

Rick Lindgren

From: "Rick Lindgren" <r.lindgren@sympatico.ca>
To: "Michelle Swenarchuk" <swenarcm@lao.on.ca>
Sent: Tuesday, June 13, 2006 1:33 PM
Subject: more nuke stuff

Hi Michelle:

Here are some followup thoughts if the press comes calling upon CELA:

- the "generic" opinion that is in the public domain dealt solely with whether Ontario's EA Act applies to the IPSP (we say yes, just as it applied to the DSP in 1989). Unless specifically exempted, I remain unclear how the EA Act would not apply to this long-term energy "plan" or "program", which is clearly being carried out by or for Her Majesty the Queen in right of Ontario, as represented by the Ministry of Energy (which, among other things, is providing statutory directives to OPA re the development/content of the plan - there can be no doubt that this is a PROVINCIAL plan, not an OPA plan per se);

- the generic opinion does not deal with the separate legal question of whether Ont's EA Act applies to individual nuclear facilities; this matter is addressed in the "private" lengthy opinion letter, and we say that it can be argued that env laws of general application (i.e. the EA Act) could apply to a federally regulated matter (i.e. nukes), esp. where the facilities are provincially owned & involve the very matters (electrical production) that section 92A of the Const Act says is exclusively provincial jurisdiction. Basically, this boils down to a battle between POGG & section 92A;

- last week, McGuinty & Broten made claims that nuke facilities are "exclusively" a matter of fed jurisdiction, & they hint that only fed EA's have be done. In response, I say the legal/constitutional situation is not as black & white as claimed by these prov officials, and their position is highly debatable, to say the least. Also note that although fed EA applies to nukes, Quebec & N.B. still apply their own provincial EA regimes to nuke facilities - so is Ontario saying these other jurisdictions are constitutionally incorrect? If not, then why not simply harmonize prov & fed EA requirements, as is possible under both statutes & is currently being done in N.B.?

Not sure if these ramblings help, but this is what I would say to the press...

Thanks,

RL

clear that there is a strong federal role in licensing & regulating nukes
 - also clear that federal EA obligations are triggered by proposed nuclear facilities
 - what is not so clear is whether these federal laws ^{the laws exist} ~~prevail over the provincial laws~~ ^{or preempt} the prov's general environmental laws of general application, such as EPA or EAA ^{apply to nukes}
 NB - harmonize but keep prov - what matters family
 A we - agree
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