**CITATION:** Drennan v. K2 Wind Ontario Inc., 2013 ONSC 2831
**COURT FILE NO.:** 200-2012
**DATE:** 2013/05/15



**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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| **B E T W E E N:** | ) | |
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| SHAWN DRENNAN and TRISHA DRENNAN | ) | *J.N. Falconer and A. James*, for the Plaintiffs |
| | ) | |
| Plaintiffs | ) | |
| | ) | |
| **- and -** | ) | |
| | ) | |
| K2 WIND ONTARIO INC., K2 WIND ONTARIO LIMITED PARTNERSHIP, AGATHA GARCIA WRIGHT, DIRECTOR OF THE MINISTRY OF ENVIRONMENT and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO | ) | *C. Bredt and H.K. Pessione*, for the Defendants K2 Wind Ontario Inc. and K2 Wind Ontario Limited Partnership<br><br>*H. Schwartz and S. Wright* for the Defendants Agatha Garcia Wright, Director of the Ministry of Environment and Her Majesty the Queen in Right of Ontario |
| Defendants | ) | |
| | ) | |
| | ) | **HEARD:** March 1, 2013 |

**Grace J.**

**A. The Argued Motions**

[1] Shawn and Trisha Drennan maintain that the quest for "green energy" should not involve the placement of wind turbines near the homes of any Ontario resident.

[2] K2 Wind Ontario Inc. and K2 Wind Ontario Limited Partnership (the "K2 defendants") propose to develop a wind power project in the Township of Ashfield-Colborne-Wawanosh (the

"Township") having a capacity of 270 megawatts and containing 140 wind turbines (the "proposed K2 Wind Power project").

[3] On November 13, 2012, the K2 defendants applied to the Director (the "Director") of the Ministry of the Environment ("MOE") for a renewable energy approval ("REA") as the *Environmental Protection Act* (the "*EPA*")[1] and the renewable energy approvals regulation require.[2]

[4] Like generations before them, the Drennans live and farm in the Township. The Drennans maintain that they will suffer devastating personal and financial consequences if an REA is issued.

[5] This action was commenced on November 14, 2012. The statement of claim seeks a range of remedies including relief under the *Canadian Charter of Rights and Freedoms* (the "*Charter*"), damages for nuisance and an injunction that would stop the regulatory process established by the *EPA* in its tracks.

[6] Motions were filed by each side soon after the commencement of the proceeding.

[7] On January 16, 2013, the parties sought directions from Regional Senior Justice Heeney concerning three motions: the plaintiffs' motion for injunctive relief against the defendants (the "injunction motion") and motions by each group of defendants seeking to dismiss or stay the action (the "motions to strike or stay").[3]

[8] In a January 18, 2013 endorsement, Regional Senior Justice Heeney gave his reasons for ordering that the defendants' motions to strike or stay proceed first. Those motions were argued before me and are the subject of this endorsement.

[9] While the Drennans pursue this action on their own, a concerned but respectful community turned out in force in Goderich. Their presence suggests that the issues the Drennans raise are ones which transcend the parties and the legal arena.

[10] Notwithstanding the able arguments of the Drennan's counsel, Mr. Falconer and Ms. James, I have concluded the plaintiffs' action is premature and this action should be stayed until the statutory process set forth in the *EPA* is complete.

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[1] R.S.O. 1990, c. E.19.
[2] O'Reg. 359/09.
[3] The defendants rely on rule 21 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 in support of their motion to dismiss and s. 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 in support of their motion to stay

[11] I am acutely aware that some may conclude that this ruling forecloses judicial involvement in the dispute. With respect, it does not do so.[4] The statutory process is in its early stages. A right of appeal to the Divisional Court on a question of law is expressly given.



## B. The Context

[12] The development K2 proposes is a renewable energy project within the meaning of the *EPA*.[5] That means that K2 may not embark on the project "except under the authority of and in accordance with a renewable energy approval" issued by the Director.[6]

[13] As noted, K2 submitted an application for the issuance of an REA. On February 15, 2013, notification of the application of the K2 defendants was posted on the environmental registry established by the *Environmental Bill of Rights, 1993*.[7]

[14] The purpose of the notice was to inform the public that the K2 defendants had taken all of the preliminary steps required by the *EPA* and the supporting regulation.[8]

[15] The public was given a forty-five day period to comment on the application and those submissions are included within the material considered by the Director.[9] As far as I know, the application is still under consideration.

[16] Section 47.5 of the *EPA* authorizes the Director to issue or refuse to issue an REA "if in his or her opinion it is in the public interest to do so".

[17] If granted, an REA is subject to the terms and conditions prescribed by regulation[10] and any imposed by the Director.[11]

[18] The *EPA* requires that the Director give reasons for decision in some situations: for example, if the Director refuses to issue an REA or attaches terms and conditions in addition to

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[4] Recently, Healey J. granted a motion for summary judgment and dismissed a somewhat analogous action: *Wiggins v. wpd Canada Corp*, [2013] O.J. No. 1858 (S.C.J.).

[5] The *EPA* incorporates the definition in the *Green Energy Act, 2009*, S.O. 2009, c.12, Sched. A by reference which, in turn, takes us to the *Electricity Act, 1998*, S.O. 1998, c. 15, Sched. A. It meets the definition because it would generate electricity from a renewable energy source – wind.

[6] *EPA, supra* note 1, s. 47.3

[7] S.O. 1993, c. 28.

[8] That requirement is set forth in s. 47.4 of the *EPA*. The technical requirements are set forth in Part IV and Table 1 of the regulation. The Director also has the statutory right to require an applicant to submit plans, specifications, and engineers' reports and to carry out and report on tests or experiments relating to the proposed project.

[9] *Environmental Bill of Rights, 1993, supra* note 7, ss. 5, 6, 22, 27, 35 and 36.

[10] For example, s. 55 of O'Reg 359/09 sets forth minimum distances between wind turbines and a "noise receptor". That phrase is defined in s. 1(1) and (4) and includes a dwelling.

[11] *EPA, supra* note 1, ss. 47.5 (2) and (4).

those prescribed.[12] Reasons are not required if the REA is issued without terms and conditions beyond those prescribed by regulation.

[19] Any Ontario resident can initiate a review of the Director's decision by the Environmental Review Tribunal ("Tribunal").[13]

[20] The Tribunal is given the power to alter or revoke the Director's decision if it determines the renewable energy project authorized by the REA will cause:

a. Serious harm to human health; or

b. Serious and irreversible harm to plant life, animal life or the natural environment.[14]

[21] The parties to the hearing before the Tribunal are given rights of appeal: to the Divisional Court on a question of law or to the Minister of the Environment on any other matter.[15]

**C. The Parties' Positions**

[22] While a number of arguments were made by Ontario and the K2 defendants, the principal ones relate to prematurity and the existing statutory procedure. They make these points.

[23] The K2 defendants have not constructed a wind farm project and cannot do so unless and until they successfully negotiate the statutory process. The application is currently part way through the first stage which they describe as being consultative and administrative.

[24] Issuance of an REA by the Director would complete that phase and initiate the second: an adjudicative process involving a hearing before the Tribunal followed by appeals to the Divisional Court and/or the Minister of the Environment.

[25] They submit that it is plain and obvious that the claim does not disclose a reasonable cause of action because it is premised on events – the approval and subsequent construction of the proposed K2 Wind Power project - that may never occur.

[26] Furthermore, the plaintiffs seek to do something which is contrary to established authority: derail a multi-stage regulatory approval process prior to its completion.

[27] The Drennans disagree. They say the action is not premature because claims founded in nuisance can be instituted before the threatened harm occurs.

[28] They maintain that completion of the first phase of the regulatory process will violate their right to life, liberty and security of the person guaranteed by the *Charter* because the

[12] *Ibid*. ss. 139 (1) and (2).
[13] *Ibid*. ss. 142.1 (1) and (2); O'Reg 359/09, s. 58 and *Environmental Bill of Rights, 1993*, *supra* note 7, s. 5.
[14] *Ibid*. ss. 142.1 (3), 145.2.1 (2) and (4).
[15] *Ibid*. s. 145.6 (1) and (2).

issuance of an REA will have significant, adverse psychological effects.[16] They rely on section 7 of the *Charter*. It reads:

> Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[29] The plaintiffs note that principles of fundamental justice require that laws that affect life, liberty or security of the person not be arbitrary.[17] Further, section 7 of the *Charter* requires procedural fairness where a decision-maker has a power of decision affecting any of the enumerated items.

[30] The Drennans submit that the *EPA* and supporting regulation are arbitrary and that the process they create is unfair.

[31] Their material includes an affidavit of legal assistant Sandy Palhinha. Ms. Palhinha deposed that persons wishing to construct wind projects had submitted twenty applications for an REA to the Director. Three were either withdrawn by the applicant or returned by the Director but they all related to single wind turbine projects. REAs were issued in all other cases. Given the history, the Drennans submit that issuance of an REA to the K2 defendants is a virtual certainty.

[32] They say the *EPA* is flawed in other respects. They maintain the statute gives their voice no additional weight during the consultative phase despite their proximity to the proposed K2 Wind Power project.

[33] Reasons need not be given by the Director unless the decision is contrary to what the K2 defendants seek.

[34] While the Tribunal can review an unfavourable decision of the Director,[18] the Drennans maintain the process is inadequate for four reasons: first, the Director's decision is not automatically stayed,[19] second, the scope of the matters the Tribunal can consider are narrowly circumscribed, third, the Drennans bear the onus of proving that the proposed project will cause serious harm to human health or serious and irreversible harm to plant life, animal life or the natural environment[20] and fourth, the Tribunal's jurisdiction is more limited than the Superior Court of Justice since the Tribunal cannot award damages for nuisance, grant an injunction or relief under s. 24 (1) of the *Charter*.

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[16] *Chaoulli v. Quebec*, [2005] 1 S.C.R. 791 at 847
[17] *Ibid*. at 851.
[18] *EPA, supra* note 1, s. 142.1
[19] *Ibid*. s. 145.6
[20] *Ibid*. s. 145.2.1 (2) and (3). They maintain application of the precautionary principle means that the K2 defendants should bear that burden. For a description of the principle see *114957 Canada Ltée v. Hudson (Town)*, [2001] 2 S.C.R. 241 at paras. 31-32.

[35] In sum, they argue that the protections contained within the legislative scheme are illusory: that it infringes on their rights under section 7 of the *Charter* and jeopardizes the viability of their farming operation without complying with the principles of fundamental justice.[21]



### D. Analysis and Decision

[36] The Legislature has assigned authority to review a decision of the Director to an administrative tribunal, not the court. Except in rare circumstances, that allocation of responsibility will be respected. In *C.B. Powell Ltd. v. Canada (Border Services Agency)*, Stratas J.A. wrote:

> …absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted…
>
> Exceptional circumstances are best illustrated by the very few modern cases where courts have granted prohibition or injunction against administrative decision-makers before or during their proceedings. Concerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the courts are not exceptional circumstances allowing parties to bypass an administrative process, so long as that process allows the issues to be raised and an effective remedy to be granted.[22] [Citations omitted]

[37] The Drennans submit an exception should be made because the process is fatally flawed. I disagree for these reasons.

[38] First, the process is not patently inadequate or unfair.

[39] In *Wareham v. Ontario (Ministry of Community and Social Services)*, Doherty J.A. wrote:

> The content of the duty of fairness in any given circumstances, and hence the requirements of the principles of fundamental justice, will vary depending on the context. That context includes the statutory scheme in issue, the importance of the decision to the individual affected by it, and the legitimate expectations of the persons affected by the decision.[23] [Citation omitted]

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[21] They argue that the mere issuance of a REA will cause the value of their property to fall which will adversely affect their ability to borrow funds needed to sustain a viable farming operation.
[22] [2010] F.C.J. No. 274 (C.A.) at paras. 31 and 33.
[23] 2008 ONCA 771 at para. 27.

[40] A review of the statute does not support the contention that approval of the proposed K2 Wind Power project is a foregone conclusion. A listing of applications and a statistical count has little, if any, probative value. I know nothing about the merits of the applications or even whether additional terms and conditions were attached by the Director.

[41] Furthermore, there is no basis for suggesting that the legislative scheme is, itself, "arbitrary". The statutory decision-makers do not have an unfettered discretion to issue an REA. As noted, the Director is statutorily required to consider the "public interest". While the phrase is undefined and criteria are not delineated, the regulation sets forth a long and detailed list of items that must be submitted by any applicant.

[42] Those are in addition to the requirement for public consultation before submission of the application. As noted, notice of the application is posted on the environmental registry after submission and the public is invited to comment.

[43] At present, there is simply no basis for suggesting that the Director acts otherwise than in good faith when discharging the important duty imposed on that office.

[44] Similarly, there is no basis to suggest that the Tribunal conducts anything other than a meaningful inquiry. By way of example, the parties referred me to the Tribunal's decision in *Erickson v. Director, Ministry of the Environment*.[24] It involved a wind power project. The decision is over two hundred pages long. It was written after a seventeen day hearing. The Tribunal dealt with a host of factual and legal issues, including the question whether engaging in a wind project in accordance with an REA would cause serious harm to human health or serious and irreversible harm to plant or animal life or the natural environment.[25]

[45] It is understandable that the Drennans would believe it inappropriate that they be legislatively required to bear the burden of proving one of those things. However, the responsibility does not offend principles of fundamental justice.[26]

[46] Second, the fact that a constitutional issue has been raised does not mean that the court should automatically assume jurisdiction.

[47] In *Ontario College of Art v. Ontario (Human Rights Commission),* Callaghan C.J.O.C. explained the court's reluctance to consider a constitutional question before completion of an administrative process created by statute. On behalf of a unanimous panel of the Divisional Court he wrote:

> …this court has followed a policy of not ruling on such issues unless it is absolutely necessary to do so. Whether or not those issues will continue to be

[24] Cases 10-121 and 10-122.
[25] I was also given a copy of *Monture v. Director, Ministry of the Environment,* case nos. 12-054, 12-072 and 12-073. In that case, the appeals from the Director's decision were unsuccessful. Nonetheless, the Environmental Review Tribunal made recommendations to the Director and respondent.
[26] *Snell v. Farrell,* [1990] 2 S.C.R. 311at paras. 16-17.

> of interest at the time of an appeal to this court will depend on the outcome before the board. It may well be that issues foreseen at this time will not exist at the termination of the proceedings. Furthermore, as has been said in many cases in relation to other boards and tribunals, it is preferable to consider issues such as those raised…against the backdrop of a full record, including a reasoned decision by the board or tribunal. Obviously this is usually available to the court only after the administrative body has conducted a full hearing.[27]

[48] I agree.

[49] I recognize that an action commenced on the basis of alleged future harm is not necessarily premature. In *Operation Dismantle Inc. v. Canada*, Dickson J. expressed the applicable principles in these words:

> A person, whether the government or a private individual, cannot be held liable under the law for an action unless that action causes the deprivation, or threat of deprivation, of legal rights. An action cannot be said to cause such a deprivation where it is not provable that the deprivation will occur as a result of the challenged action. I am not suggesting that remedial action by the courts will be inappropriate where future harm is alleged. The point is that remedial action will not be justified where the link between the action and the future harm alleged is not capable of proof.[28]

[50] Writing on behalf of the majority, Dickson J. distinguished between a "cognizable threat to a legal interest" and a dispute that "was merely speculative."[29] A declaration could issue in the former situation but not the latter.[30]

[51] As noted, the Drennans suggest that the very first decision of the Director will have serious consequences on their psychological health and financial well-being.

[52] In *Chaouilli v. Quebec (Attorney General),* the dispute related to waiting times in Quebec's public health care system. In that context, the Supreme Court of Canada acknowledged that:

> …waiting for critical care may have significant adverse psychological effects. Serious psychological effects may engage s. 7 protection for security of the

[27] (1993), 11 O.R. (3d) 738 (Div. Ct.) at para. 7.
[28] [1985] 1 S.C.R. 441 at para. 30.
[29] *Ibid*. at para. 33.
[30] For cases which have applied the principle see, for example, *Fireman's Fund Mortgage Corp. v. Imasco Ltd.,* [1988] O.J. No. 441 (S.C.J.); *Kaska Dena v. British Columbia (Attorney General)* (2009), 303 D.L.R. (4th) 144 (C.A.)

> person. These "need not rise to the level of nervous shock but must be greater than ordinary stress or anxiety."[31] [Citation omitted]

[53] With respect, this case does not stand on the same footing – at least at present. The anticipated event has not occurred. The Director's decision, even if the one anticipated and feared, is subject to challenge. While the alleged harm seems speculative to me, even if realized it will be temporary if the Drennans, rather than the K2 defendants, are successful at the end of the regulatory process.[32]

[54] Third, I do not agree that the court should exercise jurisdiction because the Drennans seek various remedies the statutory scheme does not contemplate.

[55] The Drennans ask for a declaration of constitutional invalidity. Although unable to grant that remedy, an administrative tribunal may disregard legislative provisions which offend the *Charter*.[33]

[56] As is evident from the *EPA*, the Tribunal has jurisdiction to decide questions of law.[34] In those circumstances:

> …it is presumed that the tribunal also has concomitant jurisdiction to decide on the constitutional validity of that provision. The only way to rebut this presumption is to show that the legislature clearly intended to exclude *Charter* issues from the tribunal's authority over questions of law.[35]

[57] I have seen nothing in the *EPA* which suggests any such constraint.

[58] The Drennans seek damages for nuisance. The Tribunal does not have jurisdiction to make a monetary award.

[59] Nuisance consists of "any activity or state of affairs causing a substantial and unreasonable interference with a claimant's land or…use or enjoyment of that land".[36] However,

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[31] *Supra* note 16 at 847. See, too, *New Brunswick (Minister of Health and Community Services) v. J.G.*, [1999] 3 S.C.R. 46 at paras. 59-60; *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2. S.C.R. 307 at para. 83; *R. v. Transport Robert (1973) Ltée* (2003), 68 O.R. (3d) 51 (C.A.)

[32] See *Re Alrei* [2009] 3 F.C.R. 497 at para. 26.

[33] *Nova Scotia (Workers' Compensation Board) v. Martin*, [2003] 2 S.C.R. 504 at paras. 31-33("*Martin*"); *R. v. Robertson* (2011), 277 C.C.C. (3d) 233 (S.C.J.) at para. 64; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038. They may be able to do even more: *R. v. Conway*, [2010] 1 S.C.R. 765 at para. 81.

[34] For example, in *Erickson, supra* note 24, the Tribunal considered whether and to what extend the decision of the Director should be afforded deference, the applicable standard of proof and the proper meaning of s. 145.2.1 of the *EPA*

[35] *Okwuobi v. Lester B. Pearson School Board*, [2005] 1 S.C.R. 257 at para. 30. See, too, *Martin, supra* note 33 at paras. 3 and 27-32.

[36] The quoted passage is drawn from John Murphy, *Street on Torts*, 12th ed. (Oxford: Oxford University Press, 2007) at p. 419 which was quoted with approval in *Antrim Truck Centre Ltd. v. Ontario (Transportation)*, 2011 ONCA

that cannot occur unless the proposed K2 Wind power project is approved and constructed in close proximity to the Drennan's farm. If not approved the activity constituting the alleged nuisance will not be conducted.[37] Alternatively, terms and conditions may be imposed by the Director or by the Tribunal which will satisfactorily address the plaintiffs' concerns.[38]



[60] The Drennans seek injunctive relief. The Tribunal lacks that power although it can grant a stay of the Director's decision pending its review.[39] Undoubtedly the court has jurisdiction to enjoin an anticipated activity. However, *quia timet* injunctions are rarely granted. As Dickson J. observed:

> It is clearly illustrated by the rules governing declaratory and injunctive relief that the courts will not take remedial action where the occurrence of the harm is not probable.[40]

[61] As noted, the K2 defendants cannot construct a wind power project without overcoming the concerns of the Drennans during the regulatory process. There is no need for injunctive relief.

[62] The administrative tribunal does not have to be clothed with the same powers as the court. The Drennans have an "adequate alternative remedy" which may achieve their objective.[41]

[63] While the court's jurisdiction cannot be ousted altogether by statute, where an administrative process is available it should only be assumed sparingly; generally "to fill in cracks in the administrative process".[42] That situation does not exist here.

[64] I do not mean to minimize the concerns of the Drennans and other like-minded persons. While the defendants seek an order dismissing the actions, at the core of their submission is the statutory scheme governing the approval of wind power projects. I cannot improve on this instructive passage drawn from *Hanna v. Ontario (Attorney General).* On behalf of the Divisional Court, Aston J. wrote:

> The health concerns for persons living in proximity to wind turbines cannot be denigrated, but they do not trump all other considerations. This is particularly

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419 at para. 79. While the Court of Appeal's decision was overturned, that statement of principle was not: *Antrim Truck Centre Ltd. v. Ontario (Transportation),* 2013 SCC 13 at para. 19.

[37] *Volochay v. College of Massage Therapists of Ontario* (2012), 111 O.R. (3d) 561 (C.A.) at para. 76.

[38] The Tribunal is given the power to revoke the decision of the Director, to order the Director to take action or to alter the Director's decision and to substitute the Tribunal's decision: *EPA, supra* note 1, s. 145.2.1 (4).

[39] *EPA, supra* note 1, s. 143.

[40] *Operation Dismantle, supra* note 28 at para. 36. Insofar as Ontario is concerned, s. 14 of the *Proceedings against the Crown Act,* R.S.O. 1990, c. P.27, creates another obstacle for the Drennans. In proceedings against the Crown or its servants the court may grant declaratory orders but it may not grant injunctive relief.

[41] This was the phrase used in *Volochay v. College of Massage Therapists of Ontario, supra* note 37 at para. 76.

[42] *Ibid.* at para. 52. *Mahar v. Rogers Cablesystems Ltd.* (1995), 25 O.R. (3d) 690 (Gen. Div.).

> so because those persons do have a remedy. Any person resident in Ontario, whether or not the person lives in proximity to a wind turbine, can challenge the approval of an industrial wind turbine…This challenge takes the form of an appeal to the Environmental Review Tribunal…which has the mandate to determine, on a case-by-case basis, whether a renewable energy approval would cause serious harm to human health. Thus, if the Tribunal is persuaded by evidence that the 550 meter minimum setback is inadequate to protect human health from serious harm, the Tribunal has authority to revoke the decision of the Director, or…increase the minimum setback prescribed for the proposed wind turbines.[43]

[65] On April 22, 2013, Healey J. released her decision in *Wiggins v. wpd Canada Corp.*[44] At issue were motions seeking summary judgment dismissing two actions which sought damages and injunctive relief against persons proposing to construct and operate wind turbines. While the motions were granted and the actions dismissed, the plaintiffs have found a silver lining. At para. 91, the motions judge wrote:

> The plaintiffs have argued throughout that their common law claims can run separately from the REA process and they do not have to wait for the outcome of the regulatory process to seek relief. While this court agrees with that proposition of law, awaiting the Director's answer to the application is a practical necessity within the context of this lawsuit for all of the reasons set out above.

[66] I have read the passage with interest. I cannot tell if the motion judge was referred to the authorities I have mentioned in this decision concerning the primacy of the administrative process created by the legislature. None of them are cited. It is clear that somewhat different issues were raised and the court's attention was, for the most part, directed elsewhere. I have already stated my view of the applicable principles. The quoted passage does not alter the conclusion I have reached.

[67] For the reasons given, I am of the view this action may be unnecessary. At a minimum, it is premature.[45]

**E. Conclusion**

[68] For the reasons given this action should not be allowed to proceed further at this time. It is stayed pending completion of the process established by and set forth in the *EPA*.

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[43] 2011 ONSC 609 (Div. Ct.) at para. 29.
[44] *Supra*, note 4.
[45] *Psychologist "Y" v. Nova Scotia Board of Examiners in Psychology* (2005), 236 N.S.R. (2d) 273 (C.A.); *Homalco Indian Band v. British Columbia (Minister of Agriculture, Food and Fisheries)* (2005), 39 B.C.L.R. (4th) 87 (S.C.J.) at paras. 148-149. Ontario maintains that the action should have been brought as an application to the Divisional Court for judicial review pursuant to the *Judicial Review Procedure Act*, R.S.O. 1990, c. J.1: *Canada Post Corp. v. C.U.P.W.* (1989), 70 O.R. (2d) 394 (H.C.J.); *Halpern v. Toronto (City) Clerk*, [2000] O.J. No. 3213 (S.C.J.).

[69] During argument, Mr. Falconer agreed that Agatha Garcia Wright should not be a party to the action. As against her, the action is dismissed.[46]



[70] If the parties are unable to agree on costs, they may submit a cost outline not exceeding five pages in length exclusive of any offer(s) to settle by June 3, 2013 in the case of the defendants and by June 18, 2013 in the case of the plaintiffs.[47]

"Justice A. D. Grace"
Grace J.

**Released:** May 15, 2013

[46] Mr. Falconer also indicated that the plaintiffs would not be pursuing the claim in negligence. Issues relating to the amendment of the statement of claim can be addressed when the stay ends.

[47] In addition to oral submissions on March 1, 2013, I also received a copy of the decision of the Supreme Court of Canada in *Antrim Truck Centre Ltd. v. Ontario (Transportation), supra* note 36 from counsel for the plaintiffs along with submissions dated March 14, 2013. I reviewed those submissions and those sent in response by counsel for the defendants. On May 13, 2013 I received a copy of the decision of this court in *Wiggins v. wpd Canada Corporation, supra* note 4 and on May 14, 2013 I received, without request, the plaintiffs' submissions on it along with copies of two by-laws: one enacted by a municipality in the Province of Québec and another by an Ontario municipality. No response from the defendants was needed.

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**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

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

SHAWN DRENNAN and TRISHA DRENNAN

Plaintiffs

- and-

K2 WIND ONTARIO INC., K2 WIND ONTARIO LIMITED PARTNERSHIP, AGATHA GARCIA WRIGHT, DIRECTOR OF THE MINISTRY OF ENVIRONMENT and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendants

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REASONS FOR JUDGMENT

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Grace J.

Released: May 15, 2013