

McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Shane C. D'Souza
Direct Line: 416-601-8196
Email: sdsouza@mccarthy.ca



April 8, 2014

VIA E-MAIL

The Corporation of the Township of Muskoka Lakes
P.O. Box 129
1 Bailey St.
Port Carling, Ontario
P0B 1J0

Re: Legal Notice: Township's bad faith efforts to frustrate and delay the Project

We represent Swift River Energy Limited ("**SREL**"), which is developing a hydroelectric facility on public land on Burgess Island in Bala (the "**Project**").

We demand that the Corporation of the Township of Muskoka Lakes (the "**Township**") and Mayor Alice Murphy cease and desist from unfairly targeting SREL for the improper purpose of delaying or frustrating the Project, while improperly advancing the ends of some members of the Township's council or other favoured parties. Additionally, we demand that the Township and Mayor Murphy cease and desist from making misleading and potentially defamatory statements to the Township's employees and the District Municipality of Muskoka ("**DMM**") regarding SREL's representative and the consequences of ongoing litigation between the parties, apparently aimed at influencing usual course dealings between SREL and the municipality. All of these acts must cease forthwith.

Prior acts to frustrate the Project

The Township's and Mayor Murphy's prior attempts to delay and frustrate the Project are summarized in the Affidavit of Karen McGhee, sworn May 21, 2013, which was filed with the Divisional Court, and is attached herewith without enclosures.

Ongoing litigation to frustrate the Project

After delaying the Project for eight (8) years, the Township was completely unsuccessful before the Divisional Court in (a) seeking to prohibit the Minister of Natural Resources ("**MNR**") from granting water powers and privileges and leasing public land to SREL pursuant to the *Public Lands Act*,¹ and (b) challenging MNR's policy decision to issue a public safety notice under s. 28 of the *Act*. Neither MNR nor SREL was even called on by the Divisional Court to respond. The Divisional Court's unanimous decision is attached herewith.

The Township's dogged promotion of recreation on public land despite the clear danger to public safety was specifically commented on by the Court:

[S]afety concerns have existed at least since 2009 when there was a double drowning in the waters off of these lands...

¹ *Public Lands Act*, RSO 1990, c P.43 (the "*Act*").

[T]he Township has failed to establish that the Ministry's decision ... was unreasonable ... There can be no reasonable dispute that there are safety issues concerning these lands that include rapids, waterfalls and dams among other hazards.

... Public safety is an objective that will often trump other policy goals.

The Township's appeal of the Divisional Court's unanimous decision, which has not been argued, is yet another attempt by the Township to delay and frustrate the Project.

SREL's lawsuit against the Township and Mayor Murphy

On June 20, 2013, Mayor Murphy and the Township interfered with SREL's validly authorized testing on public land, continuing their efforts to derail the Project. That same day, Mayor Murphy disseminated various falsehoods about SREL to the media. This conduct forced SREL to commence an action against the Township and Mayor Murphy (the "**Lawsuit**"), which is ongoing. The issued Statement of Claim (Court File No. CV-12-483464) is attached herewith.

Interference with SREL's entrance permit applications ("Permits")

In the usual course, entrance permit applications are approved by the DMM within a week. The Township has requested that all Permits submitted to the DMM be provided to the Township for comments. This request is highly unusual. The Project is exempt from the Township's site plan approval process pursuant to the *Green Energy Act*.² In other words, Permits that are submitted to the DMM do not have to be submitted to the Township.

Despite this, SREL cooperated by submitting all its Permits to the Township on or around February 25, 2014, even those are exempt from the Township's review. Inexplicably, the Township did not include the Permits on its council or committee agendas for March. Moreover, the Township's councillors were not even advised that the Permits had been submitted. We now understand that Mayor Murphy intends to defer the Township's council voting on this matter until at least May even though she knows that the Township has no jurisdiction to consider the approval of the Permits relating to the DMM.

SREL has also been provided with conflicting information regarding the Township's position on the Permits. In early March 2014, a senior employee of Public Works informed SREL's representative that SREL did not require the Township's approval for the Permits. In late March, after an abruptly cancelled meeting, SREL was informed by the same individual that it was "premature" to confirm whether or not SREL required the Township's approval for the Permits. We believe that Mayor Murphy's intervention caused this flip-flip.

We also understand that Mayor Murphy has attempted to delay the DMM's consideration of the Permits. Among other things, we understand that Mayor Murphy has alleged that this matter should not be considered because of the Lawsuit. We understand that Mayor Murphy has made similar false representations to the Township's employees and representatives, along with cautioning them against meeting with SREL's representative. There is no lawful or legitimate basis for Mayor Murphy's actions or statements.

Mayor Murphy's continued use of misleading statements about the Project and SREL to achieve her personal and political interests is alarming, especially in the context of ongoing litigation concerning her defamatory remarks against SREL. We consider Mayor Murphy to be in a conflict of interest, as evidenced by her dogged pursuit of delaying or frustrating the Project at

² *Green Energy Act*, 2009, SO 2009, c 12, Sch A.

all costs.

Failure to deal with SREL in the usual course

The Township is not dealing with SREL in the usual course, purportedly because of the Lawsuit. For instance, by letter dated October 15, 2013, SREL's representative wrote to the Township seeking an *in-camera* meeting with the Township's council "to discuss some options that may be available for construction that could be seen as win-win-win solutions for [SREL], the Township, and the community." As you know, an *in-camera* meeting is the usual practise for dealing with land issues such as the leasing of the Township's lands, which SREL is proposing.

SREL was denied an *in-camera* meeting and when SREL's representative attended the council meeting to delegate, she was prevented from discussing SREL's proposal. SREL is entitled to work with the Township in the usual course without fear of reprisal for protecting its legal and equitable rights. There is no lawful or legitimate basis for discriminating against SREL because of a lawsuit unconnected with the business proposed to be discussed.

SREL has again requested the opportunity to delegate on the same issues as proposed in its October 15, 2013 letter. If SREL is not allowed on the agenda, SREL will view this as a further confirmation of bad faith dealings by the Township.

Blocking the site of an entrance permit required by SREL

The Township has recently requested that DMM install a pedestrian cross-walk and a traffic signal on District Road 169 between the municipal parking lot and Margaret Burgess Park – the same location where SREL has applied for an entrance permit into Burgess Park for temporary construction purposes. The Township's request for the cross-walk by Spring 2014 is another thinly veiled attempt to frustrate and delay the Project.

There are three alternatives that would address concerns that the Township is unfairly targeting SREL and acting in bad faith. The Township could relocate the putative cross-walk (further north as was recommended in 2006 when a cross-walk was considered in the area), delay its installation until after the Project's construction, or allow SREL to utilize the traffic signal to assist with traffic control at the entrance to its temporary construction site, as described in SREL's permit application.

By-Laws designed to delay or frustrate the Project

The Township is also considering by-laws that unfairly target SREL and are primarily designed to delay or frustrate the Project.

On or around December 16, 2013, a draft by-law to *Assess and Control the Effects of Water and Ice Disturbing Equipment and Facilities on the Waters of the Township of Muskoka Lakes* was presented. We understand that in reviewing the draft by-law with councillors, the Township's counsel acknowledged that it would impact the Project. Clearly, the draft by-law seeks to regulate so-called water disturbances and is another attempt to delay the Project by requiring SREL to obtain the Township's approval.

On or around July 16, 2013, the Township's staff was instructed to revise the parking by-law, specifically with a view to considering overnight parking and commercial use. This issue was apparently only directed at the Precambrian Shield Parking Lot in Bala. The Township's interest in revising a by-law that impacts the usage of a parking lot required by SREL for construction

staging (as disclosed to the public since 2007) is telling. We understand that the parking by-law has not been revised and trust that you will advise us if our understanding is inaccurate in this regard.

On or around February 18, 2014, the Township started considering a load restriction on local roads. Such restrictions are typical in the Spring to protect roads from damage, as confirmed by the Township's staff report on March 17, 2014. Nevertheless, the Township is considering imposing an annual load restriction, which is highly unusual. Moreover, the timing of the proposed revision is suspicious as it coincides with the start of construction activity on the Project.

On or around February 18, 2014, the Township has started considering revisions to the current noise by-law, which sets times for construction noise restrictions. On or around March 18, 2014, the Township's staff was asked to investigate the Township's controls over issues relating to blasting and potential revisions to the site alteration by-law. The proposed revisions to by-laws that impact the Project simply continues the Township's pattern of conduct that improperly targets SREL.

The Township's conduct is designed to favour another private party

As the Township actively targets SREL and the Project, it is actively promoting the interests of KRIS Renewable Energy ("KRIS"), the company operating the Township's hydro-electric plant and dam on Bala's Mill Stream. We understand that the Township is expected to receive 10% of KRIS' revenues.

In such circumstances, it is highly unusual (and telling) that the Township, by a letter dated March 20, 2014 on the Township's letterhead, wrote to signatories of the Muskoka River Water Management Plan on behalf of KRIS regarding KRIS' intention to more than double the allowable amount of water it uses from 4.1 cms to 9.5 cms, and increase its capacity by significantly more than 25% of its current capacity of 140 kw.

In the same letter, the Township requested comments from other signatories of the Muskoka River Water Management Plan by April 15, 2014 in an apparent attempt to short-circuit the public consultation process that is mandated by the nature of the changes proposed by KRIS. The Township has not even informed its own councillors about this matter.

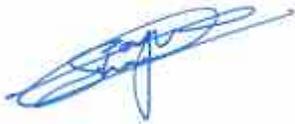
Viewed objectively, the Township's conduct is clearly directed at promoting the economic interests of KRIS and the Township. It is self-evident that any changes to the water usage at the Mill Stream plant will directly and disproportionately affect the viability of the Project more than other facilities downstream. Therefore, the Township's ongoing favouritism of KRIS while actively discriminating against SREL is further evidence of bad faith.

SREL is fulfilling its regulatory obligations, has engaged in extensive public consultation, and co-operated with the Township and the DMM – to the point of delaying the Project. This letter is a good faith attempt by SREL to avoid confrontation. SREL is open to engaging in a positive dialogue with the Township and the DMM to address residual concerns about the Project. However, SREL will not be drawn into further attempts to delay or frustrate the Project. Neither will SREL tolerate any further misleading or defamatory statements about SREL and its representatives. As such, in writing this letter, SREL does not waive but expressly reserves its legal and equitable rights and remedies.

Yours truly,

McCarthy Tétrault LLP

Per:



Shane C. D'Souza

ecc: Client
Neil Finkelstein / Eric S. Block
Mayor Alice Murphy
Chief Administrative Officer, the Township
All Councillors of the Township
The District Municipality of Muskoka
All Councillors of the District