

**ONTARIO ENERGY BOARD**

**IN THE MATTER OF** the Ontario Energy Board Act,  
1998, S.O. 1998, c. 15, Schedule B;  
**AND IN THE MATTER OF** the Electricity Act, 1998,  
S.O. 1998, c. 15, Schedule A;  
**AND IN THE MATTER OF** the Statutory Powers  
Procedure Act, R.S.O. 1990, c. S.22;  
**AND IN THE MATTER OF** the Collection Agencies Act,  
R.S.O. 1990, c. C.14;  
**AND IN THE MATTER OF** the an application pursuant  
to section 74 of the Ontario Energy Board Act, 1998,  
S.O. 1998, c. 15, Schedule B; by Enwin Utilities Ltd. to  
amend its Electricity Distribution Licence ED 2002-0527

**BETWEEN:**

**R. J. POTOMSKI**

Appellant  
(Affected Person/Consumer)

and

**JENNIFER LEA**

Respondent  
(Employee of the Board)

and

**ENWIN UTILITIES LTD.**

Respondent  
(Applicant)

**WRITTEN OF THE APPELLANT,  
R. J. POTOMSKI, TO THE WRITTEN SUBMISSION  
OF THE RESPONDENT, ENWIN UTILITIES LTD.  
ON PRELIMINARY ISSUES**

**THE APPELLANT, R. J. POTOMSKI**, makes the following response to the submissions of the respondent, Enwin Utilities pursuant to the order of the Ontario Energy Board, dated January 24, 2012:

**1. Comments that should be struck and expunged from the record:**

- a. References to the Appellant's title or status outside of meeting the requirements of the statutory requirements of requesting an Appeal to the Ontario Energy Board are irrelevant to the issues that the OEB has requested the parties to address.
- b. Reference to the Appellant's relationship with the Law Society of Upper Canada is not relevant to the subject-matter of this proceeding.
- c. References to the Appellant's status in this proceeding as meeting the requirements of legislation and the rules related to matters before the OEB are the only issues that should be addressed.
- d. The Appellant, prior to the issues before it, has never been involved with a hearing before the OEB.
- e. Andrew Sasso is licensed by the Law Society of Upper Canada<sup>1</sup> who has a great deal of experience on matters before the OEB.
- f. Erica Krygsman, who assisting Mr. Sasso in this matter, is licensed by the Law Society of Upper Canada<sup>2</sup> who has a great deal of experience on matters before tribunals.
- g. Michael Duben is Enwin's Vice President Customer Relations<sup>3</sup>, is licensed by the Law Society of Upper Canada<sup>4</sup> who has a great deal of experience on matters before tribunals.

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<sup>1</sup> See attached a copy of a page from the website of the Law Society of Upper Canada, Attachment "A"

<sup>2</sup> See attached a copy of a page from the website of the Law Society of Upper Canada, Attachment "B"

<sup>3</sup> See attached a copy of a page from Enwin's website showing its management team, Attachment "C"

<sup>4</sup> See attached a copy of a page from the website of the Law Society of Upper Canada, Attachment "D"

- h. The Appellant is one of many consumers that are required to deal with lawyers at Enwin from first line customer relations to complaints at the OEB.
- i. The Appellant has not found any history in matters before the OEB where the board took into consideration that Enwin has well qualified, litigation experience lawyers that control Enwin's dealings with the public.
- j. I ask that the paragraph titled "Appellant" in the written submission be struck and expunged from the record along with the footnote connected to the paragraph.

## 2. **Timeliness of the Notice of Appeal**

- a. The decision that the Appellant appeals to the OEB was made by an employee of the OEB on December 12, 2011 by the delegated power give to the employee by section 6<sup>5</sup> of the Ontario Energy Board Act (OEBA);
- b. The Notice of Appeal was served and filed on December 27, 2012 in a timely fashion pursuant to section 7<sup>6</sup> of the OEBA.
- c. It is not unusual for an appellant to file and an administrative tribunal to accept a Supplementary Notice of Appeal if the Appellant feels the initial notice was deficient in grounds and the order(s) requested.
- d. Examples of tribunals accepting a Supplementary Notice of Appeal to supplement the original Notice of appeal would include but not limited to the following:

- i. **Howden v. Ontario (Transportation), 2011 HRTO 1280 (CanLII)**  
— 2011-07-05 Human Rights Tribunal of Ontario — Ontario

<sup>5</sup> OEBA section 6. (1) The Board's management committee may in writing delegate any power or duty of the Board to an employee of the Board. 2003, c. 3, s. 13.

<sup>6</sup> OEBA section 7.(1)A person directly affected by an order made by an employee of the Board pursuant to section 6 may, within 15 days after receiving notice of the order, appeal the order to the Board. 2003, c. 3, s. 13.



doctrine of res judicata — ejection fraction — current drug therapy — previous — downgrade [...] A **supplementary Notice of Appeal** dated December 7, 2007, put forward four grounds for appeal including the following: "The decision is in breach of the Ontario Human Rights Code". [...]

- ii. **Law Society of Upper Canada v. Thangavel Muthali Kesavan, 2012 ONLSAP 6 (CanLII) — 2012-01-31 Law Society Appeal Panel — Ontario** prosecutors — waiver of privilege — conflict of interest ground — relief — allegation [...] [25] If the applicant intends to pursue the conflict of interest ground of appeal, he shall serve and file a **supplementary notice of appeal**, which should include any such ground [...]
- iii. **Howden v. Ontario (Transportation), 2010 HRTO 515 (CanLII) — 2010-03-08 Human Rights Tribunal of Ontario — Ontario** appropriately dealt with the substance — human — accommodation — proceeding — downgraded [...] A **supplementary Notice of Appeal** dated December 7, 2007, put forward four grounds for appeal including the following: "The decision is in breach of the Ontario Human Rights Code". [...]
- iv. **Law Society of Upper Canada v. Karen Lea Crozier, 2004 ONLSAP 4 (CanLII) — 2004-04-22 Law Society Appeal Panel — Ontario** professional misconduct — penalty — particulars — evidence — disbarment [...] **Supplementary notices of appeal** dated May 28, 2003, July 7, 2003, and September 22, 2003, respectively were also filed. [...]
- v. **Law Society of Upper Canada v. Robert Boyd Statton, 2004 ONLSAP 8 (CanLII) — 2004-09-23 Law Society Appeal Panel — Ontario** member — costs — fresh evidence — reasonable suspicion — authorization [...] [68] The notice of appeal and **supplementary notice of appeal** filed by the member raised a number of grounds with respect to the appeal including the fact that the Law [...]

- e. I believe the reference made to the supplementary notices in the aforementioned cases supports that these notices are accepted by tribunals with authority given by the Statutory Powers Procedure Act R.S.O. 1990, CHAPTER S.22 (SPPA).

- f. An administrative employee of the OEB did not make a decision pursuant to Section 4.5<sup>7</sup> of the SPPA, on receipt of the Notice of Appeal.
- g. Enwin Utilities Ltd. (Enwin) did not make a formal motion etc. to strike the Notice of Motion prior to the service and filing of the Supplementary Notice of Motion.
- h. Enwin has not submitted any law or legal foundation to support its position that the Notice of Appeal was not timely.

### 3. **Sufficient Grounds for the Appeal**

- a. Jennifer Lea (Lea) did not take into consideration in her decision the requirements of the Collection Agency Act, R.S.O. 1990, C. c.14 (CAA)
- b. Lea could have and should have made a condition that Enwin would be required to be in compliance with the CAA before the exemption is granted.
- c. I would like to suggest this analogy:
  - i. Municipalities through their by laws and the law of Ontario can issue a license to a person to drive a taxicab.
  - ii. Compliance to obtain and keep a cab driver's licence could include but not limited to:
    - 1. Not having a Criminal Record
    - 2. Keeping the cab clean
    - 3. Keeping up with paperwork

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<sup>7</sup> SPPA section 4.5 (1) Subject to subsection (3), upon receiving documents relating to the commencement of a proceeding, a tribunal or its administrative staff may decide not to process the documents relating to the commencement of the proceeding...

4. Driving a vehicle that has a Municipal Taxi Licence.

- iii. Once a person has a licence to be a cab driver, he is still required to be in compliance with the requirements of the Highway Traffic Act.
- iv. The compliance under the Highway Traffic Act would include but not limited to the following:
  - 1. Hold a certain class of licence issued by the Province.
  - 2. Keeping the vehicle safe.
  - 3. Driving a vehicle that has a valid plate that is issued by the Province.
- d. A cab driver, even though he can, may not drive a taxicab with only a license issued by the Province under the Highway traffic Act.
- e. It is the Appellant's position that Enwin has been given permission under the OEBA to collect money for a third party but cannot do so, lawfully until it complies with the CAA.
- f. If the OEB does not force Enwin to comply with the CAA, Enwin may use the doctrine of res judicata to circumvent a compliance hearing in any other forum.
- g. Lea took Enwin at its word that its systems could not be compliant with the OEB without an exemption.
- h. Enwin did not offer nor was any explanation requested from the company installing the new system for Enwin.



- i. SAP Canada is the company updating the software at Enwin. The web page<sup>8</sup> suggest, contrary to the submissions of Enwin that the conversion of the software should have be completed in 2011.
  - j. Neither Enwin nor SAP Canada submitted concrete evidence based on fact that the system overhaul is not completed.
  - k. Any submissions by Enwin in its application were not sworn and open to cross examination.
  - l. Lea did not allow for a complete and thorough analysis of the application.
4. Any other reply and material the Appellant may submit.

Respectfully Submitted

February 15, 2012

R.J. Potomski  
P.O. Box 21117,  
Windsor, Ontario N9B 3T4  
Tel: 248-677-3482  
Fax: 877-702-8993  
Email: [rip@potomski.com](mailto:rip@potomski.com)  
Appellant

**TO:** Secretary,  
for the Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
Toronto, Ontario, Canada  
M4P 1E4  
Email: [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)

**AND TO:** Jennifer Lea,  
Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street  
Toronto, Ontario, Canada  
M4P 1E4  
[jenniferlea@ontarioenergyboard.ca](mailto:jenniferlea@ontarioenergyboard.ca)  
c/o [boardsec@ontarioenergyboard.ca](mailto:boardsec@ontarioenergyboard.ca)  
Respondent

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<sup>8</sup> See at paragraph 3 in red on a copy of the web page of SAP Canada, attachment "E"

**AND TO:** Andrew Sasso,  
Enwin Utilities Ltd.,  
787 Ouellette Ave  
Windsor Ontario  
N9A 5T7  
Email: [regulatory@enwin.com](mailto:regulatory@enwin.com)  
For the Respondent



Attachment "A"  
to the Appellant's  
reply dated  
February 15, 2012

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du Haut-Canada
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**Lawyer Contact Information**[New Search](#)**Contact Information**

Full Name	Andrew Joseph Sasso
Licence Type	Lawyer ( <a href="#">L1</a> )
Real Estate Insured †	
Status <a href="#">Status definitions</a>	Practising Law - Employed
Business Name	Enwin Utilities Ltd
Business Address	787 Ouellette Ave Windsor Ontario N9A 5T7
Phone	519 255 2735
Fax	519 973 7812
Email address	
Current Practice Restrictions	None
Trusteeships	None
Discipline History	None



This directory does not include information about discipline charges pending against a lawyer or a paralegal. See [regulatory proceedings](#) for information on regulatory notices and current hearings.

See [important notice](#) for information about the frequency of updates and the content of this directory.

To obtain further information contact the Law Society's Resource Centre at [lawsociety@lsuc.on.ca](mailto:lawsociety@lsuc.on.ca), or 416-947-3315 or 1-800-668-7380 ext. 3315.

† A "Yes" in the Real Estate insured field indicates that lawyer has the required insurance to provide Real Estate Services to the public.

Attachment "B"  
to the Appellant's  
reply dated  
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## Lawyer Contact Information

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### Contact Information

Full Name	Erica Wilhelmina Krygsman
Licence Type	Lawyer ( <a href="#">L1</a> )
Real Estate Insured †	Yes
Status <a href="#">Status definitions</a>	In Private Practice
Business Name	Kirwin Partners LLP
Business Address	423 Pelissier St Windsor Ontario N9A 4L2
Phone	519 255 2888 Ext. 758
Fax	519 973 7812
Email address	
Current Practice Restrictions	None
Trusteeships	None
Discipline History	None

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Attachment "C"  
to the Appellant's  
reply dated  
February 15, 2012

## MANAGEMENT TEAM

Each member of our Senior Management Team contributes significantly towards helping us to achieve our goals as a company.

### Management Team

**Maxwell Zalev**

President and CEO

**Victoria Zuber**

Vice President & Chief Financial Officer

**John Wladarski**

Vice-President, Hydro Operations

**Michael Duben**

Vice-President Customer Relations



**Barbara Peirce Marshall**

Manager Corporate Communications & Public Relations

**James Brown**

Director, Infrastructure

**Pat Devin-Doan**

Director, Customer Service

**Marvio Vinhaes**

Director, Engineering

**Gregg Merner**

Director, Corporate Services

**Alison Keys**

Director, Finance

**Mike McKinnon**

Director, Organizational Development

**Lawrence Musy**

Director of Conservation and Energy Management

**John Doan**

Director, Site Services

**Grant Pennington**

Director, Operations

**Phil E. Partington**

Director, IT Services

**Andrew J. Sasso**

Director, Regulatory Affairs

Attachment "D"  
to the Appellant's  
reply dated  
February 15, 2012



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## Lawyer Contact Information

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### Contact Information

Full Name	Michael Du Ben
Licence Type	Lawyer ( <a href="#">L1</a> )
Real Estate Insured †	
Status <a href="#">Status definitions</a>	Not Practising Law - Employed
Business Name	Corporation of The City Of Windsor- Parks & Forestry
Business Address	350 City Hall Square W Windsor Ontario N9A 6S1
Phone	519 255 6100 Ext. 6163
Fax	519 255 7990
Email address	
Current Practice Restrictions	None
Trusteeships	None
Discipline History	None

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Attachment "E"  
to the Appellant's  
reply dated  
February 15, 2012

## ENWIN SELECTS SAP TO POWER GROWTH

Ontario Utility to Replace Legacy Systems With SAP® Software to Increase Efficiency and Transparency Across Operations, Reduce IT Costs, Leverage Market Opportunities and Address New Financial Reporting Requirements

### French Version

ORLANDO, Fla. and WINDSOR, Ont. - May 14, 2009 - — SAP Canada Inc., a subsidiary of [SAP AG](#) (NYSE:SAP), today announced that *EnWin* Utilities Ltd., the municipal electricity distributor for the city of Windsor, Ontario, has selected SAP® software to help increase visibility and efficiency across its operations, lower IT costs and build a solid foundation to address future opportunities in advanced metering infrastructure (AMI) and smart grid adoption. The announcement was made at [SAPPHIRE® 2009](#), SAP's international customer conference, being held in Orlando, Florida, from May 11-14.

*EnWin* will replace its Oracle and IBM software with the SAP® ERP application, SAP® for Utilities solutions and solutions from the SAP® BusinessObjects™ portfolio. These solutions are designed to help organizations like *EnWin* gain a clear view into its business, enabling them to make more sound decisions and optimize performance. Deloitte Canada was selected as the implementation partner for the project, which will be delivered using a phased approach.

SAP ERP, proven enterprise resource planning software from SAP, is expected to help *EnWin* to better serve its customers, employees and stakeholders by providing the tools necessary to automate and streamline its business processes, including financials, human resources and procurement; and improve access to data for more efficient reporting purposes. **The application is also expected to enable efficient and effective conversion to International Financial Reporting Standards (IFRS), which will become mandatory for Canadian companies in 2011.**

"It is critical that we prepare *EnWin* for the many changes that will affect Canadian utilities in the near future, such as Ontario's smart metering initiative, the proposed *Green Energy and Green Economy Act 2009* and IFRS, and enhance our ability to drive opportunities from these changes," said Victoria Zuber, chief financial officer, *EnWin* Utilities Ltd. "We selected SAP because of its successful track record and commitment to Canada's utility industry. Its software provides the broad and integrated functionality we need to further enhance efficiencies in our operations, gain greater transparency to comply with new regulatory requirements and lower our costs of owning IT. Ultimately, this will help us to improve service to our customers."

*EnWin* will also implement the SAP® Customer Relationship Management and Billing for Utilities package and enterprise asset management solutions within the SAP for



Utilities portfolio, which provides comprehensive, scalable and flexible solutions to address the unique business requirements of the utility industry. The solutions help utilities to automate business processes, increase profitability and support innovative business models and customer services. In addition, *EnWin* will leverage solutions from the SAP BusinessObjects portfolio to enhance business intelligence; information management; enterprise performance management; and governance, risk and compliance. These solutions are expected to help *EnWin* to integrate data for consistency and accuracy, gain broader insight through immediate access to trusted business information, improve strategic planning and analysis and mitigate risk.

"In today's challenging economy, Canadian utilities need efficient processes, proven technology and innovative business partners committed to the long-term success of their customers and to delivering a solid return on investment," said Cathy Tough, national director, Utilities, SAP Canada Inc. "They are increasingly looking to move away from best-of-breed environments to integrated solutions that lower the total cost of IT ownership and deliver shorter time to value. In Canada, SAP has a larger utilities customer base than any other vendor, largely due to its commitment to help Canadian utilities adapt to changing market and regulatory environments and achieve their business goals. We look forward to helping *EnWin* drive continued success and growth in the Ontario market."

#### **SAPPHIRE® 2009 Orlando**

More than 10,000 customers, partners and technical experts are convening at SAPPHIRE® 2009 to discover how SAP and its thriving partner ecosystem are delivering IT solutions that help today's best-run businesses achieve clarity in every area of their operations. SAP's premier educational and networking event, SAPPHIRE is the one occasion where senior executives, business managers, and decision-makers can come together every year to explore how innovative business solutions foster long-term, profitable growth. SAPPHIRE 2009 is being held in Orlando, Florida, May 11-14. For more information, please visit [www.sap.com/sapphire](http://www.sap.com/sapphire). Join the conversation via Twitter at #sapphire09.

Based on the success of last year's events, SAP and the Americas' SAP Users' Group (ASUG) are co-locating their premier events in Orlando, where the 2009 ASUG Annual Conference takes place May 11-14.

In addition to SAPPHIRE 2009, SAP is also hosting SAP® World Tour 2009, a series of local events in more than 70 cities through Europe, the Middle East, Asia and Latin America. For more information, visit [the SAP World Tour event page](#) on sap.com.

#### **Note to Editors:**

Webcasts, announcements, media roundtables, keynote presentations and podcasts from SAPPHIRE 2009 will be available in the event's virtual newsroom at: [www.sap.com/about/newsroom/sapphire](http://www.sap.com/about/newsroom/sapphire). To preview and download broadcast-standard stock footage and press photos digitally, please visit [www.sap.com/photos](http://www.sap.com/photos). On this platform, you can find high-resolution material for your media channels. To view video

stories on diverse topics, visit [www.sap-tv.com](http://www.sap-tv.com). From this site, you can embed videos into your own Web pages, share video via e-mail links and subscribe to RSS feeds from SAP TV.

#### **About EnWin Utilities Ltd**

*EnWin Utilities Ltd.* is Windsor's Local Distribution Company, responsible for the distribution of electricity and the servicing and maintenance of Windsor's power line infrastructure. As well, *EnWin Utilities Ltd.* is a management services company providing fleet, billing, collections, credit, financial, human resources, customer service; and information technology services to Windsor Utilities Commission and City of Windsor. For further information, please visit [www.enwin.com](http://www.enwin.com).

#### **About SAP Canada Inc.**

SAP Canada Inc., based in Toronto, is a subsidiary of SAP AG (NYSE:SAP), the world's leading provider of business software\*. SAP delivers solutions to help Canadian enterprises of all sizes to create efficiencies across supply chains and business operations, optimize performance and profitability, reduce costs, and increase competitive advantage. In addition, SAP Labs Canada, a division of SAP Canada Inc., develops cutting-edge software for a wide array of SAP applications from its Montreal, Toronto and Vancouver locations.

SAP Canada Inc. and Business Objects Corporation have collectively more than 1,200 customers and over 2,000 employees across the country. SAP Canada Inc. has been named as one of the 50 Best Employers in Canada for 2009 by Hewitt Associates.

For further information, please visit [www.sap.ca](http://www.sap.ca).

#### **About SAP**

SAP is the world's leading provider of business software(\*), offering applications and services that enable companies of all sizes and in more than 25 industries to become best-run businesses. With more than 86,000 customers in over 120 countries, the company is listed on several exchanges, including the Frankfurt stock exchange and NYSE, under the symbol "SAP." For more information, visit [www.sap.com](http://www.sap.com).

(\*) SAP defines business software as comprising enterprise resource planning and related applications.

Any statements contained in this document that are not historical facts are forward-looking statements as defined in the U.S. Private Securities Litigation Reform Act of 1995. Words such as "anticipate," "believe," "estimate," "expect," "forecast," "intend," "may," "plan," "project," "predict," "should" and "will" and similar expressions as they relate to SAP are intended to identify such forward-looking statements. SAP undertakes no obligation to publicly update or revise any forward-looking statements. All forward-looking statements are subject to various risks and uncertainties that could cause actual results to differ materially from expectations. The factors that could affect SAP's future financial results are discussed more fully in SAP's filings with the U.S. Securities and



Exchange Commission ("SEC"), including SAP's most recent Annual Report on Form 20-F filed with the SEC. Readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of their dates.

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