

Environmental Review Tribunal
Tribunal de l'environnement



ISSUE DATE: September 16, 2020

CASE NO(S): 19-060

PROCEEDING COMMENCED UNDER section 100(4) of the *Ontario Water Resources Act*, R.S.O. 1990, c. O.40

Appellant:	John Sherk (File No. 19-060)
Appellant:	Elizabeth Sherk (File No. 19-061)
Appellant:	Kathryn Stouffer (File No. 19-062)
Appellant:	Estate of Norma Sherk (File No. 19-063)
Respondent:	Director, Ministry of the Environment, Conservation and Parks
Subject of appeal:	Order issued to submit a completed application for a Permit to Take Water for the dam constructed 4567-BDKPTK-1
Reference No.:	4567-BDKPTK-1
Property Address/Description:	Part of Lot 10, and Lot 11, Concession 14
Municipality:	South Frontenac
Upper Tier:	County of Frontenac
ERT Case No.:	19-060
ERT Case Name:	Sherk v. Ontario (Environment, Conservation and Parks)

APPEARANCES:

Parties

John Sherk, Elizabeth Sherk, Kathryn Stouffer, Estate of Norma Sherk

Director, Ministry of the Environment,
Conservation and Parks

Participant

Robert Sherk

Counsel*/Representative

John Sherk

Paul McCulloch⁺

Self-represented

HEARD: September 9, 2020 by telephone conference call
ADJUDICATOR(S): Helen Jackson, Member

PROCEDURAL ORDER

[1] On August 7, 2019, John Sherk, Elizabeth Sherk, Kathryn Stouffer, and the Estate of Norma Grace Sherk (“Appellants”) filed appeals with the Environmental Review Tribunal (“Tribunal”) regarding Director’s Order No. 4567-BDKPTK-1 (“Director’s Order”) made on July 24, 2019 by Trevor Dagilis, Kingston District Office, Ministry of the Environment, Conservation and Parks. The Director’s Order requires the Appellants to submit a completed application for a permit to take water (“PTTW”) for a dam constructed at Part Lot 10 and Lot 11, Concession 14, South Frontenac.

Prior Procedural Orders

[2] Previous pre-hearing conferences were held in this matter in-person and by teleconference. A two-day hearing was scheduled for April 7 - 8, 2020, but was cancelled due to the COVID-19 pandemic. Since then the parties have been in discussions on a way forward, given that there is currently no date when in-person hearing events may resume, due to the ongoing pandemic.

[3] The Director was amenable to a written hearing or a hearing by videoconference, or some combination thereof; but John Sherk was of the view that a virtual hearing, either by teleconference or videoconference, would be prejudicial to the Appellants’ case, and he expressed concern that he may not have the appropriate technology to support a virtual hearing.

[4] The Director expressed the view that if John Sherk was not comfortable with a hearing that was not an in-person hearing, it would not be fair to push ahead.

Teleconference of September 9, 2020

[5] At the teleconference of September 9, 2020, the Tribunal explored possible venues for an in-person hearing. The parties preferred the venue in Sydenham where the first pre-hearing conference was held, or another public venue in the vicinity; and, as a second option, the Tribunal hearing rooms in Toronto. The Tribunal indicated that the Case Coordinator would investigate whether a suitable location could be found to hold an in-person hearing. The Tribunal set tentative hearing dates of December 2 to 4, 2020, inclusive.

[6] The Tribunal set a further teleconference for October 8, 2020 at 9 a.m. to provide an update on the status of the scheduling of an in-person hearing. The Tribunal directed the parties to work together in developing a work plan in preparation for the hearing prior to the next teleconference and to submit that work plan to the Case Coordinator one week prior to the teleconference.

[7] The Tribunal noted that if it is not possible to find a suitable venue, a hearing by videoconference may be necessary.

ORDER

[8] The Tribunal orders that:

1. A teleconference is scheduled for **October 8, 2020 at 9 a.m.** for a status update in this matter and to review the work plan. Call-in details will be provided by the Case Coordinator.
2. Tentative hearing dates are scheduled for December 2 to 4, 2020. The venue is not yet confirmed.

Tentative Hearing Dates Scheduled
Teleconference Scheduled

"Helen Jackson"

HELEN JACKSON
MEMBER

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Environmental Review Tribunal

A constituent tribunal of Ontario Land Tribunals

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