CME Interrogatory #1

Interrogatory

Reference: Application – pp. 2, 10-11,

At several instances in the application, OPG states that the overturning of Bill 124 was a change of law that OPG could not reasonably have anticipated (page 2), and states that part of the justification for its application for a variance account is that "unforeseen" events affecting the nuclear business can be addressed through an accounting order process (pages 10, 11).

According to the Court's decision in *Ontario English Catholic Teachers Assoc. v. His Majesty*, 2022, ONSC 6658, the decision that overturned Bill 124, a broad range of labour organizations challenged the constitutionality of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* in 10 separate applications. These applications were, to the extent CME can ascertain, filed prior to the settlement conference in EB-2020-0290 and the filing of the settlement proposal on July 16, 2021. Please see below for examples of the notices of application:

- OPSEU – https://opseu.org/wp-content/uploads/2020/03/0066_001.pdf, filed March 16, 2020;
- OFL – Found as a dropbox link in the following SEIU press release: Unions Move Forward In The Lawsuit Against Ford Government's Wage Restraint Legislation - SEIU Healthcare Union, filed March 3, 2020 and Amended December 3, 2020

Many of the labour organizations that challenged the constitutionality of Bill 124 also put out public press releases about their constitutional challenges. See the following links:

- "Education Unions Launch Charter Challenge Against Ford Government", dated November 7, 2019: Elementary Teachers' Federation of Ontario - Education Unions Launch Charter Challenge Against Ford Government (etfo.ca)
- "ONA Files Charter Challenge of Bill 124 - Bill will worsen hallway health care, discriminate against women", dated December 17, 2019: https://www.ona.org/news-posts/20191217-charter-challenge-bill-124/
- "Coalition of Ontario unions to launch Charter challenge, vowing to defend the rights of all Ontarians with aggressive campaign to repeal Bill 124", dated

December 17, 2019: Coalition of Ontario unions to launch Charter challenge, (globenewswire.com)

- "CUASA TO FILE CHARTER CHALLENGE AGAINST BILL 124", dated January 17, 2020: CUASA to File Charter Challenge Against Bill 124 – Carleton University Academic Staff Association

- "Ontario unions announce joint legal challenge and aggressive campaign to repeal Bill 124", dated December 16, 2019: https://cupe.on.ca/ontario-unions-announce-joint-legal-challenge-and-aggressive-campaign-to-repeal-bill-124/

The constitutional challenges were also widely published in the mainstream press. For instance:

- "Ontario's four major teachers' unions launching legal challenge against province", dated December 12, 2019: https://toronto.ctvnews.ca/ontario-s-four-major-teachers-unions-launching-legal-challenge-against-province-1.4726891

- "Ontario's four major teachers' unions launch charter challenges of Bill 124", dated December 12, 2019: Ontario's four major teachers' unions launch charter challenges of Bill 124 - The Globe and Mail

- "Unions escalate legal fight against Premier Doug Ford's 'unconstitutional' wage-cap law" dated December 17, 2019: Unions escalate legal fight against Premier Doug Ford's 'unconstitutional' wage-cap law | The Star

- "More Ontario unions launch charter challenges of Bill 124", dated December 17, 2019: More Ontario unions launch charter challenges of Bill 124 - The Globe and Mail

CME has the following questions as it relates to the foregoing:

(a) Please confirm OPG's understanding that notices of application, filed with the Superior Court of Justice, are in the public record and open for OPG to review, save and except for those matters where the Court has provided for a sealing or other confidentiality order.

(b) Please confirm that OPG was aware of the constitutional challenges launched by labour organizations against Bill 124 prior to the settlement conference in EB-2020-0290;

(c) Please confirm that OPG was aware, prior to the settlement conference in EB-2020- 0290, that the challenges launched by labour organizations against Bill 124 had a possibility of succeeding at a hearing;

(d) Please define how OPG understands the terms “reasonably anticipated” and “unforeseen” in the context of the current application.

Response

a) Confirmed.

b) Please see OPG’s response to Ex. L-SEC-02.

c) OPG did not take a view on the likelihood of success or failure of any of the legal challenges to Bill 124.

d) Without more specific context, OPG understands the terms “reasonably anticipated” and “unforeseen” to have their ordinary meanings.