

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

B E T W E E N :

SHAWN DRENNAN and TRICIA DRENNAN

Appellants/  
Appellants on Appeal

- and -

THE DIRECTOR, MINISTRY OF THE ENVIRONMENT

Respondent/  
Respondent on Appeal

- and -

K2 WIND ONTARIO INC. OPERATING AS  
K2 WIND ONTARIO LIMITED PARTNERSHIP

Respondent/  
Respondent on Appeal

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**REPLY COST SUBMISSIONS OF K2 WIND ONTARIO INC.  
OPERATING AS K2 WIND ONTARIO LIMITED PARTNERSHIP**

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**BORDEN LADNER GERVAIS LLP**  
44th Floor - 40 King Street West  
Toronto, ON M5H 3Y4

Christopher D. Bredt LSUC #23627Q

Tel: 416.367.6165  
Fax: 416.361.7063

**DAVIES WARD PHILLIPS & VINEBERG LLP**  
40th Floor – 155 Wellington Street West  
Toronto, ON M5V 3J7

James Bunting LSUC #48244K  
Nathaniel Read-Ellis LSUC #63477L

Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for the Respondent, K2 Wind Ontario  
Inc. operating as K2 Wind Ontario Limited  
Partnership

**TO:** Falconers LLP  
10 Alcorn Avenue  
Suite 204  
Toronto, ON M4V 3A9

Julian Falconer LSUC #29465R

Tel: 416.964.0495

Fax: 416.929.8179

Lawyer for the Appellants, Shawn Drennan and Tricia Drennan

**AND TO:** Ministry of the Attorney General  
135 St. Clair Avenue West  
10th Floor  
Toronto, ON M4V 1P5

Danielle Muellman LSUC #49857M

Andrea Huckins LSUC #50774W

Tel: 416.314.6569

Lawyers for Respondent, The Director, Ministry of the Environment

1. K2 Wind adopts the reply cost submissions of Armow Wind in respect of the Appellants' request to deprive K2 Wind of the costs of the Appeal. Notably, of the costs requested by K2 Wind, only \$55,851.32 are attributable to the Appeal itself, an amount that is consistent with the costs awarded by this Court in *Ostrander* in the face of public interest arguments that are similar to those advanced by the Appellants.

2. The remainder of the costs award requested by K2 Wind is attributable to the Appellants' tactical decision to bring two complex and costly motions for a "stay" pending appeal. These stay motions (which in substance sought injunctive relief to stop the project, not a stay of the ERT decision) account for nearly three quarters of the costs award requested by K2 Wind.

3. The Appellants' cost submissions are almost entirely silent on the failed stay motions and the substantial costs associated with them. The Appellants' chose to proceed with their motions on the advice of experienced and sophisticated counsel after being advised by K2 Wind that the motion had no merit and that K2 Wind would seek substantial costs if the Appellants proceeded with it.<sup>1</sup> The Appellants should be held to the normal costs consequences resulting from their decision to pursue their unnecessary and unsuccessful motions for a stay.

4. The stay motions were in no way public interest litigation. Mr. Drennan admitted that the alleged flooding issues that the Appellants raised in their motions for a stay (which were not at issue on the Appeal and which substantially increased K2

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<sup>1</sup> See K2 Wind's offer to settle dated August 21, 2014, which is attached as Appendix "B" to K2 Wind's cost submissions dated January 16, 2015, in which K2 Wind informed the Appellants that it would seek to recover its costs and that the Appellants should reasonably expect those costs to exceed \$100,000.

Wind's costs of opposing the motions) were issues that were personal to the Appellants and their property.<sup>2</sup> Even the broader issues raised on the motion relating to the alleged harm to human health were not in the public interest: any order would have been interlocutory and it was admitted at the time the motion was brought that there could be no harm to human health until after construction was completed.

5. More fundamentally, the Appellants' motions for a stay were unnecessary and meritless, and the Court should sanction the Appellants' conduct with a significant costs award. Contrary to the Appellants' assertions that "they raised issues of broad interest through the use of a litigation strategy that was reasonable, necessary [and] set out by the governing legislation", the Appellants' motions for a stay pending appeal were both unnecessary and for relief that this Court has expressly held is not permitted by the EPA.<sup>3</sup>

6. K2 Wind wrote to the Appellants to explain that their motion was unnecessary and bound to fail<sup>4</sup> and to offer to settle the motion without costs after K2 Wind had already incurred substantial costs preparing its record and conducting cross-examinations. Rather than accepting K2 Wind's reasonable offer, the Appellants chose to pursue their complex and costly motions for a stay. This dogmatic pursuit of an

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<sup>2</sup> Cross-Examination of Shawn Drennan held August 13, 2014 ("**Drennan Cross-Examination**"), p. 44, q. 192, [Appendix "A"](#).

<sup>3</sup> [Pitt v. Wainfleet Wind Energy Inc., 2014 ONSC 3970](#) (Div. Ct.).

<sup>4</sup> As noted in K2 Wind's costs submissions dated January 16, 2015, Justice Leitch declined to grant a stay for the precise reasons set out in K2 Wind's offer to settle: (a) the Divisional Court does not have jurisdiction to grant a stay, (b) the drainage issues cannot form the basis for the requested stay, and (c) there was no risk of harm to human health from wind turbine noise pending appeal because the wind turbines would not be operational until after the hearing of the Appeal. See [Dixon v. Ontario \(Director, Ministry of the Environment\), 2014 ONSC 5582](#) at paras. 31-32, 63-54, 70 and 72 (Div. Ct.).

unmeritorious stay betrays the Appellants' political motivation in pursuing that relief.<sup>5</sup>  
Such litigation cannot be in the public interest.<sup>6</sup>

7. There are strong policy reasons why costs consequences are appropriate here. As noted in *Ostrander*, the Appellants represent only one element of the public interest. There is also a strong public interest in renewable energy. Further, even if the Appellants are "public interest litigants" they cannot engage in unnecessary tactical motions with impunity. To permit the Appellants to pursue a clearly unmeritorious stay without any potential costs consequences is clearly contrary to the public interest.

8. In the circumstances, a substantial costs award is appropriate. The Appellants own more than enough assets to satisfy the costs award requested by K2 Wind without, as the Appellants suggest, facing "the prospect of losing their home" or "the prospect of financial ruin".<sup>7</sup>

Dated this 23<sup>rd</sup> day of February, 2015

by



Christopher Bredt (LSUC #23627Q)  
James Bunting (LSUC #48244K)  
Nathaniel Read-Ellis (LSUC #63477L)  
Lawyers for K2 Wind

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<sup>5</sup> Mr. Drennan has stated under oath that he believes renewable energy projects under the REA regime are expensive scams with little to no environmental benefit: Drennan Cross-Examination at pp. 22-24, qq. 92-96, [Appendix "A"](#); Mr. Drennan's Evidence, October 15, 2013 ERT Transcript, pp. 40, 56-57. [Appendix "B"](#).

<sup>6</sup> [Friends of the Greenspace Alliance v. Ottawa \(City\), 2011 ONSC 472](#) at para. 25 (Div. Ct.), in which this Court held that "public interest litigation must be pursued responsibly, not recreationally, particularly when responding parties are private actors."

<sup>7</sup> Mr. Drennan indicated that the Appellants have, among other assets, home equity of approximately \$1.66 million (more than eight times the amount of costs requested by K2 Wind): Drennan Cross-Examination, pp. 35-38 and 42, qq. 155, 157-164, 166-168 and 184, [Appendix "A"](#).

## APPENDIX "A"

1 Court File No. 2056/14  
2 ERT Case No.: 13-097/13-098

3 ONTARIO  
4 SUPERIOR COURT OF JUSTICE  
5 (Divisional Court)

6 B E T W E E N:

7 SHAWN DRENNAN and TRICIA DRENNAN

8 Appellants/  
9 Appellants on Appeal

10 -and-

11 THE DIRECTOR, MINISTRY OF THE ENVIRONMENT

12 Respondent/  
13 Respondent on Appeal

14 -and-

15 K2 WIND ONTARIO INC. OPERATING AS  
16 K2 WIND ONTARIO LIMITED PARTNERSHIP

17 Respondent/  
18 Respondent on Appeal

19 -----

20 --- This is the Cross-Examination of SHAWN DRENNAN,  
21 on his affidavit sworn May 22, 2014, taken at the  
22 offices of Neeson & Associates Court Reporting and  
23 Captioning Inc., Suite 1108, 141 Adelaide Street  
24 West, Toronto, Ontario, on August 13, 2014.

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<p style="text-align: right;">Page 22</p> <p>1 this kind?</p> <p>2 A. Yes.</p> <p>3 89 Q. And you can identify this as a</p> <p>4 public notice that SWEAR put into the Huron County</p> <p>5 Focus?</p> <p>6 A. Yes.</p> <p>7 90 Q. And so the top of the notice says</p> <p>8 Stop the Wind Turbines, and then at the bottom,</p> <p>9 we'll see a reference to "Your local SWEAR members:</p> <p>10 Shawn &amp; Trish Drennan".</p> <p>11 A. Yeah.</p> <p>12 91 Q. Okay. Can we mark that as an</p> <p>13 exhibit as well, counsel, Exhibit C.</p> <p>14 MR. ROY: I'm doing 1, 2, 3.</p> <p>15 MR. BUNTING: That's fine.</p> <p>16 MR. ROY: So that one will be 3 in</p> <p>17 other words.</p> <p>18 EXHIBIT NO. 3: Page from</p> <p>19 the Huron County Focus</p> <p>20 dated Friday, August 2, 2013.</p> <p>21 BY MR. BUNTING:</p> <p>22 92 Q. And, Mr. Drennan, just on the</p> <p>23 topic of SWEAR, it's your opinion, is it not, that</p> <p>24 renewable energy projects under the REA regime are</p> <p>25 an expensive scam?</p>	<p style="text-align: right;">Page 24</p> <p>1 opinion that what's happening under the REA regime</p> <p>2 is shameful and ugly?</p> <p>3 A. I believe that was on what was</p> <p>4 happening within the neighbors, between neighbors.</p> <p>5 I'm not necessarily sure that that's exactly what</p> <p>6 was ever stated as far as the -- actually, could</p> <p>7 you repeat the question, again, please?</p> <p>8 99 Q. Sure. You'll agree that it's your</p> <p>9 opinion that what is happening under the REA regime</p> <p>10 is shameful and ugly?</p> <p>11 A. I believe that's what's been</p> <p>12 happening between neighbors.</p> <p>13 100 Q. Okay. Now, Mr. Drennan, I take it</p> <p>14 you know Mr. George Alton?</p> <p>15 A. I do.</p> <p>16 101 Q. And he's a member of SWEAR as</p> <p>17 well?</p> <p>18 A. Yes.</p> <p>19 102 Q. And does he live near you?</p> <p>20 A. Yes, he does.</p> <p>21 103 Q. Are you friends?</p> <p>22 A. He's a neighbor.</p> <p>23 104 Q. And do you meet with him from time</p> <p>24 to time to discuss the construction of the K2</p> <p>25 project?</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes.</p> <p>2 93 Q. And is that opinion shared by</p> <p>3 SWEAR?</p> <p>4 A. I could not state anything for the</p> <p>5 rest of the members.</p> <p>6 94 Q. To your knowledge, is that opinion</p> <p>7 shared by SWEAR?</p> <p>8 A. Again, I couldn't talk for the</p> <p>9 other opinions of the rest of the people that are</p> <p>10 there.</p> <p>11 95 Q. I'm not asking for you to express</p> <p>12 an opinion for the other people, but I'm asking for</p> <p>13 your knowledge as to whether you believe that the</p> <p>14 other members of SWEAR share that opinion?</p> <p>15 A. I couldn't state whether they do</p> <p>16 or they don't.</p> <p>17 96 Q. All right. Mr. Drennan, it's also</p> <p>18 your opinion that renewal energy projects have</p> <p>19 little to no environmental benefit?</p> <p>20 A. Correct.</p> <p>21 97 Q. And is that an opinion that you</p> <p>22 understand is shared by SWEAR?</p> <p>23 A. I could not speak for the other</p> <p>24 people.</p> <p>25 98 Q. Mr. Drennan, it's also your</p>	<p style="text-align: right;">Page 25</p> <p>1 A. As a neighbor, he stops in, and we</p> <p>2 talk.</p> <p>3 105 Q. All right. I want to ask you,</p> <p>4 Mr. Drennan, about an event that I understand</p> <p>5 occurred on Wednesday, July 30th, which is about</p> <p>6 two weeks ago now.</p> <p>7 A. Okay.</p> <p>8 106 Q. And see if you have any</p> <p>9 recollection of this, but as I understand it, you</p> <p>10 drove your truck past a Black &amp; McDonald truck, and</p> <p>11 once you passed the Black &amp; McDonald truck, you</p> <p>12 slammed on your brakes and turned into your</p> <p>13 driveway.</p> <p>14 Do you recall doing that?</p> <p>15 A. No.</p> <p>16 107 Q. All right. I'm going to show you</p> <p>17 some photographs, Mr. Drennan, and see if you can</p> <p>18 help me with them. Let's start with this one.</p> <p>19 Do you recognize what's depicted this</p> <p>20 photograph, Mr. Drennan?</p> <p>21 A. It's a tractor on the side of the</p> <p>22 road.</p> <p>23 108 Q. Have you seen that tractor on the</p> <p>24 side of the road?</p> <p>25 A. Yes, I have.</p>



<p style="text-align: right;">Page 34</p> <p>1 A. No.</p> <p>2 149 Q. Okay. That's a misstatement?</p> <p>3 A. It's a mischaracterization of the</p> <p>4 statement.</p> <p>5 150 Q. All right.</p> <p>6 A. I said that -- they knew I would</p> <p>7 be away tomorrow, so today, I would be here today,</p> <p>8 and if they dug through it while I was away,</p> <p>9 because that is how things have happened in the</p> <p>10 past, that I would be very mad, and there could be</p> <p>11 a war. Yes, I did say that.</p> <p>12 151 Q. Okay, and when you said you could</p> <p>13 be very mad and there could be a war, what do you</p> <p>14 mean by war?</p> <p>15 A. No more than what I'm doing now.</p> <p>16 152 Q. Okay, and just to be clear on</p> <p>17 that, have you had discussions Mr. Alton,</p> <p>18 Mr. Nivins or anyone else who is part of SWEAR</p> <p>19 about taking steps to slow down or in any way</p> <p>20 impede the K2 construction?</p> <p>21 A. No.</p> <p>22 153 Q. Are you familiar with the term</p> <p>23 "slow crawl"?</p> <p>24 A. No.</p> <p>25 154 Q. All right. Have you had any</p>	<p style="text-align: right;">Page 36</p> <p>1 witness to leave the room?</p> <p>2 MR. ROY: Hold on a second.</p> <p>3 THE DEPONENT: Sorry.</p> <p>4 MR. ROY: Are we off the record?</p> <p>5 MR. BUNTING: We can go off record.</p> <p>6 MR. ROY: Let's go off the record.</p> <p>7 ---Discussion off the record</p> <p>8 ---Witness leaves examination</p> <p>9 at 10:40 a.m.</p> <p>10 ---Witness recalled at 10:45 a.m.</p> <p>11 BY MR. BUNTING:</p> <p>12 157 Q. Mr. Drennan, we're going to put</p> <p>13 aside the fundraising of SWEAR for a moment. We</p> <p>14 may come back to it at the end of the examination.</p> <p>15 A. Okay.</p> <p>16 158 Q. But let's return, if we could, to</p> <p>17 your farming business that we talked about earlier.</p> <p>18 You indicated, when I asked you at the beginning of</p> <p>19 the examination, that you turn a profit?</p> <p>20 A. Yes.</p> <p>21 159 Q. And am I right -- and your farming</p> <p>22 business is run through Drennan Farms Ltd.?</p> <p>23 A. Yes.</p> <p>24 160 Q. And you and your wife own a</p> <p>25 hundred percent of the shares of Drennan Farms</p>
<p style="text-align: right;">Page 35</p> <p>1 discussions with Mr. Alton about driving a tractor</p> <p>2 slowly in front of K2 cement trucks?</p> <p>3 A. No.</p> <p>4 155 Q. Okay. So, Mr. Drennan, if we</p> <p>5 could go back to the article that I think we marked</p> <p>6 as Exhibit 2, counsel? If we look at the last</p> <p>7 paragraph of this article, it says:</p> <p>8 "Groups from across the</p> <p>9 province have and continue to come</p> <p>10 together to support this Charter</p> <p>11 Challenge. SWEAR, HALT &amp; HEAT</p> <p>12 report that they have been</p> <p>13 successful in their fundraising to</p> <p>14 date."</p> <p>15 And just stopping there, the</p> <p>16 fundraising that we're talking about are funds that</p> <p>17 you're receiving from putting out public notices</p> <p>18 like the one we saw in the Huron County Focus?</p> <p>19 A. Correct.</p> <p>20 156 Q. And is the statement in this press</p> <p>21 release accurate that the fundraising has been</p> <p>22 successful?</p> <p>23 MR. ROY: Can I stop for one second?</p> <p>24 What's the relevance of this line of questioning?</p> <p>25 MR. BUNTING: Sure. Could we ask the</p>	<p style="text-align: right;">Page 37</p> <p>1 Ltd.?</p> <p>2 A. Yes.</p> <p>3 161 Q. And does Drennan Farms Ltd. own</p> <p>4 any equipment?</p> <p>5 A. Yes.</p> <p>6 MR. ROY: Go off the record for a</p> <p>7 second.</p> <p>8 ---Discussion off the record</p> <p>9 BY MR. BUNTING:</p> <p>10 162 Q. Okay. Mr. Drennan, does Drennan</p> <p>11 Farms Ltd. own any equipment?</p> <p>12 A. Yes.</p> <p>13 163 Q. Can you tell me what type of</p> <p>14 equipment it owns?</p> <p>15 A. Farming equipment, tractors, feed</p> <p>16 boxes, manure tankers -- tanker.</p> <p>17 164 Q. Any trucks or automobiles?</p> <p>18 A. It owns one.</p> <p>19 165 Q. And Drennan Farms also owns the</p> <p>20 two parcels of property that we talked about</p> <p>21 earlier?</p> <p>22 A. Correct.</p> <p>23 166 Q. Mr. Drennan, can you and I agree</p> <p>24 that the two properties that Drennan Farms owns are</p> <p>25 valued together in the range of 1.9 million?</p>

http://www.yeslaw.net/help

<p style="text-align: right;">Page 38</p> <p>1 A. Yes.</p> <p>2 167 Q. And can we also agree that the</p> <p>3 mortgage you mentioned that you had on these</p> <p>4 properties is \$300,000 or less?</p> <p>5 A. Now, yes.</p> <p>6 168 Q. And what is it now?</p> <p>7 A. Two hundred and forty.</p> <p>8 169 Q. And then personally, you and your</p> <p>9 wife, do you own any cars or vehicles personally?</p> <p>10 A. One.</p> <p>11 170 Q. And do you own any other land</p> <p>12 personally, a cottage or vacation property?</p> <p>13 A. No.</p> <p>14 171 Q. And, Mr. Drennan, we just talked a</p> <p>15 bit about some of the assets and the financial</p> <p>16 means that you and your wife have through Drennan</p> <p>17 Farms and personally.</p> <p>18 A. Mm-hmm.</p> <p>19 172 Q. Yeah?</p> <p>20 A. Yes.</p> <p>21 173 Q. And in your affidavit, you've</p> <p>22 asked to be relieved from the undertaking as to</p> <p>23 damages; right?</p> <p>24 A. Yes.</p> <p>25 174 Q. And am I right, Mr. Drennan, that</p>	<p style="text-align: right;">Page 40</p> <p>1 litigation is about ensuring that</p> <p>2 the provincial government complies</p> <p>3 with its constitutional obligations</p> <p>4 to the residents of Ontario. By</p> <p>5 requiring my wife and me to provide</p> <p>6 an undertaking as to damages to the</p> <p>7 defendants, we will be effectively</p> <p>8 estopped from expressing are</p> <p>9 ourselves through this litigation."</p> <p>10 Right?</p> <p>11 A. Correct.</p> <p>12 178 Q. Just a few questions for you about</p> <p>13 that. If a stay is not granted, you understand</p> <p>14 that you can still proceed with your appeal; right?</p> <p>15 A. Yes.</p> <p>16 179 Q. And you understand that you're not</p> <p>17 required to give an undertaking as to damages in</p> <p>18 order to proceed with your appeal; right?</p> <p>19 A. Could you repeat the question?</p> <p>20 180 Q. Sure. Can we agree that you are</p> <p>21 not required to give an undertaking as to damages</p> <p>22 in order to proceed with your appeal?</p> <p>23 MR. ROY: He's not a lawyer, and we</p> <p>24 agree with that.</p> <p>25 THE DEPONENT: Okay. Thank you.</p>
<p style="text-align: right;">Page 39</p> <p>1 that's because you don't -- am I right that you</p> <p>2 don't want to give the undertaking as to damages</p> <p>3 because you're not willing to risk your personal</p> <p>4 assets?</p> <p>5 A. No.</p> <p>6 175 Q. Okay. Are you willing to confirm</p> <p>7 on the record that you will give an undertaking as</p> <p>8 to damages to the fullest extent of your financial</p> <p>9 means? And just to be clear, that means are you</p> <p>10 willing to pledge all of your assets in support of</p> <p>11 an undertaking as to damages?</p> <p>12 MR. ROY: He's not. I mean, that's the</p> <p>13 position we've taken in the litigation, and we take</p> <p>14 the position that -- we've made a public interest</p> <p>15 argument about that.</p> <p>16 MR. BUNTING: Yes.</p> <p>17 MR ROY: So he is not prepared to do</p> <p>18 that.</p> <p>19 BY MR. BUNTING:</p> <p>20 176 Q. Okay. Paragraph 68 of your</p> <p>21 affidavit, Mr. Drennan.</p> <p>22 MR. ROY: Which paragraph again?</p> <p>23 BY MR. BUNTING:</p> <p>24 177 Q. Sixty-eight. You say:</p> <p>25 "From our perspective, the</p>	<p style="text-align: right;">Page 41</p> <p>1 BY MR. BUNTING:</p> <p>2 181 Q. You would agree that you're able</p> <p>3 to express yourself through the appeal?</p> <p>4 A. Yes.</p> <p>5 182 Q. So, Mr. Drennan, having</p> <p>6 acknowledged that, will you not agree with me that</p> <p>7 paragraph 68 of your affidavit is incorrect? The</p> <p>8 undertaking as to damages is not stopping you from</p> <p>9 your expressing yourself in this litigation?</p> <p>10 A. Could you repeat the question?</p> <p>11 183 Q. Sure. I'll just break it down</p> <p>12 quickly again.</p> <p>13 MR. ROY: I think that question is for</p> <p>14 argument. I think that's really argument.</p> <p>15 MR. BUNTING: Well, I'm asking --</p> <p>16 MR ROY: You can make that submission</p> <p>17 to court.</p> <p>18 MR. BUNTING: There is an argument</p> <p>19 there.</p> <p>20 MR. ROY: You have your facts that you</p> <p>21 need to make that submission if you want to make</p> <p>22 it.</p> <p>23 MR. BUNTING: Sure.</p> <p>24 MR. ROY: I don't think you need to get</p> <p>25 him to agree with your submission.</p>

<p style="text-align: right;">Page 42</p> <p>1 MR. BUNTING: I'm just asking the 2 witness if he'll agree that his paragraph is 3 inaccurate. 4 MR ROY: I think what you're proposing 5 is you're making a submission, and you're asking 6 him to agree with the submission. It's not a 7 factual question. 8 MR. BUNTING: I disagree. Are you 9 objecting to the question? 10 R/F MR. ROY: I am. 11 MR. BUNTING: Off the record? 12 MR. ROY: Yeah. 13 ---Short recess at 10:52 a.m. 14 ---Upon resuming at 11:02 a.m. 15 BY MR. BUNTING: 16 184 Q. Mr. Drennan, just back to the 17 fundraising point that we were speaking about 18 earlier, the article talks about how the 19 fundraising efforts have been successful. 20 That's an accurate statement; right? 21 A. Yes. 22 185 Q. And the funds that have been 23 raised by SWEAR are for use in this litigation? 24 A. Only for legal purposes. 25 186 Q. All right, and how much has been</p>	<p style="text-align: right;">Page 44</p> <p>1 A. No. 2 190 Q. All right. Mr. Drennan, the 3 flooding issues that we've talked about relating to 4 the construction of the substation lands, you 5 testified earlier that that flooding started in 6 December of 2013? 7 A. Yes. 8 191 Q. And you would agree with me that 9 the flooding from the substation lands to your 10 lands is a personal issue to you and your farm? 11 A. Could you repeat the question? 12 192 Q. Sure. The flooding that you're 13 concerned about -- I know you've raised some other 14 water management issues, but just park those for a 15 second. Just talking about the flooding from the 16 substation lands to your lands, that's an issue 17 that's personal to you and your farm? It's not a 18 broader public issue? 19 A. It is personal, yes. 20 193 Q. And then in your affidavit, you've 21 raised some other what I'll term water management 22 issues; right? 23 A. Could you be specific? 24 194 Q. You've raised some concerns about 25 groundwater contamination, for example?</p>
<p style="text-align: right;">Page 43</p> <p>1 raised? 2 R/F MR. ROY: Objection. 3 MR. BUNTING: Grounds, counsel? 4 MR ROY: That's privileged. 5 MR. BUNTING: Okay, and just for the 6 record, we don't agree that that would be 7 privileged in these circumstances. 8 MR. ROY: Yes. 9 MR. BUNTING: And we may ask for -- 10 MR. ROY: That's fine. 11 MR. BUNTING: -- an adverse interest as 12 a consequence. 13 MR. ROY: Yes. 14 BY MR. BUNTING: 15 187 Q. Okay. Mr. Drennan, we talked a 16 little bit about hay bales and road allowances; 17 right? 18 A. Yes. 19 188 Q. And I didn't ask you this, so I 20 just want to clean that up. The hay bales that are 21 around Tower Line Road and Glen Road, have you 22 placed any hay bales on road allowances? 23 A. No. 24 189 Q. Have you placed any equipment on 25 road allowances?</p>	<p style="text-align: right;">Page 45</p> <p>1 A. Yes. 2 195 Q. So let me lump all of your water 3 issues, the drainage issues, the groundwater 4 contamination, everything you talk about in your 5 affidavit, let me refer to that altogether as water 6 management issues, okay, and I have a couple 7 questions for you about the water management issues 8 generally. 9 A. Okay. 10 196 Q. But you understand when I say 11 water management issues, I'm including all of the 12 water issues that you've raised in your affidavit. 13 A. Okay. All of them. 14 197 Q. Yes. 15 A. Okay. 16 198 Q. Mr. Drennan, you have not raised 17 any of the water management -- pardon me, you did 18 not raise any of the water management issues in 19 your appeal to the Environmental Review Tribunal; 20 correct? 21 A. Correct. 22 199 Q. And you have not raised any of the 23 water management issues in your Notice of Appeal to 24 the Divisional Court; correct? 25 A. I believe you're correct.</p>

## APPENDIX "B"

ERT Case No. 13-097/13-098

ENVIRONMENTAL REVIEW TRIBUNAL

IN THE MATTER OF appeals by Shawn and Tricia Drennan  
(the "Drennan Appellants") filed on August 6, 2013,  
for a hearing before the Environmental Review Tribunal  
pursuant to section 142.1 of the Environmental Protection  
Act, R.S.O. 1990, c. E. 19, as amended with respect  
to Renewable Energy Approval No. 3259-98EQ3G issued by  
the Director, Ministry of the Environment, on  
July 23, 2013 to K2 Wind Ontario Inc., operating as a  
general partner of and on behalf of K2 Wind Ontario  
Limited Partnership ("K2 Wind") under Section 47.5 of the  
Environmental Protection Act, regarding a renewable energy  
project consisting of the construction, installation,  
operation and use of a Class 4 wind facility with a  
total name plate capacity of 270 megawatts at a site  
located in the Township of Ashfield-Colborne-Wawanosh,  
County of Huron, Ontario (the "K2 project").

\* \* \* \* \*

ROUGH DRAFT TRANSCRIPT

DAY 1

October 15, 2013

1 BEFORE PANEL:

2

3 Paul Muldoon, Vice Chair

4 Helen Jackson, Council

5

6

7 A P P E A R A N C E S:

8

9 Asha James, Esq.,

Shawn and Tricia

10

Drennan.

11

12 Alexandria J. Pike, Esq., &

K2 Wind Ontario

13 James Bunting, Esq.

Limited Partnership.

14

15 Andrea Huckins, Esq., &

Director, Ministry

16 Danielle Meuleman, Esq.

of the Environment.

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1        which has caused the sleep apnea?

2                      MRS. DRENNAN:  No.

3                      Q.     Other than the back and shoulder  
4        pain, and sinuses, and the resulting difficulties  
5        sleeping, you're physically well?

6                      MRS. DRENNAN:  Yes.

7                      Q.     And you're also mentally well?

8                      MRS. DRENNAN:  Yes.

9                      Q.     You're not seeing a psychiatrist?

10                     MRS. DRENNAN:  No.

11                     Q.     Not seeing a psychologist?

12                     MRS. DRENNAN:  No.

13                     Q.     Are you both familiar with a  
14        publication called "Ontario Farmers"?

15                     MR. DRENNAN:  Yes.

16                     BY MR. BUNTING:

17                     Q.     And you've had occasion to write  
18        letters to the editor of that publication?

19                     MR. DRENNAN:  No.

20                     BY MR. BUNTING:

21                     Q.     All right.  I'll show you a  
22        letter, if I could.  If you can take a look at that  
23        starting on the first page, you'll identify it as a  
24        publication dated August 7, 2012.

25                     A.     Yes.

1 Q. You'll see it says, "Letter to the  
2 Editor"?

3 A. Okay.

4 Q. And Ontario Farmer; can you  
5 confirm that for the record?

6 A. Yes.

7 Q. If we turn to the very last page,  
8 it appears this letter was sent by, starting with  
9 Jim and Ev -- can you pronounce that last name?

10 A. Manktelow.

11 Q. Manktelow. And then the two last  
12 names are Shawn and Tricia Drennan, and Paul  
13 Shantz?

14 A. Yes.

15 Q. This is a letter that you sent to  
16 the editor of Ontario Farmer?

17 A. It's a letter that we agreed to  
18 have our name on, yes.

19 Q. Okay.

20 A. We did not, to be fair, we did not  
21 send it. We agreed, personally. We agreed to have  
22 our name on it.

23 Q. Perfectly fine, I'm not trying to  
24 suggest anything otherwise.

25 A. You asked if I wrote the letter, I



1 did not write the letter.

2 Q. You reviewed this letter before it  
3 was sent to Ontario Farmer?

4 A. More than likely, yes.

5 Q. If you're going to put your name  
6 on something, you've got to look at it first,  
7 right?

8 A. Right.

9 Q. And you understood that the letter  
10 was being sent to be published in Ontario Farmer?

11 A. Yes.

12 Q. You made sure at the time you  
13 reviewed it, that it was accurate as far as you  
14 were concerned?

15 A. I would think so, yes.

16 Q. To make sure it fairly expressed  
17 the views of both of you?

18 A. Yes.

19 Q. So if I could take you to the  
20 fourth paragraph, this letter states:

21 "Many of these people do not  
22 buy the economics of the Ontario  
23 green energy plan. Increasingly  
24 this plan is seen to be a very  
25 expensive scam with little to no

1                                      environmental benefit."

2                                      Stopping there, that's your opinion,  
3                                      that the renewable energy projects are an expensive  
4                                      scam?

5                                      A.     It has nothing to do with health.  
6                                      This has to do with environmental, I didn't think  
7                                      ERT had anything to do with environment. Is that,  
8                                      does this have to do with health?

9                                      Q.     Just listen to my question. My  
10                                     question is, you agree with that view expressed,  
11                                     that it is a very expensive scam?

12                                     A.     I would say, yes.

13                                     Q.     And you'd agree as well there's  
14                                     little to no environmental benefit; that's your  
15                                     opinion?

16                                     A.     That would be my opinion.

17                                     Q.     And it continues:

18                                     "Many are worried about impacts  
19                                     on property values, tourism,  
20                                     wildlife habitats and migratory  
21                                     routes."

22                                     Just stopping there, you're of course  
23                                     concerned about impact on property value?

24                                     A.     Absolutely.

25                                     Q.     That no doubt is a source of worry

**SCHEDULE A**  
**(Cases)**

1. *Pitt v. Wainfleet Wind Energy Inc.*, 2014 ONSC 3970 (Div. Ct.).
2. *Dixon v. Ontario (Director, Ministry of the Environment)*, 2014 ONSC 5582 (Div. Ct.)
3. *Friends of the Greenspace Alliance v. Ottawa (City)*, 2011 ONSC 472 (Div. Ct.)

**SCHEDULE B  
(Statutes)**

***Courts of Justice Act***  
R.S.O. 1990 Chapter C.43

...

**Postjudgment interest**

129. (1) Money owing under an order, including costs to be assessed or costs fixed by the court, bears interest at the postjudgment interest rate, calculated from the date of the order.

...

131. (1) Subject to the provisions of an Act or rules of court, the costs of and incidental to a proceeding or a step in a proceeding are in the discretion of the court, and the court may determine by whom and to what extent the costs shall be paid.

***Rules of Civil Procedure***  
R.R.O. 1990, Reg. 194

...

**RULE 57 COSTS OF PROCEEDINGS**

**GENERAL PRINCIPLES**

**Factors in Discretion**

57.01 (1) In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the court may consider, in addition to the result in the proceeding and any offer to settle or to contribute made in writing,

(0.a) the principle of indemnity, including, where applicable, the experience of the lawyer for the party entitled to the costs as well as the rates charged and the hours spent by that lawyer;

(0.b) the amount of costs that an unsuccessful party could reasonably expect to pay in relation to the step in the proceeding for which costs are being fixed;

- (a) the amount claimed and the amount recovered in the proceeding;
- (b) the apportionment of liability;
- (c) the complexity of the proceeding;
- (d) the importance of the issues;
- (e) the conduct of any party that tended to shorten or to lengthen unnecessarily the duration of the proceeding;
- (f) whether any step in the proceeding was,
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (g) a party's denial of or refusal to admit anything that should have been admitted;
- (h) whether it is appropriate to award any costs or more than one set of costs where a party,
  - (i) commenced separate proceedings for claims that should have been made in one proceeding, or
  - (ii) in defending a proceeding separated unnecessarily from another party in the same interest or defended by a different lawyer; and
- (i) any other matter relevant to the question of costs.

...

(4) Nothing in this rule or rules 57.02 to 57.07 affects the authority of the court under section 131 of the *Courts of Justice Act*,

...

- (c) to award all or part of the costs on a substantial indemnity basis

Shawn Drennan et  
al  
Appellants /  
Appellants on  
Appeal

and The Director, Ministry  
of the Environment  
Respondent /  
Respondent on  
Appeal

and K2 Wind Ontario Inc.  
operating as K2 Wind  
Ontario Limited  
Partnership  
Respondent /  
Respondent on Appeal

Court File No: 2056/14  
ERT Case No.: 13-097/13-098

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(Divisional Court)**

**Proceeding commenced at London**

**REPLY COST SUBMISSIONS OF K2 WIND  
ONTARIO INC.  
OPERATING AS K2 WIND ONTARIO  
LIMITED PARTNERSHIP**

BORDEN LADNER GERVAIS LLP  
44th Floor - 40 King Street West  
Toronto, ON M5H 3Y4

Christoper Bredt LSUC No.: 23627Q  
Tel: 416.367.6165  
Fax: 416.361.7063

DAVIES WARD PHILLIPS & VINEBERG LLP  
155 Wellington Street West  
Toronto ON M5V 3J7  
James Bunting LSUC No.: 48244K  
Nathaniel Read-Ellis LSUC No.:63477L  
Tel: 416.863.0900  
Fax: 416.863.0871

Lawyers for Respondent / Respondent on  
Appeal, K2 Wind Ontario Inc. operating as K2  
Wind Ontario Limited Partnership