

STIKEMAN ELLIOTT

Stikeman Elliott LLP Barristers & Solicitors

5300 Commerce Court West, 199 Bay Street, Toronto, Canada M5L 1B9
Tel: (416) 869-5500 Fax: (416) 947-0866 www.stikeman.com

Direct: (416) 869-5688
E-mail: gzacher@stikeman.com

BY FAX

September 10, 2009
File No.: 100519.1011

Mr. George Vegh
McCarthy Tétrault LLP
Barristers and Solicitors
Suite 5300, TD Bank Tower
Toronto Dominion Centre
Toronto ON M5K 1E6

Dear Mr. Vegh:

**Re: Notice of Intention to Make an Order for Compliance under
Section 112.3 of the OEB Act, 1998
Board File No: EB 2009-0308**

Further to our letter dated September 8, 2009, we have considered the relief sought in your client's motion. Our position on each of the matters raised in your motion is as follows.

Hearing Procedure

In regards to your request that various procedural protections be put in place to segregate the Board's adjudicative, investigative and compliance functions, please be advised that Board staff have conducted themselves appropriately and will continue to do so for the duration of this proceedings. Specifically:

- We (along with Maureen Helt) will act as compliance counsel ("Compliance Counsel").
- Michael Millar has been appointed to act as counsel to the Panel ("Panel Counsel"). Mr. Millar has not had any prior involvement in this matter.

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- Compliance Counsel and any Board staff who have had prior involvement in this matter will not communicate about any of the matters in issue, other than on the public record, with Panel Counsel (or, of course, with the Panel members that will hear this matter).

We trust that the foregoing assurances address your concerns and it will not be necessary to proceed with that part of your motion regarding the hearing procedure. Please confirm.

Document Production

We disagree with your position regarding document disclosure required from Board staff. The documents sought are not relevant. Further, the *Stinchcombe* standard on which your position is premised does not apply to this proceeding.

Your client is entitled to know the case against it, including receiving disclosure of the documents that will be relied upon in conducting this proceeding. These requirements have been met. The Board's position is articulated in the August 4, 2008 Notice of Intention to Make an Order for Compliance and in a number of letters from the Board's Compliance Office. Further, on September 1, 2009, Board staff disclosed to you the documents that it intends to rely upon in this proceeding. If during the course of the proceeding we determine there are any additional documents that we intend to rely upon, we will disclose those documents to you.

With regards to the requested Complainant Information and SSMWG Materials, it is our position that these documents go well beyond the scope of this proceeding and are irrelevant.

Process and Scheduling

It is, in our view, premature to address the appropriate process for this proceeding and the scheduling of the various steps until the intervenor requests have been decided. At that point, we will know who the parties are and what their respective levels of participation will be. Once that issue has been decided, we will, subject to the Panel's approval and direction, provide our views on the appropriate process and schedule.

If you have any questions or would like to discuss these issues further,
please give me a call.

Yours truly,


Glenn Zacher

/cmr

Encl.

cc: Patrick Duffy
Maureen Helt
OEB Board Secretary
Dennis O'Leary, *Counsel for SSMWG*
Guru Kalyanraman, *EDA*