILE NO.: CV-25-113**

**DATE:** 2025-11-20

# ONTARIO

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

NORTHCREST NEIGHBOURS FOR  
FAIR PROCESS LTD.

Applicant

– and –

THE CORPORATION OF THE CITY OF  
PETERBOROUGH, CHIEF BUILDING  
OFFICIAL OF THE CORPORATION OF  
THE CITY OF PETERBOROUGH, THE  
BROCK STREET MISSION  
PETERBOROUGH

## Respondents

*Mark Pederson*, Counsel for the Applicant,  
Northcrest

*Scott Seabrooke, Counsel for the  
Respondents, City of Peterborough and the  
CBO*

*Phillip Crannell*, Counsel for the  
Respondent, Brock Street Mission

**HEARD: October 1, 2025**

**REASONS FOR DECISION: MOTION FOR SECURITY FOR COSTS**

**S. J. WOODLEY, J.**

## OVERVIEW

- [1] On February 24, 2025, the City of Peterborough (the “City”) passed two municipal by-laws (the “impugned By-laws”) that apply to a specific property, being 738 Chemong Road, Peterborough (the “property”).
- [2] The by-laws were passed for the purpose of facilitating the construction of a 6-storey, 52-unit housing facility (the “McNabb House”), on property owned by one of the Respondents, The Brock Street Mission (“Mission”).

- [3] By-law No. 25-052 amends the zoning of the property. By-law No. 025-051 exempts the property from the Site Plan Control requirements for issues such as fire routes, parking, loading, and buffering.
- [4] The McNabb House is intended to operate as a supportive housing residence to supplement the emergency shelter/semi-independent housing facility operated by the Mission already in existence and located at the property.
- [5] The Mission initially contemplated that the McNabb House would have services and 24/7/365 eyes-on care to its residents. However, it is now contemplated that the McNabb House will be a sober living facility for individuals transitioning from emergency shelters and/or street living to independent living. It is further anticipated that rent at the McNabb House will be adjusted to residents' income/ability to pay, and guests will be screened by security prior to entry.
- [6] The By-laws were passed under Part VI.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25. Part VI.1 of the *Municipal Act* is often referred to as the "Strong Mayor Powers" portion of the *Act* because Part VI.1 of the *Municipal Act* provides the head of a municipal council (i.e., a mayor) unique powers. For example, s. 284.10(1) of the *Municipal Act* states that the head of a municipal council may require the council to consider and vote on a given by-law if the head of a municipal council believes that the by-law "could *potentially* advance a prescribed provincial priority".
- [7] Such by-laws passed "if more than one third of the members of council vote in favour of the by-law" (*Municipal Act*, at s. 284.11.1(4)), with the mayor being explicitly entitled to vote (*Municipal Act*, at s. 284.11.1(5)). In the present case, more than one-third of the City's council voted to pass the impugned By-laws.
- [8] Prior to the passing of impugned By-laws, there were public discussions held by the City's council relating to the plan to build the McNabb House on the property. Members of the public, including Sarah McNeilly, who is the directing mind of the Applicant, Northcrest Neighbours for Fair Process ("Northcrest"), attended and made submissions relating to the passing of the impugned By-laws.
- [9] On April 1, 2025, after the impugned By-laws were passed, Ms. McNeilly's lawyer advised the City that Ms. McNeilly would be commencing an application to challenge the validity of the impugned By-laws.
- [10] The City responded and advised Ms. McNeilly that "costs" would be a live issue.
- [11] Following this exchange, on April 5, 2025, Ms. McNeilly incorporated Northcrest, a corporation with no income, no assets, and no business dealings, for the sole purpose of commencing the application before this court.
- [12] Northcrest challenges the impugned By-laws on the basis that they "do not implicate a provincial priority and their enactment via the Strong Mayor Powers renders them invalid and/or ineffective".

- [13] Following service of the application by Northcrest, the City served a motion for security for costs, on a “non-urgent basis”.
- [14] Following service of the security for costs motion, Northcrest served a motion for interlocutory relief, on an “urgent basis”.
- [15] On July 7, 2025, the two motions came before Smith J. who directed as follows:
- (a) the injunctive relief motion would proceed as a long motion;
  - (b) the parties would attend Triage Court on July 22, 2025; and
  - (c) Northcrest would serve all materials on the Mission and the Chief Building Official.
- [16] On July 22, 2025, at Triage Court, Edwards R.S.J. added the Mission as a party to the application and directed the parties to agree upon a timetable, failing which, a timetable would be set.
- [17] On July 24, 2025, the parties agreed to a timetable Order.
- [18] On August 22, 2025, the Mission appointed counsel to represent their interests.
- [19] On October 1, 2025, the parties attended before me to argue their motions. After discussion, it was agreed that the security for costs motion would be determined first and, following the release of that decision, *either* the motion for injunctive relief or the application would be argued.<sup>1</sup>

## FACTS

### (i) Facts Relating to the Security for Costs Motion

- [20] Prior to commencing the within application, Ms. McNeilly was aware that the application would be opposed by the City and that “costs” would be an issue.
- [21] Cognizant of this information, Ms. McNeilly incorporated Northcrest, and appointed herself as the sole officer, director, and shareholder of the corporation. Ms. McNeilly is the sole directing mind of the corporation.
- [22] Following Northcrest’s incorporation, Ms. McNeilly directed her lawyers to issue the application with Northcrest serving as the applicant.
- [23] As previously noted, Northcrest has no assets, income, or business interests and is effectively “judgment proof”.

<sup>1</sup> During argument, I queried why injunctive relief was necessary as the entire application could be argued and determined on the same timeline on a final basis, thus limiting any damages/costs occasioned by delay.

- [24] Because Northcrest has sought an injunction in this proceeding, Ms. McNeilly had to provide an undertaking regarding damages on behalf of Northcrest.
- [25] When Ms. McNeilly was cross-examined about the financial consequences of the undertaking, she stated that she didn't believe there is "really much grounds for that in this case" as she couldn't "be responsible" for the Mission's "financial mismanagement" which she described as "spending of money on something that may in fact—you know, it's up for a question".
- [26] Ms. McNeilly further advised that, despite being the sole officer, director, shareholder, and directing mind of the corporation, Northcrest "actually represents" an "unincorporated association" comprised of approximately 80 individuals who live close to the property. It is alleged that this unincorporated association has a bank account that it uses to fund Northcrest's legal fees. However, despite providing this general statement, Ms. McNeilly and Northcrest did not provide any details that would verify the existence or balance of any bank account that could be secured for costs in this proceeding.

**(ii) Facts Relating to the Challenge of the Impugned By-Laws**

- [27] As discussed above, the impugned By-laws were passed under Part VI.1 of the *Municipal Act*. Again, under Part VI.1, the head of a municipal council may force council to consider and vote on a by-law that "could *potentially* advance a prescribed provincial priority." (*Municipal Act*, s. 284.10(1) [emphasis added]).
- [28] The prescribed provincial priorities are set forth in *Provincial Priorities*, O. Reg. 580/22, and include "[b]uilding 1.5 million new residential units by December 31, 2031" and "constructing and maintaining infrastructure to support housing" (*Provincial Priorities*, s. 1).
- [29] In the case at bar, the City's Mayor, Jeff Leal, attested that, prior to the passing of the impugned By-laws, he formed the opinion that the impugned By-Laws could *potentially* advance the prescribed provincial priority of building new residential units. As a result, he exercised his authority under the *Municipal Act* to require the City's council to consider and vote on the impugned By-Laws.
- [30] More than one-third of the City's Council passed the impugned By-Laws in accordance with s. 284.11.1(4) of the *Municipal Act*.
- [31] The Notice of Application cites the fact that the impugned By-Laws were passed with respect to the construction of a 52-unit transitional housing development.
- [32] The Respondents confirm that the McNabb House is planned to be an apartment building with 52 single occupancy units. Rent payments will be adjusted to income and the unit occupants will enjoy some additional supports, which could involve daily or weekly check-ins with the residents.
- [33] There is no evidence whatsoever that the impugned By-laws were passed for any purpose other than the facilitate the building of the McNabb House.



## ISSUES

[34] The issues to be determined are as follows:

- (a) Should security for costs be ordered against Northcrest?
- (b) If so, in what amount?

## THE LAW AND ANALYSIS

[35] Rule 56.01(1)(d) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, sets forth the following:

The court, on motion by the defendant or respondent in a proceeding, may make such order for security for costs as is just where it appears that,

...

(d) the plaintiff or applicant is a corporation or a nominal plaintiff or applicant, and there is good reason to believe that the plaintiff or applicant has insufficient assets in Ontario to pay the costs of the defendant or respondent; or

...

### (i) The Test for Security for Costs

[36] The test on a motion for security for costs is well established. The initial onus rests with the respondent to satisfy the court that it *appears* that there is good reason to believe that the matter comes into one of the circumstances enumerated in r. 56.01. The onus is a light one: *Hallum v. Canadian Memorial Chiropractic College* (1989), 70 O.R. (2d) 119 (Sup. Ct.) at p. 5; *Coastline Corporation Ltd. et al. v. Canaccord Capital Corporation et al.*, 2009 CarswellOnt 2312 (S.C.J.), at para. 7.

[37] Once the respondent satisfies the first part of the test, the onus shifts to the applicant to establish that an order for security for costs would be unjust. The applicant can satisfy their onus by demonstrating that: (a) the applicant has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy any order of costs made in the litigation; (b) the applicant is impecunious and justice demands that the applicant be permitted to continue with the application; or (c) if the applicant cannot establish that it is impecunious, but does not have sufficient assets to meet a costs order, the applicant must meet a high threshold to satisfy the court of its chances of success: *Coastline Corporation*, at para. 7; *Medpace Reference Laboratories, LLC v. KGK Synergize Inc.* (2009), 84 C.P.C. (6th) 78, at para. 19.

**1) The Respondents' Burden**

- [38] The Respondents must satisfy this court that there is good reason to believe that the Applicant has insufficient assets in Ontario. This is a light onus based on the belief that it would be unfair to insist that the Respondents prove something that is within the knowledge of the Applicant: *Treasure Traders International Corporation v. Canadian Diamond Traders Inc.*, 2006 CarswellOnt 2925 (S.C.J.) , at para. 3.
- [39] To satisfy their onus, the Respondents must place some evidence before the court that their concern is genuine and is based on proven facts regarding the Applicant's current financial situation. The evidence must establish that there is something more than a hunch or a concern: *Websports Technologies Inc. v. Cryptologic Inc.*, 2004 CarswellOnt 64 (S.C.J.), at para. 8.
- [40] In the present case, Ms. McNeilly, on behalf of the Applicant, provided sworn evidence that Northcrest has no assets, no income, and no business interests. This evidence firmly satisfies the Respondents' burden that the applicant has insufficient assets to satisfy the Respondents' costs as per r. 56.01(1)(d).

**2) The Applicant's Burden**

- [41] As the Respondents' burden has been satisfied, the onus shifts to the Applicant, Northcrest, to prove that an order for security for costs would be unjust: *USCAN Aviation Sales Ltd. v. Mansfield Heliflight Inc.*, 2025 ONS 875, at para. 14, citing *Horizon Entertainment Cargo Ltd. v. Marshall*, 2019 ONSC 2081, at para. 3 and *Mara Tech Aviation Fuels Ltd. v. Palombi*, 2019 ONSC 7355, at para. 4.
- [42] The determination of whether an order for security for costs would be unjust is at the discretion of the trial judge and allows for a consideration of many factors: see *USCAN Aviation Sales Ltd.*, at para. 19; *Coastline Corporation*, at para. 3.
- [43] Northcrest can satisfy its onus by demonstrating that:
- (a) It has appropriate or sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy an order of costs made in the litigation;
  - (b) It is impecunious and justice demands that it be permitted to continue with the action (i.e., an impecunious applicant will generally avoid paying security for costs if they can establish that the claim is not "plainly devoid of merit"); or
  - (c) If Northcrest cannot establish that it is impecunious, and it does not have sufficient assets to meet a costs order, then it must meet a high threshold to satisfy the court of its chances of success on the merits of its case (see *Willets v. Colalillo*, 2007 CarswellOnt 7616 (S.C.J.), at paras. 46–47, 55)
- [44] With respect to the first option above, it is clear on the evidence that Northcrest does not have sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy an order of costs.

- [45] With respect to the second option, a corporate applicant who claims impecuniosity must demonstrate that it cannot raise security for costs from its shareholders and associates. In other words, the corporation must demonstrate that its principals do not have sufficient assets: *Smith Bus Lines Ltd. v. Bank of Montreal* (1987), 61 O.R. (2d) 688 (H.C.J.), at para. 43.
- [46] Evidence as to the personal means of the principals is required to satisfy this onus. A corporate applicant must provide “substantial evidence about the ability of its shareholders or others with an interest in the litigation to post security.” A bare assertion that no funds are available will not suffice: *1483677 Ontario Ltd. v. Crain*, 2008 CarswellOnt 4892 (S.C.J.), at para. 19.
- [47] Full financial disclosure requires the Applicant to establish the amount and source of all its income, a description of all its assets including values, a list of liabilities and other significant expenses, an indication of the extent of the ability of the Applicant to borrow funds, and details of any assets disposed of or encumbered since the cause of action arose: *USCAN Aviation Sales Ltd.*, at para. 19.
- [48] With respect to the third and final option, the court does not have to embark on a detailed analysis of the merits as required by a summary judgment motion. Instead, the merits analysis is primarily focused on the pleadings with recourse to evidence filed on the motion and, where appropriate, to selective references to excerpts from the examinations for discovery, when available.
- [49] If the case is complex or turns on credibility, it is generally not appropriate to assess the merits at an interlocutory stage. An “assessment of the merits should be decisive where (a) the merits may be properly assessed on an interlocutory application; and (b) success or failure appears obvious”: *679927 Ontario Ltd. v. Wall*, 176 NSR (2d) 96 (CA), at para. 83.
- [50] Ultimately, the court will consider the appropriateness of granting the order holistically, and examine all the circumstances of the case. The court will be guided by the overriding interests of justice in its determination of whether it is just that the order for security for costs be made: *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827, 138 O.R. (3d) 1, at para. 25.
- [51] I will now assess whether Northcrest has satisfied its onus by addressing each of its options in turn.

**a) Sufficient Assets in Ontario to Satisfy a Costs Order?**

- [52] In the present case, Northcrest has not proven that it has appropriate or sufficient assets in Ontario, or in a reciprocating jurisdiction, to satisfy an order of costs made in the litigation. Ms. McNeilly provided sworn evidence that the corporation has no income, assets, or business interests. Further, Ms. McNeilly provided no information about her ability to fund the corporation. Ms. McNeilly’s statement that the legal costs of the corporation are being funded by an unincorporated association is simply a bald statement that is unsupported by details and is insufficient for the purposes of this motion.

**b) Impecuniosity?**

- [53] The threshold for impecuniosity is high. The threshold can only be reached by tendering complete and accurate disclosure of the Applicant's income, assets, expenses, liabilities, and borrowing ability, with supporting documentation for each category. No such information was provided by the Applicant with respect to this motion. Bald assertions are not sufficient evidence: *Coastline Corporation*, at para. 7 (viii).
- [54] The Applicant provided insufficient details to support a finding of impecuniosity in this case. As such, the Applicant did not meet the high threshold for impecuniosity.
- [55] As the Applicant could not prove that it had sufficient assets, nor could it prove impecuniosity, it must meet a high threshold to satisfy the court of its chances of success: *Willets*, at para. 55.

**c) The Merits: Does the Applicant have a Good Chance at Success?**

- [56] The remaining analysis is "whether the claim has a good chance of success": *Zeitoun v. Economical Insurance Group*, 91 OR (3d) 131 (S.C.J. Div. Ct.), at para. 50, aff'd 2009 ONCA 415, 96 O.R. (3d) 639.
- [57] In *North Key v. Black & McDonald Ltd.*, 2015 ONSC 4560, 51 C.L.R. (4th) 328, at para. 20, the court considered the role of the merits on a motion for security for costs and held,

This assessment of the merits is normally part of the impecuniosity assessment. It is not by itself a basis for withholding an order. In other words the court will not refrain from ordering security just because the claim may have merit. Certainly the apparent merits or lack of merits may always form part of the analysis about what order is just but it is obviously insufficient to conclude that security for costs will be unjust if the plaintiff is correct. The court must also have regard to the injustice that will result if the plaintiff fails to prove its case and the defendant is unable to collect its costs. That is the purpose of the rule [citations omitted].

- [58] The Applicant's main argument on this motion is that the McNabb House is an "institutional" facility and not a "residential unit". Therefore, the Applicant submits that the Strong Mayor Power provisions were not available to Mayor Leal as the "identified provincial priority" which makes the provisions available is specifically for "building 1.5 million new *residential* units by December 31, 2031 [emphasis added]" and "constructing and maintaining infrastructure to support housing".
- [59] While I find the Applicant's argument to be interesting, I do not find it to be compelling. Much of the evidence relied upon by the Applicant involves the type of services that will be provided at the McNabb House for the residents. The Applicant points to video surveillance in all common areas, restrictions on visitors, and security measures, as being indicative, if not determinative, that the facility is institutional in nature rather than residential. I disagree.

- [60] Firstly, the services that may eventually be provided at the McNabb House have not yet been determined and are predicated, in part, on budget and funding. The building is intended to be a transitional residential facility to assist residents currently living in shelters and/or on the street.
- [61] Secondly, the security measures relied upon by the Applicant as being indicative of the McNabb House being “institutional” in nature are common security measures implemented in most apartment, condominium, and co-op complexes.
- [62] Thirdly, it is not disputed that the McNabb House is intended to be a transitional housing facility with separate units for the residents where their rent will be adjusted to their income.
- [63] The Applicant’s argument turns on the question of what constitutes a home, residence, and/or residential facility. I am unconvinced by the Applicant’s position that, if the proposed facility provides supportive services geared to assist vulnerable persons, that these services make the facility “institutional” in nature and thus made the provisions under the Strong Mayor Power unavailable to Mayor Leal.
- [64] It must be noted that Applicant’s case also faces a significant hurdle with respect to the immunity clause contained within the Strong Mayor Power provisions. This legal hurdle makes the Applicant’s case unlikely to succeed on the merits.
- [65] Section 284.14 of the *Municipal Act* provides that “[a] decision made, or a veto power or other power exercised, legally and in good faith under this part shall not be quashed or open to review in whole or in part by any court because of the unreasonableness or supposed unreasonableness of the decision or exercise of the veto power or other power.” Therefore, as the Legislative Assembly of Ontario has specifically ousted reasonableness as the standard of review, the standard of review on this issue will be correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at paras. 16–17.
- [66] As the application in this case purports to quash and/or review the decision made under the Strong Mayor Powers provisions, determination of this issue rests on whether the power was exercised legally and in good faith.
- [67] In the present case, Mayor Leal attested that, prior to the passing of the impugned By-laws, he formed the opinion (i.e., he *believed*) that the impugned By-laws could potentially advance the prescribed provincial priority of building new residential units. Accordingly, he exercised his legal authority under the *Municipal Act* to require the City’s council to consider and vote on the impugned By-laws.
- [68] When questioned about her evidence regarding Mayor Leal’s beliefs prior to his use of the Strong Mayor Power provisions, Ms. McNeilly said “I believe him when he says he believes that”.
- [69] It is not contested that Mayor Leal *believed* that the impugned By-laws could potentially advance the prescribed provincial priority of building new residential units. Upon initial

review, the evidence before me does not suggest that Mayor Leal acted illegally, nor does he appear to have acted in bad faith. Therefore, it appears unlikely that the Applicant will be successful in demonstrating that Mayor Leal's decision to utilize the Strong Mayor Power provisions was incorrect.

[70] For the purposes of assessing the merits of the application, in relation to the security for costs motion, I am of the view that the Applicant's case has limited merit and a limited prospect of success.

[71] In my view, for the reasons above, the Applicant has not met their burden under stage two of the security for costs test.

**d) Holistic Approach to Justness of Order**

[72] Having determined that the Applicant has not satisfied their burden, prior to implementing security for costs, I am now required "to take a step back to consider the justness of the order sought in all the circumstances, with the interests of justice at the forefront": *Yaiguaje*, at para 22.

[73] While the factors are not static for every case, as per *Yaiguaje*, at para. 24, the factors to be considered may include:

- (a) Merits of the application, with a higher onus on the applicant where no impecuniosity is shown;
- (b) The timeliness of the respondent in bringing the motion;
- (c) The impact of actionable conduct by the respondent on the applicant's assets;
- (d) Access to justice; and
- (e) Public importance.

[74] Having reviewed the application, I find as follows:

- (a) There appears to be limited merits to the application;
- (b) The Respondents commenced the motion for security for costs promptly;
- (c) The Applicant has no assets, income, or business interests and no steps have been taken by any Respondent that would restrict the Applicant's ability to post security for costs;
- (d) Access to justice is not affected by the motion. Ms. McNeilly could have commenced the application in her own name, and/or in the names of those neighbours who are purported to "fund" Northcrest. However, neither Ms. McNeilly nor any "neighbour" sought to personally commence the litigation, nor did they provide details of their personal assets that may have assisted in

defence of this motion. Instead, Ms. McNeilly incorporated a company with no assets, no income, and no business interests for the sole purpose of commencing the litigation *after* being advised that “costs” would be an issue. There is absolutely nothing that would preclude a true litigant or litigants from advancing the case; and

- (e) The within application is not public interest litigation. Instead, the application is a matter of local interest to neighboring property owners who are concerned about the possible deleterious effects that the proposed facility will have on their property values and lifestyles: *Know Your City Inc. v. The Corporation of the City of Brantford*, 2020 ONSC 7364 (Div. Ct.), 9 M.P.L.R. (6th) 301; *Pointes Protection Assn. v. Sault Ste. Marie Region Conservation Authority*, 2013 ONSC 5323 (Div. Ct.). The litigation is specific to the area and the property use. It does not affect the public at large. Municipalities and charitable/not-for-profit organizations should not be unnecessarily exposed to litigation by nominal corporate applicants simply because the implementation of municipal powers is questioned. Such litigation does not necessarily qualify as public interest litigation, and this is especially true in the present case where the merits are questionable and there is evidence that any costs and/or damages assessed will be unrecoverable.

## **DETERMINATION AND AMOUNT OF SECURITY ORDERED**

- [75] It is my view that the interests of justice are served by ordering the Applicant, Northcrest, to post security for costs fixed at \$30,000 to be paid into court within 30 days of the date herein. Further, I am of the view that the interests of justice require leave to be granted to the Respondents to seek further security throughout the course of the litigation as it progresses and costs increase.
- [76] Subject to any offer to settle, as the Respondents are the successful parties, they are entitled to their costs of the motion, which are to be paid within 30 days of the date such costs are determined, in addition to the security for costs ordered.
- [77] In the event the parties are unable to resolve the issue of costs, the Respondents shall serve and file their costs submissions, limited to three pages, together with any offers to settle, a cost outline, and bill of costs, within 30 days of the date herein.
- [78] The Applicant’s response shall be limited to three pages, together with any offers to settle, costs outline, and a bill of costs within 45 days of the date herein.
- [79] Reply, if any, is limited to one page, to be served and filed within 50 days of the date herein.
- [80] With respect to the scheduling of the application and/or injunction, I am not seized.

- [81] The application and/or injunction may be heard by any judge following payment by the Applicant into court to the credit of the action in the sum of \$30,000 on account of security for costs.

A handwritten signature in blue ink, appearing to be 'S.J. Woodley', with a stylized flourish at the end.

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The Honourable Justice S.J. Woodley

**Released:** November 20, 2025





Court File No. CV-25-00000113-0000

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

**THE HONOURABLE** ) **FRIDAY, THE 19th DAY**  
 )  
**JUSTICE J. DI LUCA** ) **OF DECEMBER 2025**  
 )

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

**NORTHCREST NEIGHBOURS FOR FAIR PROCESS LTD.**

**Applicant**

**- and -**

**THE CORPORATION OF THE CITY OF PETERBOROUGH, CHIEF BUILDING  
OFFICIAL OF THE CORPORATION OF THE CITY OF PETERBOROUGH, THE  
BROCK STREET MISSION PETERBOROUGH**

**Respondents**

**ORDER**

**ON READING** the consent of the parties to the proceeding and the affected non-party Sarah McNeilly,

1. **THIS COURT ORDERS** that the corporate Applicant and Sarah McNeilly personally are jointly and severally liable to pay to the Respondents \$22,500.00 in costs for the motion, payable within 60 days.
2. **THIS COURT FURTHER ORDERS** that the Application and the Applicant's motion for interlocutory relief are abandoned, without costs.

A handwritten signature in black ink, appearing to be "Brayden R Ellis", is written over a horizontal line.

**Brayden**  
**R Ellis**

Digitally signed  
by Brayden R Ellis  
Date: 2025.12.19  
10:03:24 -05'00'

**Superior Court of Justice**

Court File No. CV-25-00000113-0000

**NORTHCREST NEIGHBOURS FOR FAIR PROCESS LTD.**

**vs.**

**THE CORPORATION OF THE CITY OF  
PETERBOROUGH et al**

**Applicant**

**Respondents**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT PETERBOROUGH

**ORDER**

The Corporation of the City of Peterborough  
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Peterborough, ON K9H 3R9  
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LSO #70743M  
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Lawyer for the Respondent