

# Environmental Review Tribunal

## Tribunal de l'environnement



**ISSUE DATE:** October 13, 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.:	
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<sup>+</sup>

Self-represented

**HEARD:** October 8, 2020 by telephone conference call  
**ADJUDICATOR(S):** Helen Jackson, Member

## **PROCEDURAL ORDER**

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[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] A two-day hearing was scheduled in this matter for April 7 - 8, 2020, but was cancelled due to the COVID-19 pandemic. The Tribunal has since held a number of teleconferences to determine a way forward. The Director indicated that he was amenable to a written hearing or a video hearing, or some combination thereof; but Mr. John Sherk was of the view that a virtual hearing, either by teleconference or video hearing, would be prejudicial to the Appellants’ case, and he expressed concern that he may not have the appropriate technology to support a virtual hearing.

[3] At the teleconference of September 9, 2020, the Tribunal indicated that the Case Coordinator would investigate whether it was possible to hold an in-person hearing in Sydenham, where the first pre-hearing conference was held. The Tribunal set tentative in-person hearing dates for December 2 to 4, 2020, inclusive.

### **Teleconference of October 8, 2020**

[4] At the teleconference of October 8, 2020, the Tribunal confirmed that the Council Chambers in Sydenham are available for an in-person hearing, subject to the venue’s

COVID–19 protocols. The Tribunal further confirmed that the hearing has been scheduled to be held in the Council Chambers, Township of South Frontenac located at 4432 George Street in Sydenham, Ontario. Prior to the teleconference call, the Tribunal forwarded to the parties the venue’s COVID–19 protocols that all are required to adhere to for the hearing. Under the protocol, the maximum number of persons permitted in the Council Chambers at one time is 10. The Tribunal noted that during the hearing, it may be necessary to manage the witnesses to ensure that this number is not exceeded at any given time. The Tribunal notes that due to the current pandemic the ability of the venue to host an in-person hearing may change with short notice. Should that occur, the Tribunal will convene a further teleconference with the parties.

[5] Mr. John Sherk indicated that he may wish to call either of the neighbours, Mr. or Mrs. Friedli, to give evidence at the hearing. The disclosure date for providing witness statements has passed. The Director did not object to the possibility of Mr. John Sherk calling the Friedlis. The Tribunal directed that if he wishes to do so, a witness statement must be filed with the Tribunal and the other parties in advance. The Tribunal directed that the witness statement is to be provided by November 17, 2020.

[6] Ken Harper, representative for Rivendell Golf Course, an added party to the appeals, did not attend the teleconference call of October 8, 2020. If Mr. Harper intends to call any evidence, he must ensure that a witness statement is provided in advance, in line with the direction provided to Mr. John Sherk above.

## **ORDER**

[7] The Tribunal orders that:

1. If Mr. John Sherk intends to call Mr. or Mrs. Friedli to provide evidence; or if Mr. Harper intends to call a witness, a witness statement must be prefiled by November 17, 2020.

2. The in-person hearing is scheduled for **December 2 to 4, 2020**, to commence at **10 a.m.** at:

**Council Chambers  
Township of South Frontenac  
4432 George Street  
Sydenham, Ontario**

*Hearing Dates Confirmed  
Procedural Direction Ordered*

*"Helen Jackson"*

HELEN JACKSON  
MEMBER

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**Environmental Review Tribunal**

A constituent tribunal of Ontario Land Tribunals

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