

Re: RUSH FACT CHECK - LRC CBN re Energy Bills

From: "Hindmarch-Watson, Tim (CAB)" <"o=govon/ou=exchange administrative group (fydibohf23spdl)/cn=recipients/cn=hindmarch-watson, tim (cab)6ba">
To: "Young, Samantha (CAB)" <samantha.young2@ontario.ca>
Date: Tue, 12 Dec 2017 21:51:47 -0500

Thanks!

Sent from my mobile.

From: Young, Samantha (CAB)
Sent: Tuesday, December 12, 2017 9:49 PM
To: Hindmarch-Watson, Tim (CAB)
Subject: Re: RUSH FACT CHECK - LRC CBN re Energy Bills

On it.

Sent from my BlackBerry 10 smartphone on the Rogers network.

From: Hindmarch-Watson, Tim (CAB)
Sent: Tuesday, December 12, 2017 9:43 PM
To: Young, Samantha (CAB)
Subject: RE: RUSH FACT CHECK - LRC CBN re Energy Bills

Hi Sam:

Please send the below revised text to MAG for rush review of factual accuracy first thing tomorrow:

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 information in this way would be found to constitute an unjustified violation of the utilities' freedom of expression under the Charter. 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 may be more neutral and specific means of communicating information to consumers regarding the impact of the Fair Hydro Plan.

ENERGY advises that the risk of a utility bringing a case of this nature forward is low and that it has LDC buy-in to provide this messaging. Hydro One has already been providing dynamic messaging to its customers since July 2017 and has received positive feedback to date. However, this does not prevent another person seeking public interest standing from bringing a case forward.

ENERGY advises that the regulation is intended to enforce compliance and establish a consistent methodology for calculating savings so that all Ontario consumers receive the same information. The same level of constitutional law risk exists in relation to the existing regulation requiring OFHP messaging on consumer's electricity bills, however, it was not previously identified in the approvals process for that regulation.

Tim Hindmarch-Watson
416-325-4618

From: Young, Samantha (CAB)
Sent: December-12-17 3:48 PM
To: Hindmarch-Watson, Tim (CAB)
Subject: RE: RUSH FACT CHECK - LRC CBN re Energy Bills

Hi Tim – MAG suggests adding the highlighted sentence below.

From: Hindmarch-Watson, Tim (CAB)
Sent: December-12-17 2:30 PM
To: Young, Samantha (CAB)
Subject: RE: RUSH FACT CHECK - LRC CBN re Energy Bills

Hi Sam:

Can you please have MAG fact check the below proposed language. Please focus on checking for the factual nature of the language. Thanks

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. **The right to freedom of expression includes the right to say nothing or to not say certain things.** 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 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: Rabadzievski, 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

Samantha Young
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