

RE: OFHP Bills

From: "Moore, Karen (CAB)" </o=govon/ou=exchange administrative group (fydibohf23spdlt)/cn=recipients/cn=moore, karen (cab)339">
To: "Hindmarch-Watson, Tim (CAB)" <tim.hindmarch-watson2@ontario.ca>
Date: Mon, 11 Dec 2017 16:18:24 -0500

I think the last sentence opens a question that is not answered in the note, so I would err on the side of removing or revising to articulate that they explored other options but ruled them out.

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From: Hindmarch-Watson, Tim (CAB)
Sent: December 11, 2017 4:15 PM
To: Moore, Karen (CAB) <Karen.Moore4@ontario.ca>
Subject: OFHP Bills

Hi Karen:

Here is my initial cut for the new risk information. I am hesitating on including the final sentence as it may doom the item, but this is really where Energy and MAG should have raised this sooner and come up with options that mitigate this risk appropriately while still meeting the governments direction. Thoughts?

Legal Risk

The current proposal does not change the legal risks associated with the inclusion of OFHP messaging on consumer's electricity bills, but a constitutional law risk that was not previously outlined has been identified. The Ministry of the Attorney General has advised that there is a moderately- high risk that government requiring LDCs and USMPs (utilities) to convey this information in this way could be successfully argued to constitute an infringement on the utilities' freedom of expression under the Canadian Charter of Rights and Freedoms. As noted, ENERGY has been working with utilities on the proposal through its formal Working Group and advises that the risk of a utility bringing a case of this nature forward is low. **MAG has advised that there may be other options for how to convey the OFHP benefits on bills that would reduce the risk of a successful court challenge on this point.**

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