



Jay Shepherd

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BY EMAIL

March 11, 2014
Our File: EB20130159

Goodmans LLP
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON

Attn: Peter Ruby

Dear Mr. Ruby:

Re: EB-2013-0159 – Oakville Hydro – CEA Intervention

We are counsel to the School Energy Coalition ("SEC"). SEC has an opportunity to review your letter dated March 4th on behalf of the Canadian Electricity Association ("CEA") requesting intervenor status to respond to the motion as well as the Board's Procedural Order No.4.

In your letter seeking intervenor status, you outlined a number of arguments that the CEA intends to make if was granted such status. One of those proposed arguments is that:

The SEC, Oakville Hydro and the Board would infringe the CEA's copyright in these materials contrary to the Federal *Copyright Act* by reproducing or authorizing the reproduction of these materials without the consent of the CEA, which consent the CEA has not granted. Notably, the *Copyright Act* binds the provincial Crown and is paramount to any Order of the Board in conflict with this Federal statute.

SEC writes to remind the CEA of its obligations pursuant to Rule 38 of the Board's *Rules of Procedure and Practice*, and section 109 of the *Courts of Justice Act*. Specifically, Rule 38.01 requires:

Where a party intends to raise a question about the constitutional validity or applicability of legislation, a regulation or by-law made under legislation, or a rule of common law, or where a party claims a remedy under subsection 24(1) of the Canadian Charter of Rights and Freedoms, notice of a constitutional question shall be filed and served on the other parties and the Attorneys General of

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Canada and Ontario as soon as the circumstances requiring notice become known and, in any event, at least 15 calendar days before the question is argued. [emphasis added].

If the CEA plans to argue that the Board's authority to order disclosure is not applicable in the present circumstances because it would inconsistent with federal legislation, which would be paramount, then it must give notice to the Attorneys General of Ontario and Canada. This is because that argument would question the constitutional applicability of the Board's authority under the *Ontario Energy Board Act* and the *Statutory Powers and Procedure Act*, to order disclosure of the specific document sought in SEC's motion.

Yours very truly,
Jay Shepherd P.C.

A handwritten signature in black ink, appearing to be 'Mark Rubenstein', written over a horizontal line.

Mark Rubenstein

cc: Kirsten Walli, Board Secretary (by email)
Wayne McNally, SEC (by email)
Applicant and Intervenors (by email)