CITATION: Amherst Island v. Director of Environmental Approvals, 2016 ONSC 2416
COURT FILE NO.: DV 578/15
DATE: 20160411

SUPERIOR COURT OF JUSTICE – ONTARIO

DIVISIONAL COURT

RE: Association for the Protection of Amherst Island, Applicant

AND:

Director of Environmental Approvals et al, Respondents

BEFORE: H. Sachs J.

COUNSEL: Sarah Blake and Jeremy Glick, Counsel, for the Respondent, Director of Environmental Approvals

John B. Laskin and Ryan Lax, Counsel, for the Respondent, Windlectric Inc.

Marie-Andree Vermette and Anastasija Sumakova, Counsel for the Applicant

HEARD at Toronto: April 7, 2016

ENDORSEMENT

[1] The Applicant has, for the second time, brought an application to judicially review a decision of the Respondent Director. This time it challenges his issuance of a renewable energy approval to the Respondent, Windlectric. The Applicant brought its application for judicial review at the same time as it proceeded with its appeal before the Environmental Review Tribunal("ERT") regarding the same decision.

[2] The Respondents seek to quash the Applicant's application on the ground that it is plain and obvious that it is premature. On the application for judicial review the Applicant seeks a revocation of the Director's approval and it seeks the same remedy before the ERT.

[3] As the Federal Court of Appeal stated in *C.B. Powell Limited v. Canada (Border Services Agency)*, 2010 FCA 61 at paras. 30 and 31:

> [30] The normal rule is that parties can proceed to the court system only after all adequate remedial recourses in the administrative process have been exhausted. The importance of this rule in Canadian administrative law is well-demonstrated by the large number of decisions of the Supreme Court of Canada on point...

> [31] Administrative law judgments and textbooks describe this rule in many ways: the doctrine of exhaustion, the doctrine of adequate alternative remedies, the doctrine against fragmentation or bifurcation of administrative proceedings, the rule against interlocutory judicial reviews and the objection against premature judicial reviews. All of these express the same concept: absent exceptional circumstances, parties cannot proceed to the court system until the administrative process has run its course. This means that , absent exceptional circumstances, those who are dissatisfied with some matter arising in the ongoing administrative process must pursue all effective remedies that are available within that process; only when the administrative process has finished or when the administrative process affords no effective remedy can they proceed to court. Put another way, absent exceptional circumstances, courts should not interfere with ongoing administrative processes until after they are completed, or until the available, effective remedies are exhausted.

[4] There is no issue about the ability of the ERT to provide an effective remedy : it clearly has the power to revoke the Director's approval. If it does the Applicant will have succeeded at the end of the administrative process and there will be no need for the application for judicial review. There are also no exceptional circumstances within the meaning of the case law that would justify early recourse to the courts.

[5] For this reason the application for judicial review should be quashed. Given this finding there is no need for me to deal with the other arguments raised on the motion and no need to deal with the cross-motion.

[6] The parties may make written submissions on the question of costs. The Respondents shall make their submissions within 10 days of the release of this endorsement and the Applicant shall have 10 days to respond.

Sachs J.

Date: April 11, 2016