

RE: RUSH FACT CHECK - LRC CBN re Energy 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: Tue, 12 Dec 2017 14:21:41 -0500

One small tweak from me, otherwise this looks good. I agree Energy should have another look at it. Will flip you an email from leg counsel also – this has everyone very concerned.

Karen
416-325-4764
karen.moore4@ontario.ca

From: Hindmarch-Watson, Tim (CAB)
Sent: December 12, 2017 1:55 PM
To: Moore, Karen (CAB) <Karen.Moore4@ontario.ca>
Subject: FW: RUSH FACT CHECK - LRC CBN re Energy Bills

FYI from MAG.

I have reworked a little for your review. I am uncertain we need the centre paragraph or the last sentence of the first paragraph. Energy has requested that they get to see the language again after MAG review, so I plan to send this back for one last fact check:

The proposal does not change the legal risks associated with the inclusion of OFHP messaging on consumer's electricity bills in the existing regulation, 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 would be found to constitute an unjustified violation of the utilities' freedom of expression under the Charter. Therefore a law that requires persons to communicate certain things must be justified under the Charter analysis.

The risk arises because it is unclear whether the objective of advising consumers of the effect of government policy on their electricity bill when it does not directly relate to the calculation of the invoiced amount is pressing and substantial, and because there ~~are likely~~ **may be** more neutral and specific means of communicating information to consumers regarding the impact of the Fair Hydro Plan. If more neutral and specific words were used to communicate the information in question, there would be a moderate risk that the proposed amendment would be an unjustified violation due to the uncertainty as to whether it serves a pressing and substantial purpose.

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 and ENERGY advises it has LDC buy-in to provide this messaging. However, this fact does not mitigate against another person seeking public interest standing to bring a case forward. Hydro One has already been providing dynamic messaging to its customers since July 2017 and has received positive feedback to date. ENERGY advises that the regulation is not just to enforce compliance but also to establish a consistent methodology for calculating savings so that all Ontario consumers receive the same information.

Tim Hindmarch-Watson
416-325-4618

From: Young, Samantha (CAB)
Sent: December-12-17 1:39 PM
To: Hindmarch-Watson, Tim (CAB)
Subject: FW: RUSH FACT CHECK - LRC CBN re Energy Bills

Hi Tim – See below and attached. Cheers.

From: Rabadzievski, Sandra (MAG)
Sent: December-12-17 1:35 PM
To: Young, Samantha (CAB)
Cc: Kulanathan, Nisha (MAG); Soucie, David (MAG)
Subject: FW: RUSH FACT CHECK - LRC CBN re Energy Bills

Here you go!

From: King, Kevin (MAG)
Sent: December-12-17 1:32 PM
To: Rabadzievski, Sandra (MAG); Soucie, David (MAG); Generali, Patrizia (MAG); Phan, Cathy (MAG)
Cc: Kulanathan, Nisha (MAG)
Subject: RE: RUSH FACT CHECK - LRC CBN re Energy Bills

Hi Sandra, please find CLB and Energy edits in the document. Just to avoid any issues with track changes, CLB suggested Legal Risk text is as follows:

Legal Risk

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 would be found to constitute an unjustified violation of the utilities' freedom of expression under the Charter. The right to freedom of expression protects against compelled expression. Therefore a law that requires persons to communicate certain things must be justified under the Charter analysis.

The risk arises because it is unclear whether the objective of advising consumers of the effect of government policy on their electricity bill when it does not directly relate to the calculation of the invoiced amount is pressing and substantial, and because there are likely more neutral and specific means of communicating information to consumers regarding the impact of the Fair Hydro Plan. If more neutral and specific words were used to communicate the information in question, there would be a moderate risk that the proposed amendment would be an unjustified violation due to the uncertainty as to whether it serves a pressing and substantial purpose.

The proposal does not change the legal risks associated with the inclusion of OFHP messaging on consumer's electricity bills in the existing regulation. Moderately high risk means that while it is difficult to predict the outcome since there are good arguments on both sides, a court would be more likely than not to find the amended regulation unconstitutional.

Kevin

From: Rabadzievski, Sandra (MAG)
Sent: December-12-17 1:30 PM
To: King, Kevin (MAG); Soucie, David (MAG); Generali, Patrizia (MAG); Phan, Cathy (MAG)
Cc: Kulanathan, Nisha (MAG)
Subject: RE: RUSH FACT CHECK - LRC CBN re Energy Bills

CO has already followed up on this. Any way we can get comments back ASAP? Thank you.

From: King, Kevin (MAG)
Sent: December-12-17 10:58 AM
To: Soucie, David (MAG); Generali, Patrizia (MAG); Phan, Cathy (MAG)
Cc: Rabadzievski, Sandra (MAG); Kulanathan, Nisha (MAG)
Subject: RE: RUSH FACT CHECK - LRC CBN re Energy Bills

In motion.

Kevin

From: Soucie, David (MAG)
Sent: December-12-17 10:31 AM
To: King, Kevin (MAG); Generali, Patrizia (MAG); Phan, Cathy (MAG)
Cc: Rabadziewski, Sandra (MAG); Kulanathan, Nisha (MAG)
Subject: FW: RUSH FACT CHECK - LRC CBN re Energy Bills
Importance: High

Hi Kevin,

CO is asking for a rush review of this draft pink note on ENERGY's Electricity Bills. Specifically the *Legal Risks* section at the end of the note. Can you ask CLB to review and provide comments ASAP ?

Thanks!

Dave

From: Young, Samantha (CAB)
Sent: December-12-17 10:27 AM
To: Rabadziewski, Sandra (MAG)
Cc: Soucie, David (MAG); Kulanathan, Nisha (MAG)
Subject: RUSH FACT CHECK - LRC CBN re Energy Bills
Importance: High

Hi Sandra,

Attached is an LRC CBN for an Energy Bills item that was deferred from LRC yesterday to full Cabinet tomorrow.

Since LRC, a new Legal Risks section has been added at the end of the note. Seeking Con Law's review a.s.a.p., please and many thanks.

Sam

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