

Public Interest Group Ordered to Pay \$110,000 in Costs for Unreasonable Conduct

By [Donna S. K. Shier](#), Partner and Certified Environmental Law Specialist,
with the assistance of Julia Paillé, Student-at-Law.
© Willms & Shier Environmental Lawyers LLP



February 11, 2016

The OMB dismissed a public interest group’s appeal and ordered the group to pay the proponent \$110,000 in costs. The OMB called the public interest group’s conduct frivolous and unreasonable.

In November 2012, North Dumfries Township granted Preston Sand and Gravel’s application to rezone its property for a gravel pit. The Concerned Residents Association of North Dumfries (CRAND), an eight-member public interest group, appealed the Township’s decision to the OMB. CRAND claimed that the gravel pit would generate dust that would cause air pollution and would pose a substantial risk to human health. Following the OMB’s dismissal of CRAND’s appeal, Preston Sand brought a motion for costs against CRAND. Preston Sand sought \$240,000 for reimbursement of the costs it incurred for experts and lawyers.

The OMB grounded its award of \$110,000 in costs in the OMB’s *Rules of Practice and Procedure*. These Rules state that the OMB may order costs against a party if the conduct of a party has been unreasonable, frivolous or vexatious, or if the party has acted in bad faith. The Rules list examples of such conduct including changing a position without notice to the parties, failing to act in a timely manner resulting in delay, acting disrespectfully, and knowingly presenting false or misleading evidence.

CRAND’s Conduct

The OMB found that CRAND exhibited unreasonable conduct that warranted the costs award pursuant to the Rules. Some examples of CRAND’s unreasonable conduct follow:

- ♦ “...numerous motions which were brought which in my [Board Chair] view, were only to delay or frustrate the process.”¹
- ♦ “...he [CRAND’s lawyer] made a request to withdraw which was granted... This necessitated an adjournment so that CRAND could locate a new lawyer...”²
- ♦ “...Ms. Brown indicated that the only reason CRAND stayed engaged in the hearing to the end was that *so[sic]* it would be in a position to appeal my decision to the Courts. This is but one indicator of frivolous and unreasonable conduct.”³

¹ *Preston Sand and Gravel Company Limited v. Concerned Residents Association of North Dumfries*, Ontario Municipal Board, Case No. MM120031 at para 29 [Preston Sand v CRAND]

² *Ibid* at paras 24-25.

³ *Ibid* at para 19.

- ◆ “...into the sixth day of hearing... the Agent for CRAND advised without prior notice and without leave of the Board, that she would not be calling any witnesses other than herself.⁴ At no time did CRAND seek to amend its witness list or indicate that its expert witnesses would not be called.”⁵
- ◆ “With respect to... ‘acting disrespectfully,’ ... the Board stopped the proceedings during the evidence of Preston’s witness, Mr. LePage, as the Agent for CRAND was texting on her cell phone during the proceeding. Mr. LePage’s evidence was specifically to address issues raised only by CRAND.”⁶
- ◆ “With respect to... ‘knowingly presenting false or misleading evidence,’ ... I pointedly asked the Agent for CRAND for the names of individuals who made up CRAND. Her response at the time was remarkably different than the information which became known near the conclusion of the hearing. To put it bluntly, her answers to the Board could be nothing less than misleading.”⁷

This was not the first time CRAND has been ordered to pay costs. In March 2015, CRAND appealed the OMB’s decision to dismiss CRAND’s appeal of Preston Sand’s zoning application to the Ontario Superior Court of Justice. The Court dismissed CRAND’s appeal and ordered CRAND to pay Preston Sand \$15,000 and the Township \$9,000 in costs.⁸ The Court’s decision to order costs against CRAND was not a factor in the OMB’s decision to order costs.

Implications

The OMB stated that this costs award should not be interpreted as stifling public participation and involvement.⁹ The OMB cited numerous accommodations for CRAND and said that CRAND’s conduct was egregious and disrespectful of the OMB’s process and the public resources expended.

That said, public interest groups or individuals participating in hearings should be aware of the rules governing the tribunals with which they are dealing. It seems trite to say that public interest groups and individuals should be respectful of the tribunals and other parties to the proceeding; failing to do so can be very costly.

[Donna Shier](#), is a partner at *Willms & Shier Environmental Lawyers LLP* in Toronto and is certified as a Specialist in Environmental Law by *The Law Society of Upper Canada*. She can be reached at 416-862-4822 or by e-mail at dshier@willmsshier.com.

The information and comments herein are for the general information of the reader only and do not constitute legal advice or opinion. The reader should seek specific legal advice for particular applications of the law to specific situations.

⁴ *Ibid* at para 14.

⁵ *Ibid* at para 15.

⁶ *Ibid* at para 35.

⁷ *Ibid* at paras 36-37.

⁸ *Concerned Residents Assn. of North Dumfries v. Preston Sand and Gravel Co.*, 2015 ONSC 4368.

⁹ *Preston Sand v CRAND supra* note 1 at para 39.