

MOTION DECISION AND ORDER

Decision Issue Date Monday, September 26, 2022

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant: ROMAN HRYCYSHYN

Applicant: JENNIFER SCHOLES ARCHITECT INC

Property Address/Description: 24 GLENELLEN DR E

Committee of Adjustment Case File Number: 21 241719 WET 03 MV (A0584/21EYK)

TLAB Case File Number: **22 110280 S45 03 TLAB**

Written Hearing date: Friday, September 23, 2022

DECISION DELIVERED BY Panel Member G. Swinkin

REGISTERED PARTIES AND PARTICIPANTS

Appellant	ROMAN HRYCYSHYN
Appellant's Legal Rep.	GIUSEPPE DI MARCO
Applicant	JENNIFER SCHOLES ARCHITECT INC
Primary Owner	STEPHANIE DEBONA
Party/Owner	ERIC KHAN
Party's Legal Rep.	KIM SPENCER MCPHEE BARRISTERS PC C/O ARIS GYAMFI

INTRODUCTION AND CONTEXT

On August 4, 2022, a Decision of the Toronto Local Appeal Body (the “Tribunal”) issued after a hearing by this Member on August 2, 2022 of the appeal brought by Roman Hrycyshyn (the “Appellant”).

In the Decision, the Tribunal dismissed the Appellant’s appeal, commenting in the reasons on the lack of merits to the appeal.

The Owners, through counsel retained after the hearing, have brought a Motion seeking costs arising out of the appeal hearing. The Motion Record consists of a Notice of Motion supported by the affidavit of one of the owners, Eric Khan.

THE REGULATORY FRAMEWORK

Rule 28 of the Tribunal’s *Rules of Practice and Procedure* deals with Costs.

SUMMARY OF EVIDENCE

It is the position of the Owners, as set out in the Notice of Motion and the affidavit of Mr. Khan, that the Appellant fell afoul of at least three of the enumerated considerations for a costs award set forth in Rule 28.6, specifically that the Appellant changed a position in the hearing without prior notice, failed to comply with the Tribunal’s Rules and only provided evidence on an irrelevant matter.

The Owners assert that this conduct crosses the threshold established by Rule 28.7 and warrants a costs award. That threshold requires that the Party against whom costs are claimed has engaged in conduct, or a course of conduct, which is unreasonable, frivolous, vexatious or in bad faith.

The Owners are seeking a costs award in the aggregate amount of \$334,931.46. The components of this request are \$36,350.00 for the time that the individual Owners spent in preparing for the appeal hearing. They were self-represented at the Tribunal hearing. The Owners apparently have businesses wherein they charge for their services at specified hourly rates and they chose to use those rates for the time that they assert was spent on the preparation for the hearing.

In addition to this component, there was a disbursement of \$40.00 to secure a Land Registry parcel register.

Additionally, they have quantified what they have styled as economic loss in the form of projected additional construction cost due to the passage of time and the

associated increase in construction and material costs, higher rental cost for their temporary habitation during the period of construction, and additional financing cost in the form of a now higher interest rate. This is quantified in the aggregate at \$296,040.95. Of course, all of these figures are purely speculative as they have not yet been incurred but are merely projected.

Finally, they seek \$2,500.00 for the legal fees incurred to bring this Motion.

The Appellant did not file a Response to the Motion. However, ineffectual as it is given that it was filed after the Tribunal's Decision had issued, the legal representative for the Appellant filed on August 12, 2022 a purported withdrawal of the Appellant's appeal.

DISCUSSION AND CONCLUSION

It is trite to say that if one is going to allege that there has been a violation of the Rules which warrants sanction, then the claiming party should be held to the standard asserted, that is, that the claim be brought within the requirements of the Rules.

Rule 28.2 states that a request for costs may be made at any stage of a proceeding but in all cases shall be made no later than 30 days after a written decision is issued by the Tribunal. The Decision in this instance was issued on August 4, 2022. The date which is 30 days thereafter was September 4, 2022. The Notice of Motion was filed on September 14, 2022.

There was no explanation for the delay in filing and there was no request for relief in the form of an extension of time in the Notice.


As such, the Tribunal cannot properly entertain this Motion as it does not adhere to a fundamental requirement of the Rules.

However, the Tribunal wishes to make clear that the request is unsustainable in any event as it falls outside of what is understood as the subject matter of costs. Costs in this setting conventionally refers to professional fees incurred in prosecuting or defending, as the case may be, the appeal. In this case, the Owners chose to self-represent and therefore did not incur professional fees.

Economic loss is not embraced by costs. This request really amounts to a prospective claim for damages and that is beyond the jurisdiction of the Tribunal to entertain. Every appeal proceeding involves delay. That is an unfortunate regular consequence of the process but it is part of the process. Despite having sympathy for the Owners in light of the appeal lacking merit, there are not proper grounds here within the Tribunal's jurisdiction to entertain this request for costs.

DECISION AND ORDER

The Tribunal Orders that the Motion for costs is dismissed.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read 'G. Swinkin'.

G. Swinkin