

**FAX COVER SHEET**

TO:

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Toronto, Ont.

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Mr. Ian Rowe
Barriston LLP
Barrie, Ont.

FAX NO. 705-721-4025

FROM: E. Marshall Green (Samantha)

DATE: October 5, 2015

Re: The Corporation of the County of Simcoe ats
Aware Simcoe Environmental and Social Solutions Inc.
Our File A4711005

MESSAGE:

Please see the attached

TOTAL PAGES SENT, INCLUDING THIS PAGE

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October 5, 2015

Ms. Hilda Van Beek
Judicial Assistant
Superior Court of Justice
75 Mulcaster Street
Barrie, Ontario L4M 3P2

Dear Ms. Van Beek:

Re: County of Simcoe et al. ats Aware Simcoe et al.
Court File No.: DC-15-0922
Our File No. A4711005

Pursuant to the Directions of Her Honour, Justice Eberhard, enclosed please find our written submissions with respect to costs and our Bill of Costs.

Yours very truly
HGR GRAHAM PARTNERS

A handwritten signature in black ink, appearing to read "E. Marshall Green". The signature is fluid and cursive, with a large loop at the end.

E. Marshall Green
EMG/st
Encl.

c. Mr. Michael Fleishmann, Fleishmann Professional Corporation
Mr. Ian Rowe, Barriston LLP

Court File No. 15-0922 DC

**ONTARIO
DIVISIONAL COURT**

BETWEEN:

AWARE SIMCOE ENVIRONMENTAL AND SOCIAL SOLUTIONS INC.

Applicant

and

**CORPORATION OF THE COUNTY OF SIMCOE
and TECUMSETH ESTATES INC.**

Respondents

**APPLICATION UNDER the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1 and
Rule 68 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194**

**COST SUBMISSIONS OF THE RESPONDENT,
CORPORATION OF THE COUNTY OF SIMCOE**

October 5, 2015

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Solicitors for the Corporation of the
County of Simcoe

TO: ONTARIO DIVISIONAL COURT
Barrie Courthouse
75 Mulcaster Street
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L4M 3P2

AND TO: FLEISCHMANN PROFESSIONAL CORPORATION
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Solicitors for Tecumseth Estates Inc.

Court File No. 15-0922 DC

**ONTARIO
DIVISIONAL COURT**

BETWEEN:

AWARE SIMCOE ENVIRONMENTAL AND SOCIAL SOLUTIONS INC.

Applicant

and

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and TECUMSETH ESTATES INC.

Respondents

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1.	Cost Submissions dated October 5, 2015
2.	Bill of Costs dated October 5, 2015

TAB 1

Court File No. 15-0922 DC

**ONTARIO
DIVISIONAL COURT**

BETWEEN:

AWARE SIMCOE ENVIRONMENTAL AND SOCIAL SOLUTIONS INC.

Applicant

and

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Respondents

APPLICATION UNDER the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1 and
Rule 68 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194

COSTS SUBMISSIONS OF THE COUNTY OF SIMCOE

1. The County of Simcoe (the "County") is a respondent to a judicial review application brought by the Applicant Aware Simcoe Environmental and Social Solutions Inc ("Aware").
2. Aware brought a motion for an interim injunction to restrain the Co-Respondent Tecumseth Estates Inc. (the "Company") from acting on a tree removal permit granted to it by the County to clear certain of its property for agricultural purposes. The County and the Company opposed the interim injunction application and the motion was dismissed.
3. Her Honour Justice Eberhard gave detailed reasons for the dismissal of the motion, including the background to the County granting its original permit. She covered the County having inadvertently omitting notice to abutting property owners, the placing of the subsequent stop work order, the very complete hearing that was then granted, and the procedural errors made by the County in holding the hearing and deliberating on its

decision. She found that the process, though flawed, did not meet the tests for an interim injunction in all of the circumstances.

4. In our respectful submission, there is nothing in the nature, process or result of this case that would merit the Court deviating from the normal rule that costs follow the results in the cause. The “thinness” of the facts upon which Aware has based its application for judicial review, and the even thinner basis for an interim injunction should lead to nothing but the “usual” costs disposition.
5. The nature of the injunction action involved three separate legal issues to be canvassed:
 - a. Is there a serious question to be tried?
 - b. Would the litigant who seeks the interlocutory injunction suffer irreparable harm if it is not granted?
 - c. Which party would suffer the greater harm from the granting or refusal of the interlocutory order?
6. In particular, the first issue required the canvassing of a wide spectrum of issues, including public vs. private rights, elements of natural justice and certain aspects of municipal law. In all, the County’s factum covered 17 pages, and there were 6 cases and 3 statutory references to be researched, and then reviewed with the Court.
7. The County, as a public body is most sensitive to, and in most cases appreciative of, the input of public interest groups into its legislative and administrative processes. That is the very reason that when it was discovered that part of the process under its Forestry Bylaw had been inadvertently overlooked, that it determined, in this situation to go “above and beyond” the usual process and to offer a much wider public hearing than was required.
8. In fact, the AWARE group should be cognizant of the attempts by the County to be transparent in its various processes. When the AWARE group complained publicly that

the County had not been open enough in the process of adopting a new Official Plan for the County (even though the OMB found no flaw in the process) the County held an expansive, and expensive public open house to answer the questions of AWARE and others.

9. To be considered as well, is who has the primary responsibility for representing the public interest. County Council is made up of the mayors and deputy mayors of its 16 constituent municipalities. This means that residents of those local municipalities have both a direct influence on County decisions at the level of their local politicians, and a second level of input at the County Council table itself. With these two layers of input, the County Council is very well positioned to represent residents and taxpayers. Much better than a "corporate" lobby group, with an undeclared membership.
10. In our respectful submission, it was unfair and in fact inappropriate for this group to challenge the County in this situation based on irregularities that it knew or should have known had no discernible effect on the outcome. Simple mathematics was the answer to one of the complaints, being that of the vote by two councillors who did not attend part one of the hearing. With respect to the other complaint – not being allowed a "reply to Mr. Rowe's reply" at the hearing - it seems disingenuous at best for AWARE to have complained about not being able to repeat its hearing position, when the alternative (the Council's refusal to hear from Mr. Rowe before day 2) would have had Mr. Rowe unable to answer questions he was learning of for the first time at the hearing.
11. One has to keep in mind, of course, that the County is the steward of public monies. While of course it must defend an action when brought against it, it also has an obligation to recover the taxpayer dollars spent on an action that a Court has found was ill-conceived.
12. We have provided a bill of costs divided into three columns. We have shown the actual fees and disbursements charged to the County. It should be noted that we provide the

County a rate that is discounted roughly by 1/3 from our standard client rates. We have then shown what would be substantial indemnity rate at 85% and partial indemnity at 67%. We of course acknowledge Your Honour's discretion in setting the rate, and the amount, of costs in this situation.

All of which is respectfully submitted this 5th day of October, 2015.



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Corporation of the County of Simcoe

TAB 2

Court File No. 15-0922 DC

**ONTARIO
DIVISIONAL COURT**

BETWEEN:

AWARE SIMCOE ENVIRONMENTAL AND SOCIAL SOLUTIONS INC.

Applicant

and

CORPORATION OF THE COUNTY OF SIMCOE
and TECUMSETH ESTATES INC.

Respondents

APPLICATION UNDER the *Judicial Review Procedure Act*, R.S.O. 1990, c.J.1 and
Rule 68 of the *Rules of Civil Procedure*, RRO 1990, Reg. 194

**BILL OF COSTS OF THE RESPONDENT,
CORPORATION OF THE COUNTY OF SIMCOE
(Motion for Injunction)**

October 5, 2015

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County of Simcoe

Court File No. 15-0922 DC

**ONTARIO
DIVISIONAL COURT**

BETWEEN:

AWARE SIMCOE ENVIRONMENTAL AND SOCIAL SOLUTIONS INC.

Applicant

and

CORPORATION OF THE COUNTY OF SIMCOE
and TECUMSETH ESTATES INC.

Respondents

BILL OF COSTS OF THE CORPORATION OF THE COUNTY OF SIMCOE

PART I – FEES

A claim for fees is being made with respect to the following professionals:

Name of Lawyer	Title	Year of Call to the Bar
Marshall Green	Partner	1975
The Hon. Justice Peter J. Howden	Counsel	1967
William Thomson	Associate	2015
Samantha Trottola	Law Clerk	2000

Fees - Motion				
Preparation and review of Motion materials for Applicants Motion for Injunction including: drafting of responding affidavits and exhibits, factum and authorities, assembling materials and preparation of cost submissions.				
Lawyer	Hours	Partial	Substantial	Full
Marshall Green <i>(Partial \$217./hour Substantial \$276.25/ Full \$325./)</i>	21.7	\$4,708.90	\$5,994.63	\$7,052.50
Justice Peter Howden <i>(Partial \$301.50./hour Substantial \$382.50/ Full \$450./)</i>	3.5	\$1,055.25	\$1,338.75	\$1,575.00
William Thomson <i>(Partial \$155.44/hour Substantial \$197.20/ Full \$232./)</i>	23.8	\$3,699.48	\$4,693.36	\$5,521.60
Samantha Trottola (Clerk) <i>(Partial \$97.15/hour Substantial \$123.25/ Full \$145./)</i>	10.8	\$1,049.22	\$1,331.10	\$1,566.00
Attendance at Motion on August 19, 2015				
Marshall Green	9.1	\$1,974.70	\$2,513.88	\$2,957.50
William Thomson	9.1	\$1,414.51	\$1,794.52	\$2,111.20
	Fees Sub- Total	\$13,902.06	\$17,666.24	\$20,783.80
	HST@ 13%	<u>\$1,807.27</u>	<u>\$2,296.62</u>	<u>\$2,701.90</u>
	Fees Total	\$15,709.33	\$19,962.86	\$23,485.70

DISBURSEMENTS		
Photocopies		\$133.25
Research		\$50.00
	Sub-Total	\$188.75
	HST @ 13%	<u>\$24.53</u>
	Disbursements Total	\$213.28

October 5, 2015

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AWARE SIMCOE ENVIRONMENTAL et al.
Appellants

v.

CORPORATION OF THE COUNTY OF SIMCOE et al.
Respondents
Court File No. 15-0922 DC

**ONTARIO
DIVISIONAL COURT**

PROCEEDING COMMENCED AT BARRIE

**BILL OF COSTS OF THE RESPONDENT,
CORPORATION OF THE COUNTY OF SIMCOE**
(Motion for Injunction)

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AWARE SIMCOE ENVIRONMENTAL et al.
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v.

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Court File No. 15-0922-DC

**ONTARIO
DIVISIONAL COURT**

PROCEEDING COMMENCED AT BARRIE

**COSTS SUBMISSIONS OF THE RESPONDENT,
CORPORATION OF THE COUNTY OF SIMCOE**

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