Environmental Appeal Board
Fourth Floor, 747 Fort Street, Victoria BC V8W 3E9
Tel: (250) 387-3464 Fax: (250) 356-9923
www.bceab.ca Email: info@bceab.ca

DECISION NOS. EAB-EMA-21-A010(a) & EAB-EMA-21-A011(a)

In the matter of an appeal under section 100(1) of the *Environmental Management Act,* S.B.C. 2003, c. 53

BETWEEN:	The Board of Education of School District No. 43	**APPELLANT**
AND:	Director, *Environmental Management Act*	**RESPONDENT**
AND:	Anmore Green Estates	**THIRD PARTY**
BEFORE:	A Panel of the Environmental Appeal Board Brenda Edwards, Panel Chair	
DATE:	Conducted by way of written submissions concluding on December 9, 2022	
APPEARING:	For the Appellant:	Emily Kirkpatrick, Counsel
	For the Respondent:	Kaitlyn Chewka, Counsel Alandra Harlingten, Counsel
	For the Third Party:	Mark Pontin, Counsel

SUMMARY DISMISSAL DECISION

APPEAL

[1] On November 15, 2021, the Board of Education of School District No. 43 (the "Appellant") filed two appeals from pollution prevention orders issued by the Director, Ministry of Environment and Climate Change (the "Respondent"). Pollution prevention orders 110954 and 110955 (the "Orders") were issued on October 18, 2021, under section 81 of the *Environmental Management Act*, S.B.C. 2003, c. 53 (the "*Act*").

[2] On November 23, 2021, the Board acknowledged receipt of the appeals and notified the Parties that it was joining the appeals and inviting Anmore Green Estates (the subject of one of the Orders) to participate in the appeals as a Third Party. Anmore Green Estates owns a property adjacent to the Appellant's property at issue in this appeal.

[3] The Appellant appeals the Orders on the basis that the combined purpose of the Orders is to relieve the Third Party of certain obligations related to a

wastewater management system on its property, and, instead, impose them on the Appellant.

[4] The Appellant asks that the Environmental Appeal Board (the "Board") quash Order 110954 (or remit it back to the Respondent for reconsideration), and declare Order 110955 a nullity, or quash it.

[5] On September 6, 2022, the Respondent rescinded the Orders.

[6] On October 26, 2022, the Vice Chair of the Board wrote the Parties noting that the Respondent had cancelled the Orders and sought submissions as to whether the appeals should be dismissed either for lack of jurisdiction or mootness.

[7] On November 10, 2022, the Appellant replied to the Vice Chair's letter stating that while it did not concede that the issues between the Parties arising from the Orders have been fully resolved, it would be taking no position on whether the appeals should be dismissed under either section 31(1)(a) of the *Administrative Tribunals Act*, SBC 2004, c. 45 (the "*ATA*"), which address the jurisdiction of the Board, or for mootness.

[8] On November 24, 2022, the Respondent applied to the Board for orders that the group appeal be dismissed under either section 31(1)(a) or section 14(c) of the *ATA*, and for costs of the application under section 47 of the *ATA.*

BACKGROUND

[9] For the purpose of this preliminary application only, I will assume certain facts to be established based on my understanding of the Appellant's Notices of Appeal, information contained in the preamble to the Orders, and affidavit evidence filed by the Respondent in support of its application.

Assumed Facts:

1. The Appellant is the registered owner of property with a legal description of Lots 4 and 5, Plan LMP40733, Section 16, Township 39, District 6 (the "Property").
2. The Property is directly adjacent to a property known as Anmore Green Estates, the common property of which is owned by the Owners of Strata Plan, LMS3080 (the "Anmore Strata"). For the purposes of this Decision, the Anmore Strata and Anmore Green Estates will be referred to simply as the Third Party.
3. The Third Party is a residential condominium development with a private wastewater treatment system consisting of a treatment plant and two septic disposal fields, operating under Waste Discharge Permit 04606.
4. Between November 23, 2017, and August 30, 2018, the Respondent issued pollution abatement orders 109192, 109390, and 109603 to the Third Party, requiring it to: develop and implement action plans, report on options for continued on-site waste disposal, and work with the Appellant to maintain appropriate fencing and signage and implement a sampling program, with respect to its wastewater treatment system.

5. On November 2, 2018, the Respondent issued Pollution Abatement Order 109670, requiring the Third Party, alone, to maintain appropriate fencing and signage, and to implement a sampling program. On November 1, 2019, the Respondent amended Order 109670 but maintained a requirement for the Third Party to carry out a sampling program.
6. On October 18, 2021, the Respondent issued Pollution Prevention Order 110954, rescinding Order 109760. The new order required that the Third Party retain an experienced and Qualified Professional to perform dye testing of the Third Party's waste disposal system at certain times and report the photographic results of that testing to the Ministry.
7. Also on October 18, 2021, the Respondent issued Order 110955 requiring the Appellant to erect and maintain exclusion fencing and signage around a described effluent breakout zone, implement a sampling program, collect samples, submit sampling data to the Ministry, and provide information with regard to the Qualified Professionals performing any of the work under the terms of the order.
8. On August 31, 2022, the Third Party's wastewater discharge was redirected from its wastewater disposal facility to the Greater Vancouver Sewerage Drainage District system.
9. On September 7, 2022, the Respondent informed the Appellant and the Third Party that Orders 110954 and 110955 were no longer in effect and were cancelled.

ISSUES

[10] The issues arising from the Respondent's application are:

1. Does the Board have jurisdiction to hear the appeals now that the Orders have been rescinded/cancelled?
2. Are the appeals moot and, if so, should the Board hear the appeals in any event?
3. Should the Board order the Appellant to pay the Respondent's costs of the application for summary dismissal?

RELEVANT LEGISLATION

[11] Pollution prevention orders are provided for under section 81 of the *Act*.

> **81** (1) If a director is satisfied on reasonable grounds that an activity or operation has been or is being performed by a person in a manner that is likely to release a substance that will cause pollution, the director may order a person referred to in subsection (2), at that person's expense, to do any of the following:
>
> (a) provide to the director information the director requests relating to the activity, operation or substance;

(b) undertake investigations, tests, surveys or any other action the director considers necessary to prevent the pollution and report the results to the director;

(c) acquire, construct or carry out any works or measures that are reasonably necessary to prevent the pollution;

(d) adjust, repair or alter any works to the extent reasonably necessary to prevent the pollution.

[12] The group appeal is governed by section 100(1) and 103 of the *Act*.

100 (1) A person aggrieved by a decision of the director or a district director may appeal the decision to the appeal board in accordance with this Division.

103 On an appeal under this Division, the appeal board may

(a) send the matter back to the person who made the decision, with directions,

(b) confirm, reverse or vary the decision being appealed, or

(c) make any decision that the person whose decision is appealed could have made, and that the appeal board considers appropriate in the circumstances.

[13] Also relevant to this preliminary matter is section 93.1 of the *Act*. That section incorporates certain practice and procedure provisions of the *ATA*, including Part 4 (with some exceptions). Included in those provisions is section 31, which authorizes the Board to summarily dismiss appeals in certain circumstances.

31 (1) At any time after an application is filed, the tribunal may dismiss all or part of it if the tribunal determines that any of the following apply:

(a) the application is not within the jurisdiction of the tribunal;

…

(f) there is no reasonable prospect the application will succeed.

[14] The *ATA* also provides the Board with the power to order that one party pay another party's costs in connection with an application.

47 (1) Subject to the regulations, the tribunal may make orders for payment as follows:

(a) requiring a party to pay all or part of the costs of another party or an intervener in connection with the application;

…

(2) An order under subsection (1), after filing in the court registry, has the same effect as an order of the court for the recovery of a debt in the amount stated in the order against the person named in it, and all proceedings may be taken on it as if it were an order of the court.

DISCUSSION AND ANALYSIS

1. Does the Board have jurisdiction to hear the appeals now that the Orders have been rescinded/cancelled?

The Appellant's Submissions

[15] In response to the Vice Chair's request for submissions on whether the Board ought to summarily dismiss the appeals for lack of jurisdiction or mootness, the Appellant states that it takes no position.

[16] That said, the Appellant submits that the Board's jurisdiction under the *Act* is engaged where a person aggrieved by a decision of the Respondent, appeals the decision.

[17] The Appellant asserts that the Board's decision on a summary dismissal application in *Rossi v. British Columbia (Ministry of Environment),* [2021] B.C.E.A. No. 5 ("*Rossi*"), is distinguishable as, in that case, the Board's jurisdiction was based on the existence of an order made by the Water Manager under the *Water Sustainability Act*, SBC 2014, c.15 (the "*WSA*").

[18] The Appellant says that under the *Act*, the Board's jurisdiction is broader than under the *WSA* and is engaged whenever a person is aggrieved by an order or an exercise of power by the Respondent. The Appellant asserts that it has already sustained loss and damages from the Respondent's excess/improper exercise of its jurisdiction.

The Respondent's Submissions

[19] The Respondent submits that the Board lacks jurisdiction to proceed with the hearing of the group appeal since it cancelled the Orders that are the subject of the appeal.

[20] The Respondent cites the Board's decision in *Rossi* where the Board also sought submissions from the Parties on the Board's ongoing jurisdiction to continue to hear the appeal and on the issue of mootness.

[21] The Respondent submits that, in *Rossi*, the Board first observed that an order issued by the Water Manager may be appealed to the Board (s. 30 *WSA*). The Board then concluded that while there was still a "live issue" for the Appellants regarding the flooding on their property, there was no longer an order of the Water Manager that could trigger the Board's jurisdiction. The Respondent adds that there is no basis upon which to distinguish the Board's conclusion in *Rossi*.

[22] The Respondent acknowledges that it was open to the Appellant to appeal the Orders under section 100 of the *Act* as persons aggrieved by the Respondent's decision. The Respondent notes that the term "decision" is defined in section 99 of the *Act* to mean "making an order" [s. 99(a)] but also to "exercising a power except a power of delegation" [s.99(c)]. The Respondent asserts, however, he has since exercised his discretion to rescind the Orders. Without a "decision" of the Respondent, the Board no longer has authority to hear the appeals.

[23] The Respondent also cites the Board's decision in *Mountainside Quarries Group Inc. v. British Columbia (Ministry of Environment),* 2022 B.C.E.A. No. 18 ("*Mountainside Quarries*") where the Board found that it had no jurisdiction to hear the appeal of a permit suspension once the Respondent lifted the suspension because the Board could not provide any of the remedies that the appellant was seeking (i.e., orders lifting the permit suspension, and directing compensation for lost revenue during the time the suspension was in effect).

[24] The Respondent submits that here, as in *Mountainside Quarries*, the Board cannot provide any of the remedies sought by the Appellant (i.e., to quash Order 110954 or remit it for reconsideration, or to declare Order 110955 a nullity or quash it.)

[25] The Respondent asserts that the Board cannot quash or remit orders for reconsideration that no longer exist. Further, he says the Board lacks the authority under s. 103 of the *Act* to make a declaration as to whether he had jurisdiction to issue the orders at first instance.

[26] Still further, the Respondent submits that the fact that the Appellant may have sustained loss and damages, as it alleges, does not grant the Board the jurisdiction to hear the appeals. The Respondent observes that the Appellant did not reference any damages in its Notices of Appeal and, if it had, the Board would have no authority to order compensation for losses suffered: *Mountainside Quarries*, at para. 67; *Webb v. British Columbia (Ministry of Water, Land and Air Protection)*, [2003] BC.E.A. No. 26 at para. 66.

The Third Party's Submissions

[27] The Third Party submits that it consents to the orders that the Respondent seeks on this issue.

The Panel's Findings

[28] I start my analysis by recognizing that the Board is a creature of statute: it is limited to acting within the confines of its governing legislation. In this instance, the Board's appellate jurisdiction is described in sections 100 and 103 of the *Act*. Section 100(1) provides that a person aggrieved by a decision of the director may appeal to the Board.

[29] The Appellant, asserting that it is such a person appealed to the Board and the Board accepted each of the appeals (now grouped). Whether the Appellant is a person aggrieved of a decision is not, on its own, determinative of whether the Board maintains the jurisdiction to hear the group appeal. The Board's authority does not occur in a vacuum; for the Board to continue to have jurisdiction, there must be a "decision" of the Respondent for the Board to consider at the hearing of the appeal on the merits.

[30] I considered the Board's conclusion in *Rossi,* i.e., that the Board has no jurisdiction once the order that is the subject of the appeal has been rescinded. I also considered the Appellant's submission that the Board's decision in *Rossi* is distinguishable as, in that case, the Board was exercising its authority to hear an appeal from an order of the Water Manager under the *WSA*. While I agree that the

Appellant's appeal arises out of Orders made by the Respondent under a different statute than was considered by the Board in *Rossi*, the legal issue remains the same. The Board may only decide an appeal over which it has jurisdiction. Further, the Board must find its authority to act in the governing legislation.

[31] I accept that summarily dismissing an appeal under the *ATA* should only be done in clear cases: *Rodney and Kim Strasky v. Oil and Gas Commission* [Decision no. 2016-OGA-004(b)] ("*Strasky*"). I agree with the Oil and Gas Appeal Tribunal's caution that the threshold for an appeal to conclude that a matter is not in its authority is a high one so as to protect appellants' right to have their cases heard on the merits, if there is any reasonable basis for concluding that the tribunal (or in this case the Board) has jurisdiction to decide the matter.

[32] I am satisfied that there is no reasonable basis by which I could conclude that the Board continues to have jurisdiction over the appeals. I find that when the rescinded the Orders that were the subject of the appeals the Board lost its authority to hear the matters. As a result, I order that the Appellant's appeals are summarily dismissed under section 31(a) of the *ATA*.

2. Are the appeals moot and, if so, should the Board hear the appeals in any event?

The Appellant's Submissions

[33] The Appellant asserts that it takes no position on whether the Board should summarily dismiss the appeals for mootness. That said, the Appellant submits that the alleged excess or improper exercise of jurisdiction by the Respondent, resulting in loss and damage to the Appellant remains a live controversy between the Parties.

The Respondent's Submissions

[34] The Respondent submits that, regardless of the Board's conclusion as to its jurisdiction, the appeals are moot and ought to be dismissed on that basis. The Respondent asserts that there is no longer a live controversy between the Parties; the Orders have been cancelled, and the remedies that the Appellant sought have effectively been granted by the Respondent without the need for the Board's intervention.

[35] The Respondent submits that to determine whether an appeal is moot, the Board has consistently applied the test articulated by the Supreme Court of Canada in *Borowski v. Canada (Attorney General),* [1989] 1 S.C.R. 342 ("*Borowski*"). See for example, *Gibsons Alliance of Business v. British Columbia (Ministry of Environment)*, [2019] B.C.E.A. No. 10, at para. 28.

[36] The Respondent says that the *Borowski* test first requires that the Board consider whether there is a "live controversy" between the Parties for which the Board can offer a remedy. If there is not, the Board is then to consider whether it ought nonetheless to exercise its discretion to continue with the appeal because there are issues of public interest that justify the Board expending the Board's and the parties' resources.

[37] The Respondent asserts that there is no practical reason for the Board to consider the Appellant's argument that the Respondent exceeded his jurisdiction or

acted on an improper basis where, as here, the Board cannot grant any remedy that has not already been provided to the Appellant by the Respondent exercising his discretion to cancel the Orders. The Respondent adds that there are no issues of public interest that justify continuing with an otherwise moot appeal.

The Panel's Findings

[38] I have already concluded that the Board lost jurisdiction to hear the Appellant's appeals once the Respondent rescinded the Orders. I further find that, even if the Board had ongoing jurisdiction to hear the appeals, there would be no utility in doing so where, as here, the Board would be unable to grant any of the remedies which the Appellant seeks.

[39] The Board's remedial authority is found in section 103 of the *Act* which provides that the Board may send a matter back to the Respondent (with directions), confirm, reverse, or vary the decision under appeal, or make a decision that the Respondent could have made and that the Board considers appropriate in the circumstances. The authority of the Board does not extend to the issuance of a declaratory relief. Only a court of competent jurisdiction or a statutory body which has expressly been granted this authority may do so.

[40] I considered the remedies the Appellant has stated that it seeks in the appeals. The Appellant asked the Board to quash the Orders, but there are no orders left to be quashed. The Appellant also asked that the Board declare Order 110954 a nullity but as I have already stated, the Board's authority to act must be found in the *Act*. The Board has no authority to grant declaratory relief. That relief must be sought from the BC Supreme Court.

[41] In responding to the Vice Chair's request for submissions on whether the appeals ought to be summarily dismissed, the Appellant's counsel implied that the Board ought to hear the appeals and craft a remedy for the "loss and damages" that it alleges it has suffered as a result of the Respondent exceeding his jurisdiction or improperly exercising his authority. Whether the Respondent exceeded his authority or acted improperly is a matter for judicial review. Further, the Board has no authority to order compensatory relief for any "loss and damages" suffered by the Appellant.

[42] In sum, even if the Board continues to have jurisdiction to hear the appeals on the merit (which I have concluded it does not), there would be no practical purpose to determine the merits of the appeals since the remedies which the Appellant seeks are either beyond the Board's jurisdiction or have effectively been provided when the Respondent rescinded the Orders. In the circumstances, I find that the appeals are moot.

[43] Finally, I find that there is nothing in the material before the Board on this application that suggests to me that there is a matter of public interest that would justify the Board expending its resources, and those of the other Parties to continue with appeals which are otherwise moot.

3. Should the Board order the Appellant to pay the Respondent's costs of the application for summary dismissal?

The Respondent's Submissions

[44] The Respondent seeks an order for costs against the Appellant on the basis that it has been prejudiced by the Appellant's actions. The Respondent submits that, since it filed its appeals, the Appellant has failed to comply with repeated requests of the Respondent to provide particulars and to produce documents. Further, when the Respondent cancelled or rescinded the Orders, the Appellant declined to concede that the Board lacked jurisdiction or that the appeals had been rendered moot.

[45] The Respondent further submits that the Appellant asserted that it took no position on whether the appeals should be dismissed whilst also asserting that the appeals ought to proceed. In doing so, the Appellant caused the Respondent to incur legal costs, despite the Respondent having already cancelled the impugned Orders and effectively granting the Appellant the relief it sought.

[46] The Respondent seeks an order for costs against the Appellant under section 47(1) of the *ATA*.

The Appellant's Submissions

[47] The Appellant made submissions on what it described as the Respondent's extraordinary request for an order of costs. The Appellant submits that it is the Respondent's conduct that has led to the protracted process following the Respondent's cancellation of the Orders.

[48] The Appellant further submits that the Respondent first raised the prospect of an application to dismiss on September 13, 2022, but then failed or refused to bring such an application until November 24, 2022.

[49] The Appellant adds that since September 16, 2022, it made clear that it did not expect to oppose any application for dismissal but wished any such order to be "with prejudice" to the Respondent's ability to argue in any other proceeding that the Board was the proper jurisdictional forum for the dispute between the Parties. The Respondent failed or refused to engage with the Appellant on this issue.

[50] The Appellant asserts that it only responded to the Board's request for submissions on the issue of its ongoing authority and still takes no position on the outcome of the application.

The Third Party's Submissions

[51] The Third Party made no specific submissions on the issue of costs. Rather, as stated earlier, it submitted only that it consented to the orders that the Respondent seeks.

The Respondent's Final Reply Submissions

[52] The Respondent denies that its conduct led to a protracted process, as alleged by the Appellant. The Respondent asserts that, but for a brief extension of time to file an application to dismiss, the Respondent was not responsible for any delay in the appeal process.

[53] The Respondent notes that on September 29, 2022, the Board asked the Appellant to confirm, by October 19, 2022, whether it intended to proceed with the appeals. The Board initially asked the Respondent to file its application to summarily dismiss the appeals by the same date. Later, the Respondent sought and received a staggered deadline to avoid bringing an unnecessary application, should the Appellant agree to withdraw its appeals. The Appellant declined to do so.

[54] The Respondent submits that he is under no obligation to consent to the Appellant's assertion that it would agree to a summary dismissal of its appeals only on a "with prejudice" basis estopping the Respondent from making certain arguments in potential future litigation.

[55] The Respondent reiterates that, contrary to its assertions, the Appellant made submissions as to why the appeal should proceed. The Respondent points to the Appellant's letter to the Board dated November 10, 2022, in which the Appellant argued that the *Rossi* decision is distinguishable from the present case as the Board's jurisdiction under the *Act* is broader than under the *WSA*. Further, the Appellant asserted that it continues to be a "person aggrieved" by a decision of the Respondent, and it refused to concede that the appeals are moot.

[56] The Respondent repeated its assertion in chief that it has been prejudiced by the Appellant's actions. The Respondent directs the Board to the affidavit of R. Whitten, filed November 18, 2022, setting out the history of the appeal which it relies upon, in addition to the Appellant's actions since the cancellation of the Orders, in seeking an award of costs.

The Panel's Findings

[57] As I have noted above, subsection 47(1)(a) of the *ATA* allows the Board to order a party to pay some or all of the appeal costs of another party or an intervener. The *ATA* does not provide further guidance on how the Board ought to exercise this discretion. The Board has a longstanding policy to exercise its discretion only in "special circumstances." See e.g., *Gwiiyeehl and others v. Water Manager*, EAB-WSA-A013 et al ("*Gwiiyeehl*").

[58] The Board's Policy and Procedures Manual lists six situations that might amount to "special circumstances." This list is non-exhaustive but is a useful starting point when considering the history of the Board's discretion regarding this matter. One of the listed situations, referenced by the Respondent in its submissions, is where the action of a party, or the failure to act in a timely manner, results in prejudice to any of the other parties.

[59] I have considered the Whitten affidavit and the Board's record of correspondence in the appeal process, to date. I observe that the Appellant filed its appeals on November 15, 2021. On May 6, 2022, the Appellant notified the Board and the other Parties that it was considering applying for a stay of the Orders. The Appellant did not apply for a stay, yet in this application it has argued (but offered no evidence) that it suffered loss and damages while the Orders remained in place. I also observe that the Appellant did not provide particulars when directed to do so by the Board and instead argued that the Respondent ought to be required to bring its dismissal application first.

[60] I have further considered that the Appellant repeatedly declined to withdraw its appeals after the Respondent rescinded the Orders. Both the Respondent and his counsel notified the Appellant that the Orders were rescinded and suggested that the subject matter of the appeal had been resolved. The Appellant did not agree. When the Board requested an update on the status of the appeals and noted that the Orders had been rescinded, the Appellant again declined to withdraw its appeals and asserted that a live issue remained in the appeal. Further, when the Vice Chair put the Parties on notice that he was considering dismissing the appeals, the Appellant again stated that it "did not concede" that the issues between the parties arising from the Orders had been resolved as there had been no "declaration of nullity."

[61] In my view, the evidence before me is clear. The Appellant's refusal to act in a timely manner to either withdraw its appeals or consent to a summary dismissal order renders this is an appropriate situation for an order for party and party costs. I am aware of the potential chilling effect of an order for costs. I agree with the Board's observation in *Gwiiyeehl* and earlier decisions, that appellants ought not to be discouraged from appealing decisions from which they feel aggrieved.

[62] I find that by making its consent to a summary dismissal order contingent on the Respondent making concessions in future litigation, the Appellant attempted to weaponize the appeal process; an action which the Board cannot condone. It is no answer for the Appellant to assert that it "took no position" on this application whilst it asserted that the group appeal continued to have merit, it had suffered loss, and it had yet to obtain its requested declaratory relief. The Appellant cannot have its cake and eat it too.

[63] Finally, whilst I am not ordering that the Appellant pay the Board's costs, I note that the Appellant used the Board's resources unnecessarily when it declined to withdraw the appeals or consent to their summary dismissal despite repeated requests that it do so after having received relief from the very Orders it sought to impugn. That said, I find that the Appellant's actions reflect the type of action that the Court characterized as displaying "reckless indifference" and worthy of sanction in *College of New Caledonia v. Kraft Construction Co.*, 2011 BCCA 172 [*New Caledonia*]. The Appellant's failure to act in a reasoned manner when the impugned Orders were rescinded, resulted in the Respondent incurring expense which it would otherwise not have incurred to have the matter concluded.

[64] For all the above reasons, I find that special circumstances exist that warrant an order for costs against the Appellant to discourage the actions and failure to act, as I have described them.

The Panel's Determination of Costs

[65] Section 13.0 of the Practice Manual provides that costs payable by party will be determined under Appendix B.1

---

[1] The Practice Manual may be found at https://www.bceab.ca/app/uploads/sites/717/2021/04/eab_proc_manual.pdf

[66] The Respondent may claim its costs of this application commencing October 26, 2022, when the Vice Chair sought submissions as to whether the group appeal ought to continue and whether there remained a "live controversy" between the parties.

[67] I find that the matters involved in the Respondent's application for summary dismissal were of less than ordinary difficulty. Accordingly, I awards costs of the application on Scale A.

[68] I strongly encourage the Appellant and the Respondent to reach an agreement with respect to the quantum of costs. However, failing agreement, the Respondent may present a draft bill of costs, along with a brief submission not exceeding two pages, to the Panel for determination. The Appellant will have an opportunity to make brief written submissions on the draft bills of costs, followed by a reply from the Respondent according to a submissions schedule set by the Panel, if one becomes necessary to issue.

DECISION

[69] The Respondent's application for summary dismissal is granted under section 31(1)(a) of the ATA. The Appellant is ordered to pay the Respondent's costs of the summary dismissal application in accordance with the tariff set in the Supreme Court Civil Rules, Scale A. The Board's order is enforceable in the Supreme Court of British Columbia.

"Brenda L. Edwards"

Brenda L. Edwards, Panel Chair
Environmental Appeal Board

January 19, 2023