Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2010-0184

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, Schedule B;

AND IN THE MATTER OF a motion by the Consumers Council of Canada in relation to section 26.1 of the *Ontario Energy Board Act, 1998* and Ontario Regulation 66/10.

BEFORE: Cathy Spoel
Presiding Member

Paula Conboy
Member

DECISION AND ORDER

This is a decision on a motion brought by The Consumers Council of Canada and Aubrey LeBlanc (collectively the "Applicants", or "CCC") for production of complete and unredacted copies of documents provided by the Attorney General of Ontario (the "Attorney General") in response to questions taken under advisement during the examination of Barry Beale ("Mr. Beale") on November 16, 2010 and for an order compelling the re-attendance of Mr. Beale to answer further questions arising from the production of these documents.

The Canadian Manufacturers & Exporters (the "CME") supported the motion. Union Gas was represented at the oral hearing of the motion but did not file a factum. Counsel for Board staff appeared but did not take a position. The Association of Power Producers of Ontario ("APPrO") did not attend the oral hearing of the motion but provided its support through a letter dated April 20, 2011.

The Attorney General conceded that it would be appropriate for Mr. Beale to re-attend for cross-examination on any documents that are produced.

THE PROCEEDING

On April 26, 2010, the Applicants served a notice of motion regarding the constitutionality of assessments issued by the Ontario Energy Board (the “Board”) pursuant to section 26.1 of the *Ontario Energy Board Act, 1998* (the "Constitutional Motion"). The Applicants subsequently amended the notice of motion on May 27, 2010.

On May 11, 2010, the Board issued Procedural Order No. 1, which set out a number of preliminary questions arising from the Constitutional Motion. On July 13, 2010, the Board held an oral hearing to address the questions set out in Procedural Order No. 1. On August 5, 2010, the Board issued its Decision with Reasons on the preliminary issues, namely:

(a) Given Rule 42.02 of the Board’s Rules of Practice and Procedure does CCC have standing to bring the Motion?;
(b) Does the Board have the authority to cancel the assessments issued under section 26.1 of the *Ontario Energy Board Act, 1998* (the “Act”)?;
(c) Does the Board have the authority to determine whether section 26.1 of the Act (and Ontario Regulation 66/10 made under the Act) are constitutionally valid in the absence of another proceeding (i.e., can the constitutionality of the legislation be the only issue in the proceeding)?; and
(d) Would stating a case to the Divisional Court be a better alternative?

The Board held that it had jurisdiction to hear the Constitutional Motion and would proceed to do so.

On October 22, 2010, the Board issued Procedural Order No. 6, which set out the timelines that will apply to the hearing of the Constitutional Motion including the date on which the Attorney General had to file its evidence on the Constitutional issue, and provide a witness to answer questions regarding the evidence. On November 5, 2010, the Attorney General served the affidavit of Mr. Beale. On November 16, 2010, Mr. Beale was examined by counsel for CCC, as well as by counsel for some of the intervenors participating in the Constitutional Motion.

During the course of the examination of Mr. Beale, thirteen questions were taken under advisement by the Attorney General. These questions were given undertaking numbers JT1.1 to JT1.12. They are replicated in Attachment 1 to this Decision.

On December 20, 2010 the Attorney General responded to undertakings JT 1.4, 1.5 and 1.5B.

On December 23, 2010, the Attorney General responded to undertakings JT 1.6 and 1.7.

As part of these responses, the Attorney General included a number of documents, portions of which were redacted: in some cases due to claims that they are not relevant to the Constitutional Motion, and in other cases that they are subject to a claim of solicitor client privilege.

Copies of the documents were provided in confidence to the panel with the portions redacted for relevance disclosed, but without disclosing the portions redacted for solicitor client privilege. In drafting these reasons, the panel has taken care not to disclose the redacted information.

I. SOLICITOR CLIENT PRIVILEGE

With respect to the question of solicitor client privilege, two issues were raised.

1. The Board's Authority to Assess Claims for Solicitor Client Privilege

The Attorney General argued that the Board does not have the authority to review a document to determine whether the party asserting solicitor client privilege has done so appropriately.

In support of this argument, the Attorney General relied on the following passage from Sopinka, Lederman and Bryant: *The Law Of Evidence In Canada*, 3rd Edition:

> 14.47 in McClure, the court pointed out that the solicitor client privilege, because of its unique standards within the justices system and its being integral to its successful administration, and has the status of class privilege. *In the absence of express legislative language, regulatory boards, agencies and commissions are not to review solicitor client confidences to determine whether the privilege is*

> *properly claimed.* Given the fundamental role of the privilege in the integrity of the justice system, such review is to be done conducted only by the courts. (emphasis added by the Attorney General)

The only citation provided in support of this assertion is *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, [2008] 2 S.C.R. 574 (*Blood Tribe*).

The Board finds that the *Blood Tribe* decision has no application to this situation.

Blood Tribe holds that an administrative investigator (like the federal Privacy Commissioner, in that case) has no authority to review privileged documents for the purpose of assessing a privilege claim unless it has this power under statute, either expressly or by implication[1]. This is unlike the situation of an adjudicator, which the Board is. A court's power to review a privileged document to determine a claim for privilege flows from its power to adjudicate disputed claims over legal rights.[2] The Board has comparable powers, because it is a quasi-judicial statutory tribunal rather than an investigator.

The Board's authority to adjudicate the issue of privilege flows from s. 5.4 of the *Statutory Powers Procedure Act*, R.S.O. 1990, Chapter S. 22, which provides that the Board cannot order the disclosure of privileged information in the context of a hearing. In order to exercise this authority, the Board finds that it has the power, where necessary, to adjudicate the claim of privilege. The admissibility of evidence in a hearing is a matter of law, and section 19 of the Act gives the Board authority to determine all matters of law within its jurisdiction. In some cases, the Board may need to review documents in order to properly adjudicate a privilege claim.

In this case, the Board has not yet reviewed the portions of the documents over which the Attorney General asserts a claim of solicitor client privilege.

2. What is Subject to a Claim for Solicitor Client Privilege?

The Board agrees with the Attorney General's argument that solicitor client privilege extends to all communications made for the purpose of seeking or providing legal advice, including advice given by government lawyers.

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[1] *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, [2008] 2 S.C.R. 574 at para 20.
[2] *Canada (Privacy Commissioner) v. Blood Tribe Department of Health*, [2008] 2 S.C.R. 574 at para 22.

In reviewing these claims, the Board finds that it will be guided by the following principles:

- Advice given by government lawyers is privileged when given with respect to legal matters.
- The advice need not be given directly by the lawyers to the ultimate recipient but can be transmitted by others within the organization.
- If the advice is on matters of policy rather than legal issues it is not privileged even if made by a member of legal staff.

CME argued that the Board cannot rely on the mere assertion by the party claiming privilege as conclusive of the issue and that there must be some basis or evidentiary foundation for it[3]. CME further argued that this is often done through an affidavit of documents where the document is identified along with a description of why solicitor client privilege is claimed, or through an assertion by counsel.

In this case, the Attorney General has carefully described in paragraph 69 of its factum the portions of the documents for which solicitor client privilege is claimed, the reasons why, and that they do not include any business or policy advice. The factum has been signed by both counsel for the Attorney General, and is accepted by the Board as an appropriate foundation for its claim of privilege in this case.

The Board has carefully reviewed the documents and finds that the context of each redaction is consistent with the claims made by the Attorney General. The Board finds that it has no reason to doubt the assertions made by counsel and will not review the unredacted portions of these documents at this time.

II. RELEVANCE

Relevance can only be determined in the context of the substantive issue to be decided by the Board.

The Applicants have challenged the Constitutional validity of section 26.1 of the Act, which requires the Board to assess local distribution companies ("LDC") with respect to

[3] *Environmental Defence Canada v. Canada (Minister of Fisheries & Oceans),* [2009] F.C.J. No. 182

expenses incurred by the Ministry of Energy and Infrastructure ("MEI") for certain programs set out in section 26.2 of the Act. The LDCs in their turn can recover the assessment from ratepayers and have in fact already done so.

Very simply put, the issue in this case is whether the assessments are an indirect tax which is not permitted by section 92 of the *Constitution Act* or whether they are a regulatory charge which is permitted. In order to be a regulatory charge there must be some nexus with a regulatory scheme[4]. The extent to which there is such a scheme and the connection with the assessments is the subject of disagreement between the parties and will be the subject of argument when the case is heard.

The Attorney General seeks to redact portions of the documents on the basis that they are not relevant to a determination of whether the assessment is a regulatory charge as the redacted portions relate to a regulatory scheme that was not, in the end, implemented.

Some of the documents have been redacted to remove references to options that were considered but not implemented. The Attorney General argued that a consideration of available options is only required in assessing the Constitutional validity of legislation challenged as violating the *Charter of Rights and Freedoms* (specifically with regard to the "minimum impairment test"), and that it is of no relevance to a challenge based on section 92 of the *Constitution Act*.

While the Board finds that it need not inquire into whether the option chosen is the least intrusive (which a challenge based on the Charter might require), that does not mean that all reference to other options is of no relevance whatsoever. In this case, the documents in question refer to the option eventually chosen by the Government as part of a larger package, some parts of which have not been implemented. The Board does not intend to inquire into the merits of the parts that were not implemented, but the Board finds that in some cases it is not possible to remove all references to them without changing the context and meaning of the documents. Some of this may be relevant to the arguments that parties wish to advance.

[4] *Westbank First Nation v. British Columbia Hydro & Power Authority*, [1999] 3 S.C.R. 134

Can the documents be redacted for relevance? If so, under what circumstances?

As a general rule, once a document is relevant the entire document must be produced[5].

The only exceptions are if the information is clearly irrelevant **and** it would be prejudicial or damaging in some sense. For example, in *McGee v. London Life Insurance Co.*, [2010] O.J. No. 898. (Sup. Ct.) (*"McGee"*), the court lists a number of examples: medical records, familial communications, commercially sensitive financial information. The court noted that the list is not exhaustive. In *McGee*, the court also found that the onus is on the party seeking to exclude the information to show that it is clearly irrelevant.[6]

The Attorney General argued that as cabinet documents they have a special status, but did not make a claim of crown immunity. Having not made a claim of Crown immunity, the Board finds that the Attorney General must show that the information is both clearly irrelevant **and** that disclosure would be prejudicial.

The Board finds that the disclosure of Cabinet discussions may be prejudicial and finds that they should be treated in the same way as the examples cited in *McGee*.

In *Carey v. Ontario*, [1986] 2 S.C.R. 637 ("*Carey*"), the Court held, at paragraphs 79 and 80:

> Cabinet documents like other evidence must be disclosed unless such disclosure would interfere with the public interest. The fact that such documents concern the decision-making at the highest level of government cannot, however, be ignored. Courts must proceed with caution in having them produced. But the level of the decision-making process concerned is only one of many variables to be taken into account. The nature of the policy concerned and the particular content of the documents are, I would have thought, even more important… Revelations of cabinet discussions and planning at the development stage or other circumstances when there is keen public interest in the subject matter might seriously inhibit the proper functioning of cabinet government, but this can scarcely be the case when low level policy that has become of little public interest is involved.
>
> To these considerations, and they are not all, one must, of course, add the importance of producing the documents in the interests of the administration of

[5] *McGee v. London Life Insurance Co.*, [2010] O.J. No. 898. (Sup. Ct.)

[6] *McGee*, paras. 9-15.

> justice. On the latter question, such issues as the importance of the case and the need or desirability of producing the document; to ensure that it can be adequately and fairly presented are factors to be placed in the balance. In doing this, it is well to remember that only the particular facts relating to the case are revealed…

In this case, considering the issues to be decided, and having examined the documents, the Board finds that the balance should be struck so as to fairly disclose the development of the regulatory scheme while not disclosing the discussion of political considerations at the Cabinet level.

It appears that the proposed regulation evolved from a broader to a more narrow scope, as it went through the development and approval process, but new documentation was not prepared to reflect this. In the Board's view, this is unremarkable, as it likely reflects the reality of developing many regulations. Things change as they go through the process, and the final product that emerges is not necessarily what was originally proposed. This is to be expected as various considerations are taken into account. That does not mean that the documents should be edited to remove all references to anything that was not incorporated into the regulation.

Many of the redactions are not severable from the rest of the documents. In some cases, words and phrases have been removed with the effect of changing the meaning of the document. This risks inadvertently misleading the parties and the Board by making it appear that the documents were prepared in support of the scheme eventually adopted when this was not their original purpose. The Board will not permit any redactions which, in our view, may have this effect.

The Board also notes the comments of the Federal Court of Appeal in *Apotex Inc. v. Canada*, [2005] F.C.J. No. 1021 (C.A.) that documents produced may identify a train of inquiry, which may help or hinder the case of the party producing them. The Board finds that the Applicants are entitled to see the documents as they were created as this may assist them in making their case. The Board is not prepared to risk narrowing the scope of the arguments at this stage by limiting access to the record that led to the passage of the regulation.

THE DOCUMENTS

Undertaking JT 1.4 is to take under advisement whether to produce any written recommendations or analysis provided to the Minister of the increase in the Ontario Solar Thermal Heating ("OSTHI") funding levels. The Attorney General's factum indicates that these briefing notes have been redacted to remove third-party identifying information. No submissions were made by any party suggesting that this information should be disclosed, and the Board will not order its production.

Undertaking JT 1.5 is to take under advisement whether to produce any analysis/advice given to the Minister respecting the content of ss. 26.1 and 26.2 of the Act, at the time of the development of the *Green Energy and Green Economy Act* ("GEA"). Three documents were provided, portions of which have been redacted for relevance.

The Board has reviewed each of these documents and makes the following findings:

Exhibit 1: Copy of GEA Rational For Reallocation of MEI Program Cost to Ratepayers

The Board finds this document must be produced in its entirety. Quite apart from any question of relevance, the portions proposed to be redacted change the meaning of the document. While it does appear that the document was prepared in anticipation of a different regulatory scheme than was eventually implemented, it must be read as a whole to have any meaning. The weight to be given to a document which describes a different scheme will of course be a matter of argument.

In addition, the Board finds that there is nothing in this document which would be prejudicial if produced. There are some comments from one staff member to another about why certain sections have been presented in a particular way, but this is a briefing note to the Minister, not minutes of a Cabinet meeting, nor indeed the comments of the Minister. It does not, in the Board's view, meet the test in *Carey* of being part of "the decision-making level of government".

Exhibit 2: Copy of Program Cost Recover Outline – Original

The Board finds that this document must also be produced in its entirety. As with Exhibit 1 above, the redactions under the heading "Policy Intent" change the meaning of the document, and are not, in the Board's view, clearly irrelevant.
The Board also finds that there is nothing in this document that is prejudicial if produced.

Exhibit 3: Program Cost Recover 2009 - 04 - 27+ Pk's Comments

This document is a slide deck used to brief the Minister. The Board finds that this document must be produced in its entirety.

References to certain programs which did not become part of the regulatory scheme have been removed. The Board finds that this cannot be done without changing the meaning of the document. For example, there were three programs described on page 2 – one has been redacted. However, the reference to the total cost of the programs has not been changed as it cannot be without editing the document after the fact. The Board assumes that the figure of $150 million used in paragraph 1 on this page is no longer accurate as one program has been removed. Another conclusion may be that program did not cost anything and that is why it is not part of the scheme. Only by looking at the document as a whole can this sort of ambiguity be avoided.

Tthe sections of the document dealing with time lines and cost recovery examples of programs that do not form part of the scheme may be of some relevance as they might demonstrate a general approach to the implementation of the scheme. The Board does not find that they are clearly irrelevant.

This document outlines a proposal. Apart from the fact that some aspects of it did not find their way into regulation does not make disclosure of it prejudicial.

Undertaking JT 1.5 B is to take under advisement whether to provide any Ministry reports or analysis that supports the creation and implementation of Ontario Regulation 66/10. This document has been redacted for relevance and for solicitor client privilege.

This document is a 15 page slide deck used to update the Minister. This document has been redacted to remove parts of sentences which, in the Board's view, change their

meaning, and to remove references to some parts of the briefing. The Board finds that the document cannot be properly understood unless read as a whole. For example, as redacted, the fourth bullet point on page 3 reads:

> The $140 million that needs to be recovered is next apportioned to … electric ratepayers by determining the costs associated with … electricity savings that HESP and OSTHI would yield. MEI estimates the division to be: $40 million (electricity)… .

The redactions make it difficult to understand the meaning of the paragraph, and, more importantly, in the Board's view, is not what was prepared by Ministry staff and presented to the Minister. This document has several such redactions.

On Page 4, the section asking the Minister for direction has been removed. Even if discussions with the Minister are included in the ambit of Cabinet decision-making, the parts that have been redacted are not his directions, but matters on which direction is sought. Those are not clearly irrelevant, nor, in the Board's view, should they be treated as Cabinet discussions.

With respect to the issues, some of the advice from staff has been redacted. In the Board's view it may be misleading to include only some points and not others. With the exception of the portions for which solicitor client privilege is claimed, the Board finds that this document must be produced in its entirety.

Undertaking JT 1.6 is to take under advisement whether to provide any written proxy for a business case underlying Ontario Regulation 66/10. A three-part document was produced, which is also the answer to **Undertaking JT 1.7**[7]. This is described as a document provided to Cabinet.

It consists of three exhibits:

Exhibit 1: Application and Report to Treasury Board/Management Board of Cabinet.

This 2 page document has been redacted for relevance.

[7] To take under advisement whether to provide a regulatory impact assessment or proxy prepared in connection with O. Reg. 66/10.

In this case, the redaction in the “Section 5: Purpose of Request”, does not refer to the request being made, but is a statement about future requests and activities anticipated by MEI. In the Board’s view, these are not relevant to the question of whether there is a regulatory scheme, and, disclosure of these could compromise future government decision making.

This appears to be the only redaction in this document, and the Board will not order that this information be revealed.

Exhibit 2: Ministry of Energy and Infrastructure: MB 20 For MEI's Conservation Cost Recovery From Electricity Utilities and IESO (“Independent Electricity System Operator”).

This 5 page exhibit has been redacted for relevance and for solicitor client privilege.

The third paragraph under “1.0 Ministry Request” is also a statement of future intention, and may be redacted for the same reasons as apply to the previous document.

On Page 2, as the redactions in the first full paragraph change the meaning of the document, they will not be permitted.

The first sentence in the next paragraph has been redacted for relevance. It relates to political considerations and is not, in the Board’s view in any way relevant as to whether there is a regulatory scheme. The Board will not order its disclosure.

The rest of the paragraph is asserted to be solicitor client privileged, and need not be disclosed.

In the discussion of options, all except the recommended option have been redacted. The Board finds that the descriptions of the various options must be included.

Following each is a discussion of the implications. Some portions are asserted to be solicitor client privileged. The Board finds that the remainder is a discussion of the political implications and as such is not relevant to the existence of a regulatory scheme. These need not be disclosed.

The last sentence of Section 3.0 deals with future intentions so is not relevant and need not be disclosed.

The Board finds that all parts of Section 5.0 Financial Implications are relevant so must be disclosed.

The redactions under Section 6.0 Recommendation are permitted as they are related to future intentions and not relevant to the consideration of whether there is a regulatory scheme.

Exhibit 3: Legislation and Regulations Committee: Ministry Approval Form.

This 6 page document has been redacted for relevance and for solicitor client privilege.

The Board finds that Page 1 must be produced in its entirety as it relates to regulations passed as a group. It may be argued that they are part of the regulatory scheme. As the other instruments have been passed they are a matter of public record and there is no possible prejudice in disclosing them.

Page 2 is a statement of future intention and is not relevant and may remain redacted.

The parts of Page 3 for which solicitor client privilege is claimed need not be disclosed, but the rest of the page must be for the same reasons as Page 1.

The information on Page 4 relates to costs and may be relevant in determining whether there is a scheme; it must therefore be disclosed.

Page 5 must be disclosed in its entirety for the same reasons as pages 1 and 3.

The redactions on Page 6 deal with stakeholder consultations. These are not relevant and their disclosure may be prejudicial. They need not be disclosed.

COSTS

The Board finds it appropriate to make provision for eligible parties to file their claims for costs for the period of August 6, 2010 to the end of the hearing of the motion, April 21, 2011.

THE BOARD ORDERS THAT:

1. The Attorney General serve copies of the documents referred to in this decision and unredacted in accordance with this decision by **June 14, 2011.** Copies of the documents unredacted in accordance with this decision are to be filed with the Board and served on the intervenors of record in this proceeding.

2. Mr. Beale re-attend to be examined on the contents of the documents described in subparagraph (1) at a time to be determined by the Board.

3. Parties that have been found eligible for an award of costs may file their cost claims for the period of August 6, 2010 to the end of the hearing of the motion, April 21, 2011 by **June 20, 2011**. Cost claims must be filed in accordance with the Board's Practice Direction on Cost Awards. The Board will make provisions regarding cost claims for later phases of the proceeding at a later date.

4. All filings to the Board must quote file number EB-2010-0184, be made through the Board's web portal at www.errr.ontarioenergyboard.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.ontarioenergyboard.ca. If the web portal is not available you may email your document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

5. All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

Attention: Board Secretary
Ontario Energy Board
P.O. Box 2319
2300 Yonge Street, 27th Floor
Toronto, ON M4P 1E4

Filings : www.errr.ontarioenergyboard.ca
E-mail: Boardsec@ontarioenergyboard.ca

Tel: 1-888-632-6273 (toll free)
Fax: 416-440-7656

DATED at Toronto **June 8, 2011**

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Walli
Board Secretary

Attachment 1

List of undertakings and reference to transcript page number.

UNDERTAKING NO. JT1.1: TO ADVISE IF THERE ANY OTHER CHANGES BETWEEN CONTENTS OF AFFIDAVIT EXHIBIT A TO THE GRANT TABLE AMOUNTS. Page 20

UNDERTAKING NO. JT1.2: TO PROVIDE ANALYSIS OF PEAK DEMAND REDUCTIONS BROUGHT ABOUT BY THESE PROGRAMS. Page 47

UNDERTAKING NO. JT1.3: TO ADVISE IF WRITTEN ESTIMATES EXIST FOR PROGRAM FUNDING ALLOCATION. Page 65

UNDERTAKING NO. JT1.4: TO PRODUCE ANY WRITTEN RECOMMENDATION OR ANALYSIS PROVIDED TO THE MINISTRY FOR INCREASE IN OSTHI FUNDING LEVELS. Page 68

UNDERTAKING NO. JT1.5: TO PROVIDE ANY STUDY DONE ON COST RECOVERY IMPLICATIONS. Page 70

UNDERTAKING NO. JT1.6: TO PROVIDE ANY WRITTEN PROXY FOR A BUSINESS CASE UNDERLYING ONTARIO REGULATION 66/10. Page 83

UNDERTAKING NO. JT1.7: TO PROVIDE REGULATORY IMPACT ASSESSMENT OR PROXY PREPARED IN CONNECTION WITH THE ONTARIO REGULATION 66/10. Page 84

UNDERTAKING NO. JT1.8: TO PROVIDE THE NUMBER OF MEGAWATTS SAVED FROM THE HESP PROGRAM. Page 143

UNDERTAKING NO. JT1.9: TO PROVIDE THE NUMBER OF MEGAWATTS SAVED FROM THE OSTHI PROGRAM. Page 144

UNDERTAKING NO. JT1.10: TO PROVIDE CALCUKLATIONS OF ANTICIPATED QUANTIFIED GREENHOUSE GAS EMISSIONS REDUCTION ASSOCIATED WITH HESP AND OSHTI. Page 150

UNDERTAKING NO. JT1.11 (1): TO PROVIDE COST ESTIMATES FOR THE INCENTIVE COSTS UNDER EACH OF THE HESP AND OSTHI PROGRAMS FOR GOVERNMENT FISCAL YEAR ENDED MARCH 31, 2011. Page 158

UNDERTAKING NO. JT1.11 (2): TO PROVIDE DATE FOR YEAR-END ESTIMATES OF INCENTIVE COSTS. Page 159

UNDERTAKING NO. JT1.12: TO PROVIDE DETAILS OF LEGISLATIVE CONTEXT MR. BEALE RELIED ON IN MAKING RECOMMENDATIONS ON HOW TO DEFINE THE SPECIAL PURPOSES. Page 163