

RE: minister's letter

From: "Bromm, William (CAB)" </o=govon/ou=ontario public sector - iserv
ems/cn=recipients/cn=brommwi">
To: "Silver, Caryl (MOF)" <caryl.silver@ontario.ca>
Date: Thu, 07 Sep 2017 11:25:01 -0400

Thanks Caryl,

As we discussed, there are two key principles that put the government in relatively safe territory with respect to any allegations of contempt arising from commencing this work prior to the passage of enabling legislation:

- Rulings recognizing that the government and the public service are entitled to engage in reasonable planning measures and work activities in anticipation of the passage of legislation, and
- Rulings (as recently as March 2017 re Fair Hydro) confirming that the Speaker cannot engage in any legal analysis required to determine whether legislation is necessary to authorize proposed work.

However, once a bill is introduced, the Speaker can be asked to rule on whether communications raise any questions of contempt. This is exactly what happened with the Fair Hydro communications. In March, the Speaker relied on principle 2 to say he could not find a Point of Privilege had been made out, but in May, after the bill was introduced, the Point of Privilege was renewed. The Speaker then looked at the same communications and decided he did not have to engage in any legal analysis to see whether the language was sufficiently qualified with respect to the requirement to pass legislation. In that case, he found that it was because of a link to a website that indicated legislation needed to pass.

The draft letter does not signal the need for any legislation at all, which drops in into both principles above. But once a bill is introduced, the letter and any matching announcements could invite a repeat of the Fair Hydro scenario.

The letter does say "under the proposed approach", which the government will be able to say signals a recognition that this is a proposal, not a definitive path forward. It is not as strong as the usual, "if passed, the bill will..." language, but it is at least something. I would try to reinforce the idea that this is "proposed" in some additional places.

In addition, I find that some of the timeline language may be viewed as too definitive. Saying when something will be in effect with no qualification can be a problem based on the 1996 MegaCity ruling by the then Speaker. This ruling was cited by the Speaker in May, but because the definitive language of the Fair Hydro ad was qualified by the website, the Speaker found the overall context was acceptable.

Arguably the government can argue that the current timing language does not presume the passage of legislation, but sets a *target date* for the completion of all necessary work, which by implication includes any necessary legislation.

However, because we are in an environment where these communications will be closely scrutinized, I think it would be prudent to qualify the timelines a bit more to bolster that argument (particularly if there is no desire to reference legislation at this point).

It is my understanding that some of this is based, at least in part, on the timelines set by the Federal Government. I wonder whether there is a way to leverage that so make it clear that the government is not presuming passage by a certain date, but working to meet a deadline set by the Federal Government. For example, you could do something like the following (new references highlighted):

As previously mentioned, the proposed Federal legislation has set July 2018 as the effective date for the legal distribution of non-medical cannabis across Canada. In order to meet that deadline, our proposed retail and distribution system would include an online sales channel by July 2018 and up to 150 stand-alone stores by the end of 2020, starting with 40 by July 2018 and rising to 80 by July 2019. This proposed retail system would sell cannabis and cannabis-related items only, not alcohol.

Ontario has extensive experience in dealing with controlled substances in a socially responsible manner, and indeed, the LCBO is broadly recognized for its decades of excellence in this regard. Our proposed approach is to build on the expertise and back-office capabilities of the LCBO to set up the Crown corporation, which would have a subsidiary relationship to the LCBO. Our priority is to reduce the illegal market by building on our strengths to create an efficient and secure system for Ontarians across the province.

*To that end, I am writing to ask the LCBO to work with my ministry to establish a cannabis project team to initiate the planning and preparations required to **meet the Federal deadline** and ensure that the online retail channel and 40 stores are operational by July 2018.*

Happy to chat.

From: Silver, Caryl (MOF)
Sent: September 7, 2017 10:31 AM
To: Bromm, William (CAB)
Subject: FW: minister's letter

From: Stewart, Nicole (MOF)
Sent: September-07-17 10:26 AM
To: Silver, Caryl (MOF)
Subject: minister's letter

Hi Caryl, you can share this letter with William Bromm – Nancy will also give William a call to explain the context.

Thanks,
Nicole