

Rick Lindgren

From: "Rick Lindgren" <r.lindgren@sympatico.ca>
To: <mcarter@davidsuzuki.org>; <dave.martin@yto.greenpeace.org>; "José Etcheverry" <Jose@davidsuzuki.org>; <shawn.patrick.stensil@yto.greenpeace.org>; "mark winfield" <markw@pembina.org>
Cc: "Rob Wright" <rwright@sierralegal.org>; "Hugh Wilkins" <hwilkins@sierralegal.org>
Sent: Wednesday, September 06, 2006 12:22 PM
Subject: Re: IPSP: CELA's updated opinion

Understood. By the way, FYI, we have still not received the MOE's response to CELA's EBR Application for Review of O.Reg.276/06. Due to my other commitments (and the fact that the Leg resumes in 3 weeks), I plan to wait a bit longer before making noises to the ECO and/or the press re MOE delay.
 RL

—— Original Message ——

From: mark winfield
To: Rick Lindgren ; mcarter@davidsuzuki.org ; dave.martin@yto.greenpeace.org ; José Etcheverry ; shawn.patrick.stensil@yto.greenpeace.org
Cc: Rob Wright ; Hugh Wilkins
Sent: Wednesday, September 06, 2006 9:19 AM
Subject: Re: IPSP: CELA's updated opinion

Thanks Rick,

Will give this some thought, although my first reaction is that unless we're pretty certain of our case, it would be a tough sell to our board.

Mark.

At 11:41 AM 9/3/2006, Rick Lindgren wrote:

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Hi Mark:

Rob & Hugh may have additional views, but if a Rule 14.05 application is brought but dismissed, there is clearly a potential for an adverse cost award to be made against the applicant(s).

The general rule is that "costs follow the event" – that is, the loser may be ordered to pay some, most, or all of the winner's costs. However, the quantum of the cost award is completely within the court's discretion, having regard for the nature/complexity of the issues, conduct of the parties, etc.

In this case, I would expect that the application could be argued in court in one day or less. However, there might be some cross-examination upon affidavits (and other interlocutory activities, such as motions), which may also run up the legal bill.

Given the inherent judicial discretion over costs, it is difficult to predict with precision what the size of an adverse cost award might be in this case. If, for example, the court took a dim view of the grounds for the application (or the applicants' motives), it may be reasonable to expect an adverse cost award in the range of \$15,000 to \$25,000 for a one day hearing.

However, the cost award could be higher or lower, depending on the court's view of things. Of course, it is also possible that the court may order "no costs" (or fixed nominal costs) if the court is persuaded that although the application was dismissed, it nevertheless raised serious questions of

9/6/2006

statutory interpretation, & that it was in the public interest to have these questions clarified or answered by the court (or that other "special circumstances" existed so as to avoid the "cost follows the event" rule).

So, while the court has discretion over whether (or to what extent) costs would be payable by the losing side, it would not be prudent to count upon the court relieving the applicant(s) against cost liability if the application is dismissed. Simply put, env groups cannot count on getting a "free ride" merely because they are env groups.

Bottom line – there is a risk of a significant adverse cost award, which would definitely have to be considered before a decision is made to launch a Rule 14.05 application.

Regards,
RL

----- Original Message -----

From: mark.winfield

To: [Rick Lindgren](mailto:Rick.Lindgren) ; mcarter@davidsuzuki.org ; dave.martin@yto.greenpeace.org ; [José Etcheverry](mailto:Jose.Etcheverry) ; shawn.patrick.stensil@yto.greenpeace.org

Cc: [Rob Wright](mailto:Rob.Wright) ; [Hugh Wilkins](mailto:Hugh.Wilkins)

Sent: Thursday, August 31, 2006 10:03 AM

Subject: Re: IPSP: CELA's updated opinion

Rick, Hugh and Rob,

What are the risks if we advanced an application and lost? Are we looking at a potential adverse costs award, and if so how bad. My contacts tell me the proponents would be very aggressive on that front if they have the opportunity.

Mark.

At 04:27 PM 8/30/2006, Rick Lindgren wrote:

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Hello all:

Please find attached CELA's updated legal opinion re the possibility of a legal challenge to the IPSP exemption from the EA Act.

Because it is subject to solicitor-client privilege, this letter must not be copied, forwarded or circulated to anyone else.

Please contact me if you have questions/comments about our conclusions & recommendations.

Regards,
RL