

CITATION: Dixon v. Director, Ministry of the Environment, 2015 ONSC 1358
DIVISIONAL COURT FILES NOS.: 2055/14, 2056/14 and 2073/14
DATE: 20150306

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Marrocco A.C.J.S.C., Henderson and D. Brown JJ.

Court File No. 2055/14)
)
BETWEEN:)
)
Scotty Dixon, Jennifer Dixon, Thomas Ryan) *J. Falconer, A. James and J. Subhan, for*
and Catherine Ryan) the Appellants
)
Appellants) *M. Horner, D. Meuleman, S. Wright, A.*
) *Huckins and D. Huffaker, for the*
) Respondent, Director, Ministry of the
- and -) Environment
)
The Director, Ministry of the Environment) *D. Cruz, E. Pellegrino and C. Wayland,*
and St. Columban Energy LP) for the Respondent, St. Columban
) Energy LP
) Respondents)
) *C. Bredt, for the Respondent, K2 Wind*
Court File No. 2056/14) Power Inc.
)
BETWEEN:) *J. Bunting and N. Read-Ellis, for the*
) Respondent, K2 Wind Ontario Inc. and
Shawn Drennan and Tricia Drennan) SP Armow Wind Ontario GP Inc.
)
Appellants) *R. Macklin and N. Wilson, for the*
) Intervenor, The Coalition Against
- and -) Industrial Wind Turbines (Ontario)
)
The Director, Ministry of the Environment) *B. Davies and D. Cribbs, for the*
and K2 Wind Ontario Inc., operating as K2) Intervenor, The Corporation of The
Wind Ontario Limited Partnership) County of Lambton
)
) Respondents)
)
) **HEARD at London:** November 17, 18, 19
) and 20, 2014; with subsequent written cost

) submissions.
)
Court File No. 2073/14)
)
BETWEEN:)
)
 Kenneth George Kroeplin and Sharon Anne)
 Kroeplin)
)
 Appellants)
)
 – and –)
)
 The Director, Ministry of the Environment)
 and SP Armow Wind Ontario GP Inc. as)
 general partner for an on behalf of SP)
 Armow Wind Ontario LP)
)
 Respondents)
)

SUPPLEMENTARY REASONS FOR DECISION - COSTS

BY THE COURT

[1] By Reasons dated December 29, 2014 (2014 ONSC 7404), this court dismissed the appeals from three decisions of Environmental Review Tribunal (“ERT”). The parties have filed written cost submissions.

[2] The successful respondents seek the following awards of costs:

- (i) **K2 Wind Ontario Limited Partnership** (“K2 Wind”): as against the appellants, Shawn Drennan and Tricia Drennan, substantial indemnity costs totaling \$145,797.78 for the stay motion heard by Leitch J. and the appellants’ motion for re-hearing before this panel, together with partial indemnity costs of \$55,851.32 for the appeal;
- (ii) **St. Columban Energy LP** (“St. Columban Energy”): as against the appellants, Scotty Dixon, Jennifer Dixon, Thomas Ryan and Catherine Ryan, partial indemnity costs of \$120,000; and,
- (iii) **SP Armow Wind Ontario LP** (“SP Armow Wind”): as against the appellants, Kenneth Kroeplin and Sharon Kroeplin, partial indemnity costs in the amount of \$17,250.52.

[3] The appellants submit that no costs should be awarded to the respondents for the stay motion and appeal because the issues raised by the appeals were novel and of fundamental importance to the public interest as a challenge to the constitutionality of legislation that appears on its face to expose citizens to a reasonable prospect of serious harm to their health.

[4] In accordance with the approach taken by this court in *Ostrander Point GP Inc. v. Prince Edward County Field Naturalists*, 2014 ONSC 2127, we conclude that these appeals did not constitute public interest litigation which would merit no award of costs to the successful respondents. However, we adopt the following observations made by this court in *Ostrander Point*:

[7] In the end result, PECFN and APPEC should be required to pay costs to Ostrander. The issue then becomes what quantum of costs should be ordered. In approaching the task of fixing costs, we are cognizant of the general principles applicable to that task. In particular, we are aware that costs should be fixed in an amount that is fair and reasonable - see *Boucher v. PublicAccountants Council for the Province of Ontario* (2004), 71 O.R. (3d) 291 (C.A.).

[8] Some of the factors set out above are relevant to the quantum of costs that should be paid. In particular, the amount of costs should reflect that there was a measure of public interest in this litigation. In our view, the amount of costs sought by Ostrander fails to sufficiently take that reality into account. The costs sought are also beyond that which a reasonable party would expect to pay for an appeal in this court, even recognizing that the appeals took three days in total.

[5] The appellants are private landowners who were seeking to protect their ability to live on their lands without being subjected to what they feared would be serious adverse health consequences caused by the operation of the wind farms in proximity to their residences. Although the appellants obviously had a private interest in the litigation, their appeals contained a strong public interest component raising, as they did, the constitutionality of part of the legislative regime governing the construction and operation of wind farms in this province. Any award of costs must reflect that strong public interest component.

[6] In assessing the appropriate quantum of costs, we have also considered: that the issues before this court were complex; that the litigation was important to both the appellants and the respondents; that the appellants were fully aware of the possible adverse cost consequences of an unsuccessful result; that the shifting position of the appellants on the appeal probably increased the legal costs of the respondents; and, that the respondents were entirely successful after a four day hearing in this court.

[7] As to the specific claims for costs, the bills of costs filed by the respondents lacked the degree of particularity which would enable a court to assess the reasonableness of the claims for significant awards of costs, especially those sought by K2 Wind and St. Columban Energy. The lack of particularity in the bills of costs prevent this court from assessing such factors as the potential duplication of work by timekeepers, the delegation of discrete tasks to the cheapest

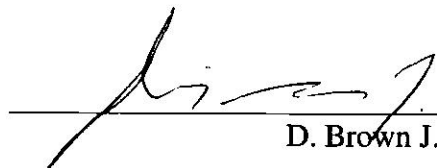
[9] Taking those factors into account, in our view the fair and reasonable awards of costs in favor of the respondents are as follows:

- (i) the appellants, Shawn Drennan and Tricia Drennan, shall pay to K2 Wind partial indemnity costs fixed at \$25,000;
- (ii) the appellants, Scotty Dixon, Jennifer Dixon, Thomas Ryan and Catherine Ryan, shall pay to St. Columban Energy partial indemnity costs fixed at \$25,000; and,
- (iii) the appellants, Kenneth Kroepelin and Sharon Kroepelin, shall pay to the respondent, SP Armow Wind, partial indemnity costs in the amount of \$17,000.

The awards of costs are inclusive of disbursements and HST.


Marrocco A.C.J.S.C.


J. Henderson J.


D. Brown J.

Released: MAR 06 2015

CITATION: Dixon v. Director, Ministry of the Environment, 2015 ONSC 1358
DIVISIONAL COURT FILES NOS.: 2055/14, 2056/14 and 2073/14
DATE: 20150306

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

Marrocco A.C.J.S.C., Henderson and D. Brown JJ.

BETWEEN:

Scotty Dixon, Jennifer Dixon, Thomas Ryan
and Catherine Ryan

Appellants

– and –

The Director, Ministry of the Environment
and St. Columban Energy LP

Respondents

ET AL.

REASONS FOR JUDGMENT

Released: 20150306