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Canadian Environmental Law Association
L'Association canadienne du droit de l'environnement

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July 20, 1984

The Steering Committee of
the No Towers Federation
c/o Dave Ambrose
Box 153
Elgin, Ontario
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Dear David:

Re: Supreme Court Decision
Southwestern Ontario Transmission Project

I thought that you and other members of the No Towers Federation might be interested in the recent decision of the Supreme Court of Ontario with respect to the application brought to quash (not unlike squash, in a judicial sense) the decision of the Joint Board with respect to Hydro's undertaking in Southwestern Ontario. This then is a brief synopsis of the Court's decision which was released on Monday, June 25, 1984.

As you may be aware, an application was made to the Divisional Court last Fall by a coalition of ratepayer groups, several municipalities and others to declare invalid the hearings and Joint Board decision that had given plan stage approval to Hydro's transmission project in Southwestern Ontario. The Joint Board decision under attack was very similar to the plan stage approval granted in July/82 with respect to Eastern Ontario. Those making or supporting the Application put forward a variety of complaints including:

- The lack of notice to many whose rights were affected by the hearing and whose lands might be expropriated in consequence of them;
- The erroneous impression created by the description of the project as being in Southwestern Ontario for many who consider themselves residents of Central Ontario and;
- The misleading nature of Hydro's description of the plan stage study area in light of subsequent addition (at the instance of the Joint Board) of an additional study area that had not previously been part of any proposed plan.

After seven days of hearings (reputedly the longest in the Divisional Court's history) the three judges reserved, releasing their decision last week, some six months after hearing the case.

Simply put, the Court's unanimous and lengthy decision (80 pages) quashes the plan stage hearings and the decision of the Joint Board. For all intents and purposes, the hearings simply did not occur. This leaves Hydro back where it started at the outset of the hearings.

In its decision, the Divisional Court sustained the complaints that I have outlined about and found the Board's decision to be without effect because of the absence of notice to those whose rights were effected in consequence of the Joint Board's decision. The Court's decision leaves no doubt that should additional hearings be convened, a new Joint Board would have to be selected. In finding that responsibility for the form and content of notice rested with the Board, it squarely layed the blame at the Board's doorstep. The Court also found the Board to have been at fault in suggesting an addendum to the plan stage study area without first giving notice to those who, for the first time, were being put at risk of expropriation.

Hydro came off rather well in the Joint Board's decision, and the Joint Board, very poorly. In subsequent press interviews, etc. Hydro has taken advantage of that fact and has characterized the problem as being the result of the Board's bungling. In fact, the Notice, its contents and the manner in which it would be served were all devised by Hydro and presented to the Board for its approval. The characteristic readiness with which the Joint Board has been willing to use its "rubber stamp" backfired in this instance. As for the addendum to the plan stage study area, however, it is ironic to note that upon route stage study Hydro chose this option as its preferred choice. So much for the exhaustive constraint mapping process used to identify the planned stage study areas in the first place.

Clearly the problems identified by the court were the product of a "collaborative effort" on the part of Hydro and the Board. It is also somewhat ironic that the challenge to the Board's decision may be seen as a product of the fact that the Board chose to reject Hydro's preferred plan stage study area. In the first place, had the Board gone along with Hydro's preferred choice the Southwestern Ontario project would probably be running along as smoothly as it is in Eastern Ontario.

The Court's decision, and the fallout that will no doubt emanate from it, will have significant consequences for the Environmental Assessment Process and for the Joint Board. Of greater interest to the NTF however is the potential significance of the decision for Eastern Ontario.

As for the matter of notice, it is difficult for us to determine who, if anyone, might have been unaware of our plan stage hearing. We (being the 500 members of the HCA) were clearly aware of Hydro's plans and indeed made some considerable effort to bring them to the attention of all who might be affected. Given the fact that Hydro's preferred route was selected, it is difficult to imagine a similar sympathetic case existing even for those who might not have known of Hydro's proposed endeavour. I would be happy to discuss this further with you should anything pertinent present itself.

One thought does occur, however - given the rap on the knuckles it has recently received for dealing with matters in Southwestern Ontario in a somewhat high-handed fashion, it may be that the Board will consider our application to have a consultant retained, with slightly more favour. The same might be said of any appeal to cabinet that might be made should the Board's decision on our motion be unfavourable, as indeed we expect it to be. Should such an appeal be launched, however, it would be essential for the NTF to mobilize a significant and very vocal constituency to lobby and circulate petitions and otherwise make hay of the Board's refusal.

I trust that this will be of some interest to you and please do not hesitate to contact me should you have any questions in this or in any other regard.

Yours sincerely,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Steven Shrybman
Counsel

SS:dlb