

RE: LegCounsel < LRC memo

From: "Moore, Karen (CAB)" <karen.moore4@ontario.ca>
To: "Valerio, Anna (CAB)" <anna.valerio@ontario.ca>, "Davidson, Steven (CAB)" <steven.davidson@ontario.ca>
Cc: "Adams, Laura (CAB)" <laura.adams2@ontario.ca>, "Frndova, Lucia (CAB)" <lucia.frndova@ontario.ca>, "Scott-Vickers, James (CAB)" <james.scott-vickers@ontario.ca>, "Greenberg, Martha (CAB)" <martha.greenberg@ontario.ca>
Date: Tue, 12 Dec 2017 21:56:06 -0500
Attachments: LRC-CBN_ENERGY Bills_DRAFT- v5.docx (36.11 kB)

Also attached is the latest CBN, which is with MAG and Energy for final fact check of the legal risk section.

Thanks,
Karen

From: Valerio, Anna (CAB)
Sent: December 12, 2017 9:45 PM
To: Davidson, Steven (CAB) <Steven.Davidson@ontario.ca>
Cc: Adams, Laura (CAB) <Laura.Adams2@ontario.ca>; Frndova, Lucia (CAB) <lucia.frndova@ontario.ca>; Moore, Karen (CAB) <Karen.Moore4@ontario.ca>; Scott-Vickers, James (CAB) <James.Scott-Vickers@ontario.ca>
Subject: Fw: LegCounsel < LRC memo

Steven,

Further to the pkge I left on your chair this evening, see below for the current draft of the memo to Cabinet from the Office of Legislative Counsel. We expect to get the final tomorrow morning.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Frndova, Lucia (CAB) <lucia.frndova@ontario.ca>
Sent: Tuesday, December 12, 2017 7:07 PM
To: Scott-Vickers, James (CAB); Valerio, Anna (CAB); Moore, Karen (CAB); Adams, Laura (CAB)
Cc: Dabraio, Rachele (CAB)
Subject: LegCounsel < LRC memo

Good evening,

As information, below is the final draft of the OLC memo that is intended to come tomorrow related to the ENERGY item. The message in the memo is consistent with what has already been provided - such that a higher constitutional risk could impact sealing of the regulation; however, this does not necessarily impact the ability to move forward with the regulation.

I gather that most of the discussion at MAG is focused on the legal opinion, and understandably, this memo from OLC does not get into those details. I understand that MAG has provided input into the LRC-CBN to help summarize the risks identified in the legal opinion.

Please let me know if you have any questions on the OLC memo. Thank you.

Lucia Frndova

Manager and Secretary, Legislation and Regulations Committee

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MEMORANDUM

Date : December 13, 2017

To : Hon. Deborah Matthews
Chair of Cabinet

From : Mark Spakowski
Chief Legislative Counsel

Re : Proposed regulation under the *Ontario Fair Hydro Plan Act, 2017*

The Ministry of Energy is proposing a regulation to amend Ontario Regulation 196/17 (Invoicing Requirements) made under the *Ontario Fair Hydro Plan Act, 2017*. The proposed regulation was considered at the Legislation and Regulations Committee on Monday, December 11, 2017.

After the proposed regulation was sealed by our office and delivered to LRC, the Constitutional Law Branch (CLB) prepared an opinion for the Ministry. The CLB opinion indicates that the proposed regulation poses a moderately high risk of being found unconstitutional. Had our office been aware of the CLB opinion, we would not have sealed the proposed regulation.

A regulation may be made even if it is not sealed. However this is rare - to our knowledge this has not been done in at least the past decade. In the normal course, the Ministry responsible for the regulation and the Office of Legislative Counsel work together, during the drafting process, to address any concerns that might affect the sealing of the regulation.

If an unsealed regulation is made by the Lieutenant Governor in Council, it is effective in law like any other

regulation, unless and until it is successfully challenged.

Mark Spakowski
Chief Legislative Counsel

cc. Irwin Glasberg, Acting Deputy Attorney General
Mark Spakowski, Chief Legislative Counsel
Sarah Wright, Acting Director, Constitutional Law Branch
Maud Murray, Legal Director, Ministry of Energy
James Rehob, Counsel, Ministry of Energy
Han Dong, MPP, Vice Chair, LRC
Lucia Frndova, Secretary, LRC