

Wind Farms in Ontario – Legal Issues

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REA Appeals

- **Solar Projects?**

- None

- **Wind Projects**

- Most, if not all...



- **Lesson – If you have a wind project, assume your REA will be appealed**

Test on Appeal

- Serious harm to human health
- Serious and irreversible harm to plant life, animal life or the natural environment

Environmental Protection Act s. 142.1 (3)

Notable REA Appeals

- **Kent Breeze – Suncor**
 - the first decision
 - Harm to human health possible
 - Case by case determination
 - Later cases will require more evidence of harm
- **Conestogo and Summerhaven - Nextera**
 - Withdrawn after lengthy hearings

Notable REA Appeals

- **GREP and South Kent**
 - Pattern/Samsung
 - Lengthy cases (at least for GREP)
 - Decisions pending
- **Capital Power**
 - Hearing not quite as long as some
 - About the Natural Environment
- **Springwood**
 - Adjournment request denied – appeal withdrawn
 - Common issue

REA Strategic Issues

- **Grounds for Appeal – how to respond?**
- **Other legal procedures / appeal routes**
 - Judicial review
 - Appeal from ERT?
 - Need for Injunctions?
 - Collateral Attacks....other litigation anticipating ERT appeals

REA Appeals

Implications of an REA Appeal

- Everything done to date viewed through a legal “lens”
- Not just a *normal* legal lens (pardon the oxymoron)
- The Environmental Review Tribunal is a different forum:
 - Timelines are proscribed, however...
 - Less legalistic
 - Flexible rules mean less certainty of process and evidence
 - Focus on openness and transparency
 - Critical to understand the unique point of view of the ERT

REA Appeals

Implications cont..

- Anything you have said or not said can and will be used.....
- Consultative meetings will be examined “warts and all”
- [insert photo for effect – on second thought.....]

REA Appeals

What if there are warts? Appeal not really planned for...(really?)

- **work fast – appeal process is very short**
(from the “be careful of what you wish for” saying you heard as a child)
- **Quickly gather the witnesses and expertise (internal and external)**
- **Plan the project story and identify those warts we discussed**
- **The warts won’t go away easily so figure out how to deal with them**

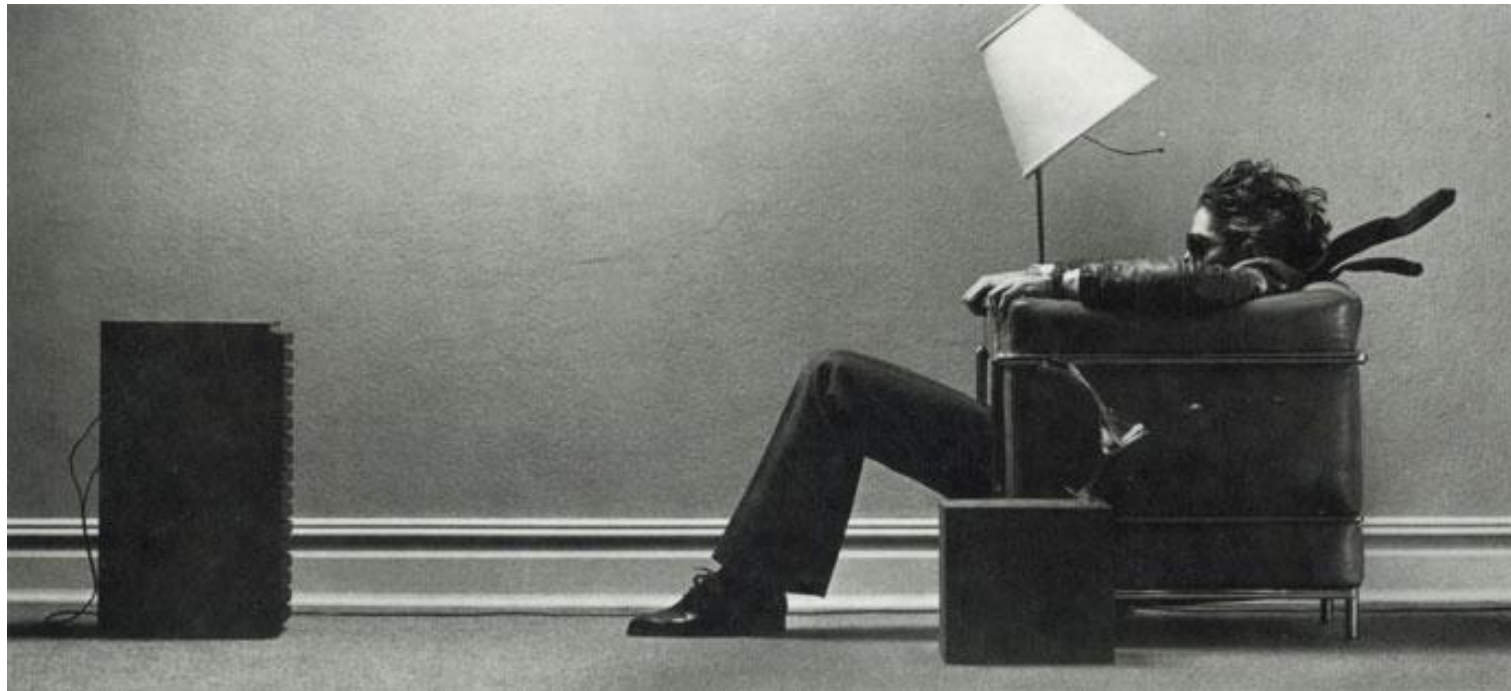
REA Appeals

During the Appeal process you may feel like this fellow:





The view of the world after a successfully presented ERT Hearing



Thank you.....