



Fogler, Rubinoff LLP
Lawyers

77 King Street West
Suite 3000, PO Box 95
TD Centre North Tower
Toronto, ON M5K 1G8
t: 416.864.9700 | f: 416.941.8852
foglers.com

June 30, 2020

Reply To: Albert M. Engel
Direct Dial: 416.864.7602
E-mail: aengel@foglers.com

VIA RESS AND EMAIL

Ontario Energy Board
2300 Yonge Street
27th Floor
Toronto, Ontario
M4P 1E4

Attention: Christine E. Long,
Registrar and Board Secretary

Dear Ms. Long:

Re: OEB Seeking Feedback Virtual Hearing – BOMA's Comments

The OEB proposes to use Zoom technology to facilitate virtual hearings. In the short term, the OEB is using Zoom technology to conduct a technical conference and a settlement conference in two different applications currently before the OEB. Testing the technology in these two forums has assisted in identifying issues.

BOMA has participated in all initial tests of the technology originally with some misgivings regarding becoming adjusted to yet another new application. It was easier than expected and OEB IT staff were extremely helpful.

The OEB should consider the following issues as it plans for the ability to conduct a virtual hearing:

- the technical capabilities of participants to ensure that they are clearly heard and seen and rules/consequences around when a participant may be required to stop participating if their sound or video quality falls below a certain quality level;
- standardized protocols for muting and unmuting participants;
- rules in respect of virtual examinations and cross-examinations to ensure the integrity of both.

There are no technical obstacles that would prevent BOMA from participating in a virtual hearing if it is done through Zoom.

Rules and protocols should be specifically discussed at a pre-hearing conference in advance of a virtual hearing. During the tests, what was helpful in the test was the role of intervenors in helping to work out how best to use tried and true practices to best replicate an in-person proceeding. However, there were numerous interjections by intervenors who had sought to go early in the questioning sessions; they did not hesitate in taking up technical conference time when they wished to re-emphasize items to which they had questioned the witnesses within their earlier allotted time. Board Staff lawyers should be stricter in managing such matters.

The potential to use this technology will last far beyond the current pandemic especially for technical conferences and settlement conferences. The experience from the first few virtual hearings will also have be tested and used if positive.

This technology will reduce travel time and impacts for local participants and those from outside of Toronto. Coupled with the Board's announcement that two hard copies are no longer required in addition to the electronic filing will also reduce related expenses and environmental impacts.

One technical shortfall was the size of the text when sections of evidence or IRRs were on screen. The tiny size of text is a problem that is not limited to the Zoom application, but also in PDFs of applications and evidence. The Board may wish to consider its potential to discriminate against people whose vision is no longer 20/20.

Board Staff presentations using Web Ex have also been successful and should be continued.

An unrelated but time consuming practice is participants, OEB staff, intervenors, etc., assigning case document names which do not include either the case number or a consistent "short title" when document names should include both as prescribed by OEB staff for consistency.

Yours truly,

FOGLER, RUBINOFF LLP

on behalf of Albert M. Engel

AME/dd

cc: Tom Brett, Foglers (*via email*)
Marion Fraser, Fraser & Company (*via email*)