

Message

From: Glenn Zacher [GZacher@stikeman.com]
Sent: 2017-05-24 12:12:25 PM
To: Michael Boll [/o=ExchangeLabs/ou=Exchange Administrative Group
(FYDIBOHF23SPDLT)/cn=Recipients/cn=4811917e15054407b665fe16d12ff415-Michael Bol]
Subject: RE: Fair Hydro Legislation

I will let Peter know that I talked to you on the indemnity issue

Glenn Zacher
Tel : (416) 869-5688
gzacher@stikeman.com

From: Michael Boll [mailto:Michael.Boll@ieso.ca]
Sent: Wednesday, May 24, 2017 11:24 AM
To: Glenn Zacher
Subject: RE: Fair Hydro Legislation

I'll call you then

From: Glenn Zacher [mailto:GZacher@stikeman.com]
Sent: May 24, 2017 11:15 AM
To: Michael Boll
Cc: Peter Hamilton
Subject: RE: Fair Hydro Legislation

Just sent you an email – yes, how about 11:45?

Glenn Zacher
Tel : (416) 869-5688
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From: Michael Boll [mailto:Michael.Boll@ieso.ca]
Sent: Wednesday, May 24, 2017 11:02 AM
To: Glenn Zacher
Cc: Peter Hamilton
Subject: RE: Fair Hydro Legislation

Just on a call. Are you free sometime between 11:30 and 12?

From: Glenn Zacher [mailto:GZacher@stikeman.com]
Sent: May 24, 2017 10:27 AM
To: Michael Boll
Cc: Peter Hamilton
Subject: RE: Fair Hydro Legislation

Michael – I just gave you a call. Are you able to give me a call to discuss?

Glenn Zacher
Tel : (416) 869-5688
gzacher@stikeman.com

From: Glenn Zacher
Sent: Wednesday, May 24, 2017 10:12 AM
To: Michael Boll
Cc: Peter Hamilton
Subject: RE: Fair Hydro Legislation

Michael – sorry just in midst of calls/mtg - - will look at this shortly and get back to you.

Glenn Zacher
Tel : (416) 869-5688
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From: Michael Boll [<mailto:Michael.Boll@ieso.ca>]
Sent: Wednesday, May 24, 2017 9:36 AM
To: Glenn Zacher
Cc: Peter Hamilton
Subject: RE: Fair Hydro Legislation

Glenn and Peter, the proposed change in Motion 16 concerns me and I'd like your view. Glenn, this is a related theme to the new 40.1 that is being proposed relating to compliance and compensation orders.

Paragraph 7 of Section 41 currently provides:

"Providing for a right of compensation for investment interest owners affected by a breach under section 29 and the manner in which such a right may be enforced under this Act."

The new motion is:

Motion 1516

Schedule 1 to the Bill, paragraph 7 of subsection 41 (1)

Paragraph 7 of subsection 41 (1) would be amended by striking out "a breach under section 29" and substituting "the failure of any person or entity to comply with this Act give effect to the rights and interests provided for under section 29".

My concern is this seems to broaden IESO's and LDC's obligations to "give effect to the rights and interests provided for under section 29", rather than to simply comply with the obligations imposed on us under the Act. I'm concerned this unnecessarily increases the risk for IESO and LDCs if an investment interest owner believes IESO or an LDC has done not done something to enable it to exercise a right under section 29, even if the IESO did not have an obligation to do so. A potential fix would be to add the underlined text as follows:

..."the failure of any person or entity to comply with this Act in order to give effect to the rights and interests provided for under section 29".

Michael

From: Glenn Zacher [<mailto:GZacher@stikeman.com>]
Sent: May 24, 2017 8:55 AM
To: Michael Boll
Cc: Peter Hamilton
Subject: FW: Fair Hydro Legislation

Michael – fyi. Will let you know what I hear back. Will also independently look into this.

Glenn Zacher
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From: Glenn Zacher
Sent: Wednesday, May 24, 2017 8:52 AM
To: Myers, Jonathan; Emes, Aaron
Cc: Peter Hamilton
Subject: Fair Hydro Legislation

Hi Aaron, Jonathan –

The Ministry shared with the IESO yesterday their proposed Bill 132 draft motions, which included a proposed new section 40.1 providing the investment asset owner with the right to apply to the Ontario SCJ for injunctive and compensatory relief. We queried why this provision was necessary given that a person affected by a statutory breach has the right to bring a proceeding to enforce compliance (including claiming mandatory/prohibitive injunctive relief) or claim damages. Moreover, rule 14.05 (d), (g) of the Rules of Civil Procedure expressly provides recourse by way of "notice of application" for the purpose of determining rights pursuant to statute or regulation, including seeking injunctive relief. We also questioned why, in particular, section 40.1 (c) - which provides for seeking "compensation" from the IESO and LDCs - would be necessary.

The Ministry indicated that OPG apparently thought it needed this specific standing/remedy provision and had referenced an SCC case in support of its position. Can you provide us with some further explanation and if there is some SCC case or other authority that supports the need for this provision, pass it on. As it stands, we do not believe this provision is required. I understand the Ministry is under some time pressure to resolve this issue so if you can get back to me as soon as possible that would be great. If it is easier to have a call to discuss, please give me a call.

Thanks,
Glenn

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