IN THE MATTER OF the *Electricity Act, 1998* as amended (the "*Electricity Act*");

AND IN THE MATTER OF an application by Plateau Wind Inc. for an order or orders pursuant to section 41(9) of the *Electricity Act* establishing the location of Plateau Wind Inc.'s distribution facilities within certain road allowances owned by the Municipality of Grey Highlands.

WRITTEN SUBMISSIONS OF
THE MUNICIPALITY OF GREY HIGHLANDS
(INTERVENOR)

A. Overview

1. Section 41 of the *Electricity Act, 1998* (hereinafter the "*Electricity Act*") bestows rights upon transmitters and distributors of electricity to use any public street or highway (or otherwise referenced as "municipal roads") for the placement of the transmitters or distributors infrastructure without the consent of the municipality having jurisdiction.

***Electricity Act* Excerpts, Tab 1**

2. Section 41 of the *Electricity Act, 1998* does not extend such rights to the owners of "generation facilities" or "renewable energy generation facilities".

3. The Corporation of the Municipality of Grey Highlands (hereinafter the "Municipality) respectfully submits that the Applicant's Project is a "renewable energy generation facility" and as such it is afforded no rights under section 41 of the *Electricity Act.*

4. Accordingly, the Municipality respectfully submits that the Ontario Energy Board has no authority or jurisdiction to make a determination under subsection 41(9) of the *Electricity Act* with respect to the Application, as the Applicant is neither a transmitter nor distributor of electricity.

B. Rules of Statutory Interpretation

5. The Municipality respectfully submits that the rights bestowed under section 41 of the *Electricity Act* represent a significant and substantial incursion upon the exclusive jurisdiction vested in municipal corporations concerning the use, occupation and alteration of municipal roads.

6. The rights bestowed under section 41 represent a special privilege granted to transmitters and distributors.

7. Where special privileges are granted under statutory authority, the legislation granting such special privilege must be strictly construed.

   Re Stronach (1928), 61 O.L.R. 636 (C.A.) (**Caselaw, Tab 2**)
   Re Carter and Sudbury et. al. (1949) O.R. 455 (**Caselaw, Tab 2**)

8. It is well established law in Ontario, that statutes or by-laws that restrict, control or interfere with rights of enjoyment normally vested in the owner of property must be strictly construed.

   City of Thunder Bay v. Potts (1982), 39 O.R. (2d) 725 (H.C.J.) (**Caselaw, Tab 2**)
   Coleman v. McCallum (1913), 4 O.W.N. 1127 (H.C.J.) (**Caselaw, Tab 2**)

9. The rights bestowed under section 41 of the *Electricity Act* constitute special privileges which clearly impose restrictions and control upon and/or interfere with the rights of ownership vested in the Municipality pursuant to sections 24 through 68 of the *Municipal Act, 2001* concerning roads under its jurisdiction.

10. But for the statutory provisions of section 41 of the *Electricity Act*, no person is may alter, erect any structures or buildings upon , or occupy a municipal road (including unopened road allowances) without the written consent of the municipality.

11. Accordingly, section 41 of the *Electricity Act* must be strictly construed in its application to the Applicant and its Project.

C. The Applicant's Project: The *Electricity Act* Definitions

12. At Tab 2, Page 3 of the Applicant's submissions, the Applicant's identifies the Plateau Wind Energy Project. The Applicant identifies the "Project" as the "Plateau I and II siting area, together with the turbines contained therein and the associated distribution network connecting these turbines to the grid...". At Tab 2, Page 4, the Applicant further indicates that the "Project will involve a 44 kilovolt("kV") overhead and underground electrical power distribution system (the Distribution System) which is necessary to transport the electricity generated from each Turbine to the existing 44kV local distribution system of Hydro One Networks Inc. ("HONI") and ultimately the ISEO-controlled grid".

13. The *Electricity Act* and its regulations define a "renewable energy generation facility" to mean a "generation facility that generates electricity from a renewable energy source" and such facilities include "the following associated or ancillary equipment, systems and technologies...distribution lines of less than 50 kilometers in length that are"... "used to distribute electricity within the facility or from the facility to the distribution system of the distributor in whose distribution

service area the renewable energy generation facility is located".

***Section 2(1), Electricity Act* Excerpts, Tab 1**
Sections 1(4) and 1(5), Ont. Reg 160/99 as amended to 328/09 Excerpts, Tab 3.

14. The Municipality respectfully submits that any distribution line or lines under 50 kilometers in length that convey electricity from a renewable energy generation facility to a distribution system are therefore, not components of a distribution system, but rather are components of the "renewable energy generation facility".

15. Stated in other words, a number or combination of distribution lines are not a "distribution system" as defined in the *Electricity Act*, if they are components of a "renewable energy generation facility".

16. It is the Municipality's respectful submission that the defined terms "distribution system", "generation facility", "renewable energy generation facility" and "transmission system" are all mutually exclusive.

17. For example, components of a generation facility cannot also be components of a transmission system. Similarly components of a renewable energy generation facility cannot also be components of a distribution system. This position is borne out in the Act governing the Ontario Energy Board.

D. Section 84, OEB Act: OEB Must Consider the Definitions of Renewable Energy Generation Facility and Distribution Systems to be Mutually Exclusive

18. Section 84 of the *Ontario Energy Board Act*, indicates that a transmission system may be deemed to form part of a distribution system by the Ontario Energy Board and that a distribution system may be deemed to form part of a transmission system.

19. Clearly if components of one system or facility could also be components of another system or facility, the OEB would require no special authority to deem such a situation to exist.

20. In the absence of any similar provision wherein or whereby a "distribution system" may be deemed to form part of a "renewable energy generation facility" or a "renewable energy generation facility" may be deemed to form part of a "distribution system", the Ontario Energy Board must consider the definitions of ""renewable energy generation facility" and "distribution system" in the *Electricity Act* to be mutually exclusive.

E. The Applicant is not a Distributor: Licensing Aspects

21. The inclusion of certain lengths of distribution lines in the definition of a "renewable energy generation facility" is important for the purposes of licensing pursuant to section 57 of the *Ontario Energy Board Act.*

22. Section 57 of the *Ontario Energy Board Act* requires all transmitters, distributors and generators to hold a license issued under authority of that Act.

Ontario Energy Board Act Excerpts, Tab 4

23. If the distribution lines associated with a "renewable energy generation facility" constituted a "distribution system" as defined in the *Electricity Act*, Plateau would be required to be licensed as a distributor under section 57 of the *Ontario Energy Board Act.*

24. Contrary to the assertions of the Applicant's solicitor concerning Ont. Reg. 161/99 (at Tab 2, Page 5, Lines 7-11 and footnote 5), the reason Plateau does not require a distributor's license is due solely to the fact that its distribution lines are defined to be a component of a "renewable energy generation facility" and are not a "distribution system".

Section 4.0.1, Ontario Regulation 161/99

25. With respect, the Applicant's submission concerning the applicability of subsection 4.0.1(1)(d) of Ont. Reg. 161/99 is erroneous.

26. A condition precedent to the applicability of this provision, as stated in the first sentence is that "Clause 57(a)... of the Act do(es) not apply to a distributor who distributes electricity for a price no greater than that required to cover all reasonable costs...".

Section 4.0.1(1)(d), Ontario Regulation 161/99 as amended Excerpts, Tab 5

27. Subsections (a) through (d) of section 4.0.1 cannot be considered in isolation. The introductory sentence of section 4.01 must be read in combination with subsection (d); accordingly, unless the Applicant is in the business of generating electricity and supplying it to the ISEO Grid on a "non-profit basis", subsection 4.0.1(d) would not apply to the Applicant or its Project.

28. The Applicant has supplied no information or evidence upon which the Board could conclude that the Applicant falls within the protection of section 4.0.1(d) of Ont. Reg. 161/99.

29. The Applicant is not a "non-share capital corporation" (or "not for profit corporation") as defined in the *Corporations Act,* R.S.O. and instead is a "business corporation" incorporated under the Ontario *Business Corporations*

Act, R.S.O. 1990, as amended.

30. It is respectfully submitted that "renewable energy generation facilities" including any ancillary distribution lines are distinct from "distribution systems" and "transmission systems".

F. The Applicant is not a Distributor: Other Legislative and Regulatory Provisions

31. There are, in the legislation and regulations related to the electrical industry, further clear indications that the distribution lines that form part of the Applicant's Project are not a "distribution system" as defined in the *Electricity Act, 1998.* These provisions clearly support the Municipality's position that the Applicant is not a distributor as contemplated in section 41 of the *Electricity Act, 1998.*

Part III of the Electricity Act

32. Part III of the Act, entitled "*Access to Transmission and Distribution Systems*" includes section 25.36 which states that:

> "*a transmitter or distributor shall connect a renewable energy generation facility to its transmission system or distribution system in accordance with the regulations...*".

***Electricity Act* Excerpts, Tab 1**

33. If the distribution lines were in fact to be considered as a "distribution system" as defined in the Act, logic would dictate that specific reference to the connection of the renewable energy generation facility and its distribution system would have been included in that section. This section makes no reference to the connection of any intervening "distribution system" owned by the renewable energy generator.

34. Section 26 of the Act states that "*a transmitter or distributor shall provide generators, retailers and consumers with non-discriminatory access to its transmission or distribution systems in Ontario in accordance with it license*".

***Electricity Act* Excerpts, Tab 1**

35. If the Applicant's distribution lines are both a component of the "renewable energy generation facility" and a "distribution system", then the Applicant is required to provide access to the distribution lines to "consumers". Consequently, the distribution lines must be available for connection to any lands located along such distribution line.

36. Section 56 of the *Ontario Energy Board Act* defines a consumer to mean a "person who uses, for the person's own consumption electricity that the person

did not generate".

***Ontario Energy Board Act* Excerpts, Tab 4**

37. The Applicant's own materials indicate that it will convey electricity to the HONI distribution system. It does not indicate or identify that consumer's will have access to the distribution lines.

38. If, in fact, the Applicant intended to construct a distribution system as defined in the Electricity Act, such system would be subject to the *Ontario Energy Board Distribution System Code*.

The Distribution Code*: *Expanded Definition of Distribution System

39. The Ontario Energy Board has published the *Distribution System Code* (the Code), last revised October 1, 2010. The purpose of the Code is to set "minimum conditions that a distributor must meet in carrying out its obligations to distribute electricity under its license and the *Energy Competition Act, 1998*" .

***Distribution System Code* Excerpts, Section 1.1: The Purpose of this Code, Tab 6.**

40. Section 1.2 of the Code includes a definition of "distribution system" that further elaborates upon the statutory definition. Specifically, it adds to the statutory definition, the following: "A distribution system is comprised of the main system capable of distributing electricity to many customers and the connection assets used to connect a customer to the main distribution line".

***Distribution System Code* Excerpts, Tab 6.**

41. The definition of a "consumer" in section 1.2 of the Code is identical to the statutory definition which means " a person who uses, for the person's own consumption, electricity that the person did not generate.
***Distribution System Code* Excerpts, Tab 6.**
***Electricity Act* Excerpts, Section 2(1), Tab 1**

42. The Applicant's own description of its proposal indicates that it will deliver electricity to the HONI distribution system and not consumers.

The Distribution Code: Conditions of Service

43. Section 2.4.1 of the Code outlines the requirements of a distributor to maintain a document identified as its "Conditions of Service" which document shall describe its operating practices and connection policies. Pursuant to Section 2.4.2, such "Conditions of Service" shall be filed with the Ontario Energy Board and make such document publically available.

***Distribution System Code* Excerpts, Tab 6.**

44. To the best of the knowledge of the Municipality, the Applicant has prepared no such document and no such document is filed with the OEB.

45. The Municipality respectfully submits that the Conditions of Service Document does not exist because Plateau has no intentions of distributing electricity to consumers and because it is not a "distributor".

The Distribution Code: Generally

46. By way of summary, the Code sets out a series of regulations, requirements, conditions, prohibitions, cost allocations etc. that apply to "distributors" as defined in the *Electricity Act,*. In the Municipality's respectful submission considering the totality of the regulations, requirements, conditions, prohibitions, cost allocations etc., in the Code it is clear the Applicant is not a distributor.

G. Earlier Enactments: Provincial Intent to Afford Special Privileges

47. Prior to the enactment of the *Electricity Act,* the placement of electrical infrastructure on, over or under municipal roads or provincial highways was authorized under various Provincial statutes including the *Power Corporation Act*, R.S.O 1990, c.P18 and its predecessor (prior to the 1980 version of the *Power Corporation Act*) the *Power Commission Act*, R.S.O. 1970, c.354 and the *Public Utilities Act*, R.S.O. 1980, c.423.

The Power Corporation Act

48. Pursuant to section 41 of the *Power Corporation Act*, R.S.O 1990, the Corporation (defined to mean Ontario Hydro), "has and always has had the authority to put down, carry construct, erect and maintain such conduits, wires, poles, towers an other equipment and works used in the generation, transmission or distribution of power...under, along, across or upon any public street or highway...without taking any of the proceedings prescribed the Expropriations Act for the taking of land without consent of its owner...but the location of any such conduits, wires...under, along, across or upon a public street or highway shall be agreed upon by the Corporation and municipal corporation...having control of the public street or highway and in the case of disagreement shall be determined by the Ontario Municipal Board".

***Power Corporation Act* Excerpts, Tab 7.**

49. The same provisions were also found in section 37 of the *Power Commission Act*, R.S.O 1970 c.354.

***Power Commission Act* Excerpts, Tab 8.**

50. The authority granted under section 41 of the *Power Corporation Act* amounted to or was equivalent to a power of expropriation.

51. The authority in section 41 of the *Power Corporation Act* is similar in all respects

to the existing authority granted to transmitters and distributors under section 41 of the *Electricity Act, 1998* with two exceptions:

a. firstly under the prior legislation "conduits, wires, poles, towers an other equipment and works used in the generation" of electricity were permitted to be located on streets and highways without the consent of the municipal owner; and

b. secondly, the Ontario Municipal Board was the designated adjudicator or arbiter of disputes between the generator, transmitter and distributor being Ontario Hydro and the municipal owner.

52. The first exception is of significance. The conduits, wires, poles, towers and other equipment and works used in the generation were no longer expressly permitted to be located**, by a generator of electricity,** on a public street without the consent of the municipal owner.

53. The *Electricity Act* provided for, among other things, the repeal and replacement of section 41 of the *Power Corporation Act.*

Public Utilities Act

54. Pursuant to sections 18 and 22 of the *Public Utilities Act*, R.S.O. 1990 municipal corporations were authorized to produce, distribute and sell electrical power and were identified as having and always having had "the authority to put down, carry, install...such conduits, pipes, wires, poles...on, over, under or across any highway, lane...." .

***Public Utilities Act* Excerpts, Tab 9.**

55. Pursuant to section 26 of that Act, a municipal corporation could also enter into agreements within an adjoining municipality to supply and distribute electrical power within that municipality.

***Public Utilities Act* Excerpts, Tab 9.**

56. Unlike the authority granted to Ontario Hydro under section 41 of the *Power Corporation Act*, a municipal power corporation had no special privilege to use municipal road allowances in such adjoining municipality without the consent of that municipality.

57. The *Electricity Act* provided for, among other things, the repeal and replacement of sections 2, 22 and 26 of the *Public Utilities Act.*

58. Under the prior legislative regime, in the Municipality's respectful submission, it is evident that the Province "turned its mind" to the granting of special privileges to specific electrical power entities. Ontario Hydro was given special privileges

to use public streets without the consent of the municipal owner, while in contrast, municipal power corporations supplying electricity to adjoining municipalities were not given such special privileges.

59. It is the Municipality's respectful submission that the Province also "turned its mind" to the granting of special privileges in the legislation that repealed section 41 of the *Power Corporation Act* and sections 2, 22 and 26 of the *Public Utilities Act*. Specifically, the Province chose not to extend to the owners of generation facilities" or "renewable energy generation facilities" the authority granted to transmitters and distributors in section 41 of the *Electricity Act, 1998.*

H. The Electricity Act 1998: Granting of Special Privileges to Ontario Power Generation Inc.

60. Section 53.6 of the *Electricity Act* bestows specific powers to OPG Inc. to "enter upon...and use such land...roads...as in its opinion are necessary for the purpose of the expiditious development of construction of... power generation facilities and ancillary works at Niagara". This subsection is stated to apply despite any provision of the *Electricity Act* or any other Act and despite the devotion of the land or property to a municipal of public use.

61. Clearly section 53.6 was required to afford special privileges to a generator of electricity because such special privileges were not granted under section 41.

***Electricity Act* Excerpts, Tab 1**

62. Section 53.6 is further demonstration that the Province "turned its mind" to the granting special privileges in the *Electricity Act*. Specifically it chose not to grant special privileges to the owners of "generation facilities" or "renewable energy generation facilities" in section 41 but it did choose to grant special privileges to one particular generator concerning one particular "generation facility" elsewhere in the Act.

I. SUMMARY

63. Had the province intended to continue to grant special privileges to those entities that produce electricity and introduce that electricity into the ISEO grid concerning the use and occupation of municipal roads without the consent of the municipal owner, language to that effect could and should have been included in the *Electricity Act.*

64. Had the Province intended to extend to the owners of renewable energy generation facilities the special privilege of locating their works on, across, under or upon public streets it could and should have done so through the enactment of the *Green Energy Act* or through consequential amendments to the *Electricity Act.*

65. Similarly, but more specifically, had the Province intended for "distribution lines" that connect wind turbines to the "distribution system" of the local "distributor" to be considered or classified as a separate and distinct "distribution system", the *Electricity Act* would not have defined those distribution lines to be a component of a "renewable energy generation facility".

66. In consideration of the special privileges bestowed under section 41 of the *Electricity Act,* which special privileges impose control and restrict the rights of ownership of public streets under the jurisdiction of the Municipality and the case law referenced at paragraphs 7 and 8 of these submissions, section 41 of that Act must be narrowly and strictly construed.

67. Had the Province intended "renewable energy generation facilities", or any distribution lines defined to be included as a component of those facilities, to be afforded the rights under section 41 clear and express language to that effect must be present in the legislation or related regulations.

68. Alternatively stated, unless section 41 includes language extending the rights bestowed thereunder to "renewable energy generation facilities" the Applicant has no right to place distribution lines that connect its wind turbines to the HONI owned distribution system on the Municipality's road allowances without the express written consent of the Municipality.

69. Moreover, unless section 41 includes language extending the rights bestowed thereunder to "renewable energy generation facilities" the Ontario Energy Board has no authority to resolve or adjudicate any dispute between the Applicant and the Municipality concerning location of the Applicant's works on municipal property.

70. The Municipality respectfully requests the Ontario Energy Board to issue an Order declaring that section 41 of the *Electricity Act* does not apply to the works or undertakings of a "renewable energy generation facility" and accordingly, that section 41 does not apply to the Applicant's Project as the Applicant's Project is a "renewable energy generation facility".

71. All of which is respectfully submitted.

Dated at Orillia, Ontario this 25th Day of November, 2010.

The Municipality of Grey Highlands
by its solicitors Russell, Christie LLP

Edward B. Veldboom

consistent with the policies of the Government of Ontario;

(c) to facilitate load management in a manner consistent with the policies of the Government of Ontario;

(d) to promote the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources, in a manner consistent with the policies of the Government of Ontario;

(e) to provide generators, retailers and consumers with non-discriminatory access to transmission and distribution systems in Ontario;

(f) to protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service;

(g) to promote economic efficiency and sustainability in the generation, transmission, distribution and sale of electricity;

(h) to ensure that Ontario Hydro's debt is repaid in a prudent manner and that the burden of debt repayment is fairly distributed;

(i) to facilitate the maintenance of a financially viable electricity industry; and

(j) to protect corridor land so that it remains available for uses that benefit the public, while recognizing the primacy of transmission uses. 2004, c. 23, Sched. A, s. 1.

Interpretation

2. (1) In this Act,

"affiliate", with respect to a corporation, has the same meaning as in the *Business Corporations Act*; ("membre du même groupe")

"alternative energy source" means a source of energy,

(a) that is prescribed by the regulations or that satisfies criteria prescribed by the regulations, and

(b) that can be used to generate electricity through a process that is cleaner than certain other generation technologies in use in Ontario before June 1, 2004; ("source d'énergie de remplacement")

"ancillary services" means services necessary to maintain the reliability of the IESO-controlled grid, including frequency control, voltage control, reactive power and operating reserve services; ("services accessoires")

"Board" means the Ontario Energy Board; ("Commission")

"charges" means, with respect to the OPA, amounts charged by the OPA to recover amounts paid or payable by the OPA to another person with respect to electricity; ("frais")

"consumer" means a person who uses, for the person's own consumption, electricity that the person did not generate; ("consommateur")

"corridor land" means the real property transferred to Her Majesty in right of Ontario by section 114.2; ("biens-fonds réservés aux couloirs")

"distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less; ("distribuer")

"distribution system" means a system for distributing electricity, and includes any structures,

equipment or other things used for that purpose; ("réseau de distribution")

"distributor" means a person who owns or operates a distribution system; ("distributeur")

"Electrical Safety Authority" means the person or body designated by the regulations as the Electrical Safety Authority; ("Office de la sécurité des installations électriques")

"fees" means, with respect to the OPA or the IESO, amounts charged by the OPA or the IESO, as the case may be, to recover its costs of operations; ("droits")

"Financial Corporation" means Ontario Hydro Financial Corporation, as continued under Part V; ("Société financière")

Note: Effective April 1, 1999, the name of the Ontario Hydro Financial Corporation has been changed by regulation to Ontario Electricity Financial Corporation in English and Société financière de l'industrie de l'électricité de l'Ontario in French. See: O. Reg. 115/99, s. 1.

"generate", with respect to electricity, means to produce electricity or provide ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system; ("produire")

"generation facility" means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system, and includes any structures, equipment or other things used for that purpose; ("installation de production")

"generator" means a person who owns or operates a generation facility; ("producteur")

"Governance and Structure By-law" means the by-law made under subsection 16 (2); ("règlement de régie")

"Hydro One Inc." means the corporation incorporated as Ontario Hydro Services Company Inc. under the *Business Corporations Act* on December 1, 1998; ("Hydro One Inc.")

"IESO" means the Independent Electricity System Operator continued under Part II; ("SIERE")

"IESO-administered markets" means the markets established by the market rules; ("marchés administrés par la SIERE")

"IESO-controlled grid" means the transmission systems with respect to which, pursuant to agreements, the IESO has authority to direct operations; ("réseau dirigé par la SIERE")

"integrated power system" means the IESO-controlled grid and the structures, equipment and other things that connect the IESO-controlled grid with transmission systems and distribution systems in Ontario and transmission systems outside Ontario; ("réseau d'électricité intégré")

"licence" means a licence issued under Part V of the *Ontario Energy Board Act, 1998*; ("permis")

"market participant" means a person who is authorized by the market rules to participate in the IESO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid; ("intervenant du marché")

"market rules" means the rules made under section 32; ("règles du marché")

"Market Surveillance Panel" means the Market Surveillance Panel continued under Part II of the *Ontario Energy Board Act, 1998*; ("comité de surveillance du marché")

"Minister" means the Minister of Energy and Infrastructure or such other member of the Executive

Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"Ontario Power Generation Inc." means the corporation incorporated as Ontario Power Generation Inc. under the *Business Corporations Act* on December 1, 1998; ("Ontario Power Generation Inc.")

"OPA" means the Ontario Power Authority established under Part II.1; ("OEO")

"procurement contract" means a contract referred to in subsection 25.32 (1); ("contrat d'acquisition")

"regulations" means the regulations made under this Act; ("règlements")

"reliability standard" means a standard or criterion, including an amendment to a standard or criterion, relating to the reliable operation of the integrated power system that is approved by a standards authority; ("norme de fiabilité")

"renewable energy generation facility" means a generation facility that generates electricity from a renewable energy source and that meets such criteria as may be prescribed by regulation and includes associated or ancillary equipment, systems and technologies as may be prescribed by regulation, but does not include an associated waste disposal site, unless the site is prescribed by regulation for the purposes of this definition; ("installation de production d'énergie renouvelable")

"renewable energy project" has the same meaning as in the *Green Energy Act, 2009*; ("projet d'énergie renouvelable")

"renewable energy source" means an energy source that is renewed by natural processes and includes wind, water, biomass, biogas, biofuel, solar energy, geothermal energy, tidal forces and such other energy sources as may be prescribed by the regulations, but only if the energy source satisfies such criteria as may be prescribed by the regulations for that energy source; ("source d'énergie renouvelable")

"retail", with respect to electricity, means,

(a) to sell or offer to sell electricity to a consumer,

(b) to act as agent or broker for a retailer with respect to the sale or offering for sale of electricity, or

(c) to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity; ("vendre au détail")

"retailer" means a person who retails electricity; ("détaillant")

"security" has the meaning assigned by the *Securities Act*; ("valeur mobilière")

"service area", with respect to a distributor, means the area in which the distributor is authorized by its licence to distribute electricity; ("secteur de service")

"smart grid" means the advanced information exchange systems and equipment described in subsection (1.3); ("réseau intelligent")

"smart metering data" means data derived from smart meters, including data related to the consumers' consumption of electricity; ("données des compteurs intelligents")

"Smart Metering Entity" means the corporation incorporated, the limited partnership or the partnership formed or the entity designated pursuant to section 53.7 to accomplish the

government's smart metering initiative; ("Entité responsable des compteurs intelligents")

"smart metering initiative" means those policies of the Government of Ontario related to its decision to ensure Ontario electricity consumers are provided, over time, with smart meters; ("initiative des compteurs intelligents")

"standards authority" means the North American Electric Reliability Corporation or any successor thereof, or any other agency or body designated by regulation that approves standards or criteria applicable both in and outside Ontario relating to the reliability of transmission systems; ("organisme de normalisation")

"subsidiary", with respect to a corporation, has the same meaning as in the *Business Corporations Act*; ("filiale")

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by adding the following definitions:

"suite meter" has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; ("compteur individuel")

"suite metering" has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs individuels")

"suite meter provider" has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs individuels")

See: 2010, c. 8, ss. 37 (1), 40.

"transmission system" means a system for transmitting electricity, and includes any structures, equipment or other things used for that purpose; ("réseau de transport")

"transmit", with respect to electricity, means to convey electricity at voltages of more than 50 kilovolts; ("transporter")

"transmitter" means a person who owns or operates a transmission system; ("transporteur")

"voting security" has the same meaning as in the *Business Corporations Act*; ("valeur mobilière avec droit de vote")

"waste disposal site" has the same meaning as in section 25 of the *Environmental Protection Act*. ("lieu d'élimination des déchets") 1998, c. 15, Sched. A, s. 2 (1); 2002, c. 1, Sched. A, s. 2 (1-6); 2002, c. 23, s. 3 (2); 2004, c. 23, Sched. A, s. 2 (1-10); 2006, c. 3, Sched. B, s. 1; 2008, c. 7, Sched. G, s. 1; 2009, c. 12, Sched. B, s. 1 (1-4).

Alternative energy source, exception

(1.1) Despite the definition of "alternative energy source" in subsection (1), an energy source is not an alternative energy source for the purposes of this Act in respect of a particular generation facility or unit if criteria prescribed by the regulations relating to the generation of electricity from the energy source are not satisfied. 2004, c. 23, Sched. A, s. 2 (11).

Renewable energy source, exception

(1.2) Despite the definition of "renewable energy source" in subsection (1), an energy source is not a renewable energy source for the purposes of this Act in respect of a particular generation facility or unit if criteria prescribed by the regulations relating to the generation of electricity from the energy source are not satisfied. 2004, c. 23, Sched. A, s. 2 (12).

PART III
THE ELECTRICITY MARKETS

ACCESS TO TRANSMISSION AND DISTRIBUTION SYSTEMS

Mandatory connection to transmission or distribution system

25.36 (1) A transmitter or distributor shall connect a renewable energy generation facility to its transmission system or distribution system in accordance with the regulations, the market rules and any licence issued by the Board if,

(a) the generator requests the connection in writing; and

(b) the applicable technical, economic and other requirements prescribed by regulation or mandated by the market rules or by an order or code issued by the Board have been met in respect of the connection. 2009, c. 12, Sched. B, s. 8.

Conflicts

(2) In the event of a conflict between a regulation referred to in subsection (1) and an order or code issued by the Board, the regulation prevails. 2009, c. 12, Sched. B, s. 8.

Regulations

(3) A regulation referred to in subsection (1) may specify requirements which must be met in relation to the connection of renewable energy generation facilities to a transmitter's transmission system or a distributor's distribution system. 2009, c. 12, Sched. B, s. 8.

Information re connections

25.37 (1) A distributor, transmitter, the OPA and the IESO shall provide such information as may be prescribed by regulation about the distribution system's or transmission system's ability to accommodate generation from a renewable energy generation facility and the information shall be current and prospective in nature and be made available to the public. 2009, c. 12, Sched. B, s. 9.

Completion time re connection assessments

(2) Connection assessments described in the Board's Distribution System Code and the IESO market rules shall be completed in the time prescribed by regulation. 2009, c. 12, Sched. B, s. 9.

Providing information and reports

(3) The IESO, a transmitter or a distributor shall file with the Board, on a quarterly basis, the information and reports that are prescribed by regulation relating to their ability to meet the prescribed time requirements referred to in subsection (2). 2009, c. 12, Sched. B, s. 9.

Immediate publication

(4) The Board may publish the information and reports referred to in subsection (3) immediately upon their receipt. 2009, c. 12, Sched. B, s. 9.

Non-discriminatory access

26. (1) A transmitter or distributor shall provide generators, retailers and consumers with non-discriminatory access to its transmission or distribution systems in Ontario in accordance with its licence. 1998, c. 15, Sched. A, s. 26 (1).

Priority access re renewable energy generation facilities

(1.1) Despite subsection (1), a transmitter or distributor shall provide, in accordance with its licence, priority connection access to its transmission system or distribution system for a renewable energy generation facility that meets the requirements prescribed by regulation. 2009, c. 12, Sched. B,

s. 10.

Conflicts

(1.2) In the event of a conflict between a regulation referred to in subsection (1.1) and a market rule or licence issued by the Board, the regulation prevails. 2009, c. 12, Sched. B, s. 10.

Regulations

(1.3) A regulation referred to in subsection (1.1) may specify criteria related to the renewable energy generation facility which must be met in order for the facility to receive priority connection access. 2009, c. 12, Sched. B, s. 10.

Same

(2) Until subsection (1) comes into force, a transmitter or distributor prescribed by the regulations shall provide a generator, retailer or consumer prescribed by the regulations with non-discriminatory access to its transmission or distribution systems in Ontario in accordance with its licence. 1998, c. 15, Sched. A, s. 26 (2).

Previous contracts with Ontario Hydro

(3) Any contract entered into between Ontario Hydro and a municipal corporation or any other person before December 11, 1998 for the supply of electricity to the municipal corporation or other person ceases to have effect on the day subsection (1) comes into force. 1998, c. 15, Sched. A, s. 26 (3); 2002, c. 1, Sched. A, s. 5 (1).

Previous contracts with municipal corporation

(4) Any contract entered into between a municipal corporation and any person before December 11, 1998 for the supply of electricity to the person ceases to have effect on the day subsection (1) comes into force. 1998, c. 15, Sched. A, s. 26 (4); 2002, c. 1, Sched. A, s. 5 (2).

Low-volume consumers

(5) Subsections (3) and (4) do not apply to a contract for the supply of electricity to a low-volume consumer. 1998, c. 15, Sched. A, s. 26 (5).

Same

(6) A contract for the sale of electricity between a low-volume consumer and a person who, at the time the contract was entered into, was not authorized under the *Ontario Energy Board Act, 1998* to retail electricity ceases to have effect on the date subsection (1) comes into force unless, after the person becomes authorized under the *Ontario Energy Board Act, 1998* to retail electricity and before the date subsection (1) comes into force, the low-volume consumer re-affirms the contract in writing. 1998, c. 15, Sched. A, s. 26 (6).

No cause of action

(7) No cause of action arises as a result of a contract ceasing to have effect under subsection (3), (4) or (6). 1998, c. 15, Sched. A, s. 26 (7).

Return of prepayment

(8) Despite subsection (7), a person to whom electricity was to be supplied under a contract referred to in subsection (3) or (4), or a low-volume consumer to whom electricity was to be sold under a contract referred to in subsection (6), may recover any amount paid under the contract before the day the contract ceased to have effect in respect of electricity that was to be supplied on or after that day. 1998, c. 15, Sched. A, s. 26 (8).

Application of subss. (3), (4) and (6)

(9) Subsections (3), (4) and (6) do not apply to contracts prescribed by the regulations. 1998,

c. 15, Sched. A, s. 26 (9).

Definition

(10) In this section,

"low-volume consumer" means a person who annually uses less than the amount of electricity prescribed by the regulations. 1998, c. 15, Sched. A, s. 26 (10).

Use of IESO-controlled grid

27. A person shall not cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid except in accordance with this Act and the market rules. 2004, c. 23, Sched. A, s. 39.

Distributor's obligation to connect

28. A distributor shall connect a building to its distribution system if,

(a) the building lies along any of the lines of the distributor's distribution system; and

(b) the owner, occupant or other person in charge of the building requests the connection in writing. 1998, c. 15, Sched. A, s. 28.

Note: On a day to be named by proclamation of the Lieutenant Governor, the Act is amended by adding the following section:

Manner of connection

28.1 A distributor to whom section 28 applies shall connect a building to its distribution system in such manner as may be prescribed by regulation, under such circumstances as may be prescribed by regulation, for such properties or classes of properties as may be prescribed by regulation, and for such consumers or classes of consumers as may be prescribed by regulation. 2010, c. 8, s. 37 (3).

See: 2010, c. 8, ss. 37 (3), 40.

Distributor's obligation to sell electricity

29. (1) A distributor shall sell electricity to every person connected to the distributor's distribution system, except a person who advises the distributor in writing that the person does not wish to purchase electricity from the distributor. 1998, c. 15, Sched. A, s. 29 (1).

Same

(2) If, under subsection (1), a person has advised a distributor that the person does not wish to purchase electricity from the distributor, the person may at any time thereafter request the distributor in writing to sell electricity to the person and the distributor shall comply with the request in accordance with its licence. 1998, c. 15, Sched. A, s. 29 (2).

Same

(3) If a person connected to a distributor's distribution system purchases electricity from a retailer other than the distributor and the retailer is unable for any reason to sell electricity to the person, the distributor shall sell electricity to the person. 1998, c. 15, Sched. A, s. 29 (3).

Exemptions

(4) The Board may exempt a distributor from any provision of this section if, after holding a hearing, the Board is satisfied that there is sufficient competition among retailers in the distributor's service area. 1998, c. 15, Sched. A, s. 29 (4).

Same

Public streets and highways

41. (1) A transmitter or distributor may, over, under or on any public street or highway, construct or install such structures, equipment and other facilities as it considers necessary for the purpose of its transmission or distribution system, including poles and lines. 1998, c. 15, Sched. A, s. 41 (1).

Inspection, etc.

(2) The transmitter or distributor may inspect, maintain, repair, alter, remove or replace any structure, equipment or facilities constructed or installed under subsection (1) or a predecessor of subsection (1). 1998, c. 15, Sched. A, s. 41 (2).

Entry

(3) The transmitter or distributor may enter the street or highway at any reasonable time to exercise the powers referred to in subsections (1) and (2). 1998, c. 15, Sched. A, s. 41 (3).

Employees, etc.

(4) The powers of a transmitter or distributor under subsections (1), (2) and (3) may be exercised by an employee or agent of the transmitter or distributor, who may be accompanied by any other person under the direction of the employee or agent. 1998, c. 15, Sched. A, s. 41 (4).

No consent required

(5) The exercise of powers under subsections (1), (2) and (3) does not require the consent of the owner of or any other person having an interest in the street or highway. 1998, c. 15, Sched. A, s. 41 (5).

Identification

(6) A person exercising a power of entry under this section must on request display or produce proper identification. 1998, c. 15, Sched. A, s. 41 (6).

Notice, compensation, etc.

(7) If a transmitter or distributor exercises a power of entry under this section, it shall,

(a) provide reasonable notice of the entry to the owner or other person having authority over the street or highway;

(b) in so far as is practicable, restore the street or highway to its original condition; and

(c) provide compensation for any damages caused by the entry. 1998, c. 15, Sched. A, s. 41 (7).

No compensation

(8) Subject to clause (7) (c), the transmitter or distributor is not required to pay any compensation in order to exercise its powers under subsections (1), (2) and (3), and the *Expropriations Act* does not apply in respect of anything done pursuant to those powers. 1998, c. 15, Sched. A, s. 41 (8).

Location

(9) The location of any structures, equipment or facilities constructed or installed under subsection (1) shall be agreed on by the transmitter or distributor and the owner of the street or highway, and in case of disagreement shall be determined by the Board. 1998, c. 15, Sched. A, s. 41 (9).

Application of subs. (9)

(10) Subsection (9) does not apply if section 92 of the *Ontario Energy Board Act, 1998* applies. 1998, c. 15, Sched. A, s. 41 (10).

Power to acquire land and property

53.6 (1) Ontario Power Generation Inc. may, without any further approval and without the consent of the owner, enter upon, take possession of, expropriate and use such land, property, waters, water privileges, water powers, rights of access and roads, buildings and works as in its opinion are necessary for the purpose of the expeditious development and construction of works for the conveying of water by subsurface tunnels from the Niagara River to any existing or future power generation facilities and ancillary works at Niagara. 2004, c. 23, Sched. A, s. 51.

Same

(2) Subsection (1) applies,

(a) despite any provision of this or any other Act;

(b) despite the devotion or deemed devotion of the land or property to a municipal or other public use;

(c) despite the power of the owner of the land or property to take land compulsorily;

(d) despite the origin, nature or sources of the owner's title to or interest in the land or property; and

(e) despite the manner by which the land or property was acquired by the owner or any of the owner's predecessors in title. 2004, c. 23, Sched. A, s. 51.

Easements continue until release

(3) Despite any provision of any other Act, if Ontario Power Generation Inc. acquires an easement through, over, under or otherwise affecting any land, the land shall continue to be subject to the easement and the easement shall be binding upon the owner and all subsequent owners of the land until Ontario Power Generation Inc. grants a release. 2004, c. 23, Sched. A, s. 51.

Acquisition of whole parcels

(4) Ontario Power Generation Inc. may acquire a whole parcel of land of which only a part may be acquired under the authority of this section, together with any right of way to it if the parcel is separated from the works, if Ontario Power Generation Inc. reasonably believes that the whole parcel may be obtained at a more reasonable price or there is a greater advantage to acquiring the whole parcel instead of only the part and Ontario Power Generation Inc. may later sell and convey all or part of the excess land as it considers expedient. 2004, c. 23, Sched. A, s. 51.

Expropriations Act application

(5) If a power exercised under subsection (1) does not constitute an expropriation, Ontario Power Generation Inc. shall provide compensation to the owner based on market value as provided by the *Expropriations Act*. 2004, c. 23, Sched. A, s. 51.

No court action

(6) No action or exercise of a power by Ontario Power Generation Inc. under this section shall be restrained by injunction or other process or proceeding in any court. 2004, c. 23, Sched. A, s. 51.

Definitions

(7) In this section,

"easement" means an easement, right of way, right or licence in the nature of an easement, profit à prendre or other incorporeal hereditament; ("servitude")

"land" means any real property and includes any estate, term, easement, right or interest in, to, over, under or affecting real property; ("bien-fonds")

"owner" includes a mortgagee, lessee, tenant, occupant, a person entitled to a limited

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No evidence was given as to what other or further inspection or examination the defendant should have made. In these circumstances, it seems to me that the Court is not qualified by its own experience or knowledge, or by what is called common knowledge, to find that the ladder was obviously unsafe in design and workmanship, or that the defendant should have made some other or further inspection than that which he deposed to. I, at least, am unable, without evidence, to say either that the ladder was obviously unsafe in design or workmanship, or that, had the defendant made some other or further inspection, he would have discovered that the ladder was unsafe.

Applying then the propositions of law which I have stated to the facts and circumstances in evidence, I am of opinion that the plaintiff failed to establish that the defendant was negligent, or in other words failed to establish that the defendant neglected to perform the duties which the law required him to perform in reference to the plaintiff, and for these reasons I would allow the appeal and dismiss the action with costs.

Appeal dismissed (FERGUSON, J.A., *dissenting*).

[APPELLATE DIVISION.]

RE STRONACH.

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Jan. 16.

Municipal Corporations—By-law Prohibiting Housing of Motor-trucks in Buildings in Specified Areas in City—Municipal Act, R.S.O. 1914, ch. 192, sec. 409 (2f) (9 Geo. V. ch. 46, sec. 17, and 10 & 11 Geo. V. ch. 58, sec. 15)—Application of Qualifying Words to Remote Antecedent—General Rules of Construction of Statutes and By-laws—Conviction for Breach of By-law Quashed.

A city by-law, passed under the authority of sec. 409 of the Municipal Act, R.S.O. 1914, ch. 192, provided that "no building for the housing of motor-trucks or apparatus used in any truck cartage business shall be located, erected or used on the property abutting on any of the highways or parts thereof nor in any of the blocks or areas set forth in the schedule . . . of this by-law." Motor-trucks of a dairy company, used solely for the purpose of delivering milk, and not used in a truck cartage business, or for the purpose of trucking or cartage for others or for the public, were housed upon premises situated within one of the areas of the city specified in the schedule:—

Held, that the words of the by-law, "used in any truck cartage business," referred to "motor-trucks" as well as to "apparatus."

The by-law therefore applied only to motor-trucks used in the business described; and the company's motor-trucks, not being used in any

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truck cartage business, did not come within the prohibition of the by-law or of the statute under which it was passed.

The grammatical rule of construction restricting the application of the qualifying clause to the immediate antecedent is not universal, and will give way where a reasonable interpretation or the context requires it.

Statement of principles governing the interpretation of statutes and by-laws and review of the authorities.

AN appeal by Stronach from the dismissal by one of the Judges of the County Court of the County of York (sitting in a Division Court) of an appeal to him by Stronach from his conviction by the Police Magistrate for the City of Toronto for a breach of a by-law of the city, No. 8754, in that the appellant "did house motor-trucks on premises known as 45 Soudan-avenue, in the said city of Toronto, in contravention of the said by-law."

November 28, 1927. The appeal was heard by MULOCK, C.J.O., MAGEE, HODGINS, FERGUSON, and GRANT, JJ.A.

A. J. Thomson, for the appellant, argued that the words of the by-law "used in any truck cartage business" qualify the preceding words "motor-trucks or apparatus," and not "apparatus" alone. The trucks housed were not used in the truck cartage business. The conviction violates the general rule of construction and disregards the general object of the statute, the Consolidated Municipal Act, 1922, 12 & 13 Geo. V. ch. 72, sec. 409, subsec. 2. Reference to *Great Western Railway Co.* v. *Swindon and Cheltenham Extension Railway Co.* (1884), 9 App. Cas. 787, at p. 808.

G. R. Geary, K.C., for the complainant, respondent, contended that, if effect were given to the argument of counsel for the appellant it would lead to the anomaly that other trucks are prohibited by the by-law, but the appellant with his milk-trucks is not. In any event, the defendant's trucks are used in the delivery of milk about the city, and therefore in the truck cartage business. The Legislature could not have intended to make a distinction between a truck used in the truck cartage business and a truck used in the delivery of milk. The sentence should be interpreted according to the ordinary grammatical rules of construction. "Motor-truck" is self-contained and has a meaning of its own, which "apparatus" has not. The ordinary rule that words qualify the word immediately preceding them should be applied. Reference to Beal's Cardinal Rules of Legal Interpretation, 2nd ed., p. 66.

January 16, 1928. The judgment of the Court was read by GRANT, J.A.:—The relevant section of the Municipal Act, R.S.O.

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1914, ch. 192, in so far as material to this appeal, is sec. 409(2), and it reads as follows:—

"409. By-laws may be passed by the councils of cities.

Location of Stables etc.

"2. For regulating and controlling the location, erection and use of buildings as livery boarding or sales stables, and stables in which horses are kept for hire or kept for use with vehicles in conveying passengers, or for express purposes, and stables for horses for delivery purposes, laundries, butcher shops, stores, factories, blacksmith shops, forges, dog kennels, hospitals or infirmaries for horses, dogs or other animals and for prohibiting the erection or use of buildings for all or any or either of such purposes within any defined area or areas or on land abutting on any defined highway or part of a highway;

"(*a*) The by-law shall not be passed except by a vote of two-thirds of all the members of the council;

(*b*) This paragraph shall not apply to a building which was on the 26th day of April, 1904, erected or used for any of such purposes, so long as it is used as it was used on that day."

By an amending Act of 1919, 9 Geo. V. ch. 46, sec. 17, a paragraph was added to sec. 409, which, as amended in 1920, by 10 & 11 Geo. V. ch. 58, sec. 15, reads as follows:—

"2 *f*. Paragraph 2 of this section shall also apply to tents, awnings, or other similar coverings for business purposes and buildings for the housing of motor-trucks or apparatus used in any truck cartage business, but this paragraph shall not apply to any such tent, awning or building which was on the 1st day of May, 1919, erected or used for any such purpose so long as it was used on that day."

The by-law passed by the city council, under and pursuant to the statute, in so far as it bears upon the subject-matter of the appeal, reads as follows:—

"No tent, awning or other similar covering for business purposes and no building for the housing of motor-trucks or apparatus used in any truck cartage business shall be located, erected or used on the property abutting on any of the highways or parts thereof nor in any of the blocks or areas set forth in the schedule in section III. of this by-law."

It is agreed that the premises in question on Soudan-avenue come within the description of property covered by the clause of the by-law above quoted.

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Grant, J

The appellant is the manager of Caulfield's Dairy and, although not properly speaking the owner of the trucks in question, it was agreed by counsel that the question of the ownership should not be raised or considered upon the appeal, as it was expressly waived before the learned County Court Judge. The motor-trucks of the Caulfield Dairy Company are housed in a garage, a building which was formerly a stable, on the premises known as street No. 45 Soudan-avenue. The trucks are used solely for the purpose of delivering the milk of the dairy company, and are not used in a truck cartage business, or for the purpose of trucking or cartage for others or for the public.

It is the contention of the complainant that the motor-trucks in question are being "housed" upon the premises 45 Soudan-avenue, and that this constitutes a breach of the by-law, no matter what use may be made of the trucks. In other words, the contention of the complainant is that the qualifying phrase, "used in any truck cartage business," applies only to the word "apparatus," the last antecedent, and does not apply to "motor-trucks." The learned County Court Judge has given effect to this contention, and has affirmed the conviction.

The appellant contends that the qualifying phrase, "used in any truck cartage business," should be read as applying to "motor-trucks" as well as to "apparatus;" and that, as admittedly the trucks are not being used in any truck cartage business, therefore no breach of the by-law has been committed.

The learned County Court Judge, in his reasons for judgment, has based his decision upon the strict grammatical rule of construction, whereby the qualifying clause is restricted in its application to the immediate antecedent. That this is not a rule of universal application is abundantly clear on the authorities.

"It is true that, in strict grammatical construction, the relative ought to apply to the last antecedent; but there are numerous examples in the best writers to shew, that the context may often require a deviation from this rule, and that the relative may be connected with nouns which go before the last antecedent, and either take from it or give to it some qualification:" Lord Abinger, C.B., in *Staniland* v. *Hopkins* (1841), 9 M. & W. 178, at p. 192.

"It must be admitted that, every relative ought to be referred, not perhaps to the next antecedent 'which will make sense with the context,' but to that to which the context appears properly to attract it:" Lord Chelmsford in *Eastern Counties etc. Railway*

Cos. v. *Marriage* (1860), 31 L.J. Ex. 73, at p. 90. The case is also reported in 9 H.L.C. 32.

"It must on all hands be admitted that, both in writing and speaking, the antecedent really referred to has often to be made out by the good sense of the hearer or reader rather than by the position of a word in the sentence; frequently the actual last antecedent would make nonsense; and it seems conceded you must then go back to some other antecedent, and a curious question may be raised as to the degree of absurdity and injustice which may be tolerated rather than retire to an earlier antecedent. The judicial exposition of any document ought to be the reasonable one, and not emphatically the grammatical one:" *ib., per* Pollock, C.B., 31 L.J. Ex. at p. 86.

"*Primâ facie,* no doubt, the words would apply to the antecedent clause before them; but we may look at the rest of the deed, and, if necessary, apply the words, not to the antecedent next before them, but to the one next before that. This view of the construction to be put on a deed is supported by the decision in the House of Lords in *Eastern Counties etc. Railway Cos.* v. *Marriage,* 9 H.L.C. 32;" Channell, B., in *Tetley* v. *Wanless* (1866), L.R. 2 Ex. 21, at p. 29.

Lord Bramwell, in *Great Western Railway Co.* v. *Swindon and Cheltenham Extension Railway Co.,* 9 App. Cas. 787, at p. 808:—

"First, I think that as a matter of ordinary construction, where several words are followed by a general expression as here, which is as much applicable to the first and other words as to the last, that expression is not limited to the last, but applies to all. For instance, 'horses, oxen, pigs, and sheep, from whatever country they may come,' the latter words would apply to horses as much as to sheep."

It is manifest that the grammatical rule of construction is, at best, of *primâ facie* application only, and will give way where a reasonable interpretation or the context requires it to do so.

The law is also well established that common law rights are not held to have been taken away or affected by a statute, or by-law passed under its authority, unless it is so expressed in clear language, or must follow by necessary implication, and in such cases only to such an extent as may be necessary to give effect to the intention of the Legislature thus clearly manifested.

"It is settled by numerous authorities that a by-law restricting the carrying on of a lawful business or calling or the doing

of an otherwise lawful act is to be strictly construed:" Meredith & Wilkinson's Canadian Municipal Manual, p. 254.

"There is ample authority also for the proposition that the power of a municipality to pass by-laws restricting common law rights can only be found in language clear and distinct:" *Watt* v. *Drysdale* (1907), 17 Man. L.R. 15, at pp. 20 and 21, quoted with approval by Richards, J.A., delivering the judgment of the Court of Appeal of Manitoba in *Doble* v. *Canadian Northern Railway Co.* (1916), 27 D.L.R. 115, at p. 117.

"Municipal corporations, in the exercise of the statutory powers conferred upon them to make by-laws, should be confined strictly within the limits of their authority, and all attempts on their part to exceed it should be firmly repelled by the Courts. *A fortiori* should this be so where their by-laws are directed against the common law right, and the liberty and freedom of every subject to employ himself in any lawful trade or calling he pleases:" Osler, J.A., in *Merritt* v. *City of Toronto* (1895), 22 A.R. 205, at p. 207.

"Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction in the sense before explained. It is a recognised rule that they should be interpreted, if possible, so as to respect such rights. It is presumed, where the objects of the Act do not obviously imply such an intention, that the Legislature does not desire to confiscate the property, or to encroach upon the right of persons; and it is therefore expected that if such be its intention, it will manifest it plainly, if not in express words, at least by clear implication, and beyond reasonable doubt:" Maxwell on the Interpretation of Statutes, 6th ed., p. 501.

Apart from the provisions of the by-law, which follows the language of the statute, the defendant and his dairy company enjoyed the common law right to keep the motor-trucks in question upon the premises at 45 Soudan-avenue, if they chose to do so. If that common law right is to be taken away, it must be by clear language, the meaning and intention of which cannot easily be misunderstood. In our opinion, this requirement has not been complied with in the present case. There is no apparent and sufficient reason why the housing of the apparatus should be forbidden only if it be "used in any truck cartage business;" but the housing of a motor-truck should be forbidden, no matter what use is being made of it, or indeed if it is not being used at all. If the contention of the complainant be carried to its logical conclusion,

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no man who lives in Soudan-avenue could store or house a motor-truck in his garage, even though it were put up there for the winter, and were not being used at all. I do not think that any such result was either contemplated or intended by the Legislature in passing this section of the statute, upon which the by-law must depend for its validity and interpretation. If the Legislature had any such intention, it has not been so clearly expressed as to justify a construction which interferes so seriously with established common law rights.

Further, an examination of the general tenor of the provisions of the statute and of the history of the legislation discloses its purpose, namely, to prevent the carrying on of certain businesses in the restricted locality. If the Legislature intended to provide that the owner of property might, by by-law, be prohibited from housing a motor-truck on his premises, one would not look for such an enactment in sections relating to the carrying on of businesses of various kinds. Having in mind the general purport and intention of the legislation, and the above mentioned principles governing its interpretation, I am convinced that the expression "used in any truck cartage business" refers to "motor-trucks" as well as to "apparatus." The motor-trucks, in this case, not being used in any truck cartage business, do not come within the prohibition of the by-law or of the statute under which it was passed.

The appeal, in my judgment, should be allowed with costs, and the conviction set aside, also with costs.

Appeal allowed.

[IN CHAMBERS.]

RE IRVINE.

1928.
Jan. 18.

Appeal—Motion to Extend Time—Rule 492 (2), (7)—Intention to Appeal—Delay in Applying—Unusual Circumstances—Rule 600—Scope of.

An order was made, under Rule 492(7), extending the time for appealing from an order of FISHER, J., 33 O.W.N. 188, made upon a motion under Rule 600, although no determination to appeal was formed within the 7 days allowed by Rule 492 (2) and the failure to appeal within the time was not by reason of some slip or oversight.

In granting the extension, applied for 3 weeks after the time had expired, the facts that the time allowed by the Rule was very short, that the solicitor for the two parties desiring to appeal acted with diligence in advising them of the order, and asking for instructions, that one of them lived at a great distance from the solicitor, and that the solicitor had intimated to the solicitors for the opposite party, before the time had expired, the possibility of an appeal, were regarded as unusual circumstances sufficient to warrant the extension.

Quære, whether the question dealt with in the order of FISHER, J., could conveniently or properly be dealt with upon a summary motion under Rule 600.

MOTION by the executors and beneficiaries under the will of John Albert Irvine, deceased, under Rule 492(7),* for an order extending the time for appealing from an order of FISHER, J., 33 O.W.N. 188, made upon a summary application under Rule 600.

January 7. The motion was heard at a sitting of the Weekly Court, Ottawa, by ORDE, J.A., as a Judge of the Appellate Division.

W. F. Schroeder, for the applicants.

Harold Fisher, K.C., for the testator's widow.

January 18. ORDE, J.A.:—The judgment of Fisher, J., was pronounced and the order dated on the 6th December, 1927, upon a motion made under Rule 600 by the executors for advice and directions as to certain questions arising out of the will of the deceased. The motion was heard on the 12th November, 1927, by Fisher, J., at the Ottawa Weekly Court. It appears to have been fully argued, and, judgment being reserved, further written arguments were put in by consent.

The real question involved upon that motion, while arising in the administration of the estate, does not seem to have arisen under the testator's will at all, but, as appears from the judgment, involved the question whether or not there had been a binding agreement to sell certain mining lands made by the testator before his death, which, as was contended, deprived his widow of dower under the provisions of sec. 7 of the Dower Act, R.S.O. 1914, ch. 70, which deprives the wife of dower in mining lands unless the husband dies "entitled thereto."

Whether or not this question, which depended upon the effect of the conduct of the son of the testator in mailing, after the testator's death, an acceptance of an offer to purchase the lands in question signed by the testator immediately before his death, was one which could conveniently or properly be dealt with upon a summary motion under Rule 600 may be doubtful. But the executors launched the motion, the widow raised no objection, and, if the executors and beneficiaries are prejudicially affected by the course they adopted, they have themselves only to blame.

Rule 492 (2) requires an appeal in cases like this to be taken and set down within seven days from the date of the judgment or order; in the present case, not later than the 13th December, 1927.

* See appendices to vols. 30, 40, and 50 of the Ontario Law Reports. The amendments made to Rule 492 are there set forth.

There will be judgment for the defendant dismissing this action, with costs to be taxed.

Action dismissed with costs.

Solicitors for the plaintiff: *Borden, Elliot, Kelley, Palmer & Sankey, Toronto.*

Solicitors for the defendant: *Mason, Foulds, Davidson & Arnup, Toronto.*

[SCHROEDER J.]

Re Carter and the City of Sudbury et al.

Franchises — Powers of Municipality to Grant — Special Act Incorporating Street Railway Company — Powers of Company — Franchise to Operate Motor Buses — The Municipal Franchises Act, R.S.O. 1937, c. 277, s. 3(1), as re-enacted by 1947, c. 70, s. 1.

Street Railways — Powers of Company — Operation of Buses — Terms of Franchise and Act of Incorporation — The Railway Act, R.S.O. 1937, c. 259, s. 1 (u).

Statutes — Interpretation — Agreement Made Schedule to, and Confirmed by, Special Statute — Whether Agreement to be Construed as Part of Statute — Effect of Interpretation Section in General Act.

A company was incorporated by special Act with power to construct and operate "a railway to be operated by steam or electricity" within a defined area. By an agreement with the City of S. (assented to by the municipal electors) the company was granted a franchise to construct and operate "a street railway" within the city. This agreement was ratified and confirmed by a special Act of the Legislature, to which it was made a schedule. In 1949 the City passed two by-laws purporting to authorize the company to operate motor buses. These by-laws were not ratified by the electors, and they did not set out any term for which the powers were conferred.

Held, the by-laws were invalid for non-compliance with s. 3 (1) of The Municipal Franchises Act, as re-enacted in 1947. The company being a creature of statute, its powers were limited to such as were conferred by the statute. *London County Council v. The Attorney-General et al.*, [1902] A.C. 165, applied. The agreement between the company and the City should be read and construed as a part of the statute confirming it, and as itself a statutory enactment, since the statute did more than merely ratify and confirm it. *The Ottawa Electric Railway Company v. The City of Ottawa*, [1945] S.C.R. 105 at 122; *Winnipeg v. Winnipeg Electric Railway Company* (1921), 31 Man. R. 131; *City of Toronto v. Toronto R.W. Co.* (1918), 44 O.L.R. 308 at 316, affirmed [1920] A.C. 455, applied. The statute, being one that conferred exceptional privileges trenching on general rights, was subject to the principle of strict construction, and so construed it authorized the construction and operation of a street railway and the operation of cars which would run on rails constructed in the manner provided by the agreement. *The Grand Trunk Railway Company of Canada v. James* (1901), 31 S.C.R. 420, applied. It could not be said that the company had power under its Act of incorporation, or was authorized by the agreement, to operate buses, and the definition of "street railway" in s. 1(*u*) of the Ontario Railway Act (made applicable by the special Act of incorporation) could not confer on the company any power not specifically conferred on it by its Act of incorporation. *Reg v. Pearce* (1880), 5 Q.B.D. 386 at 389, applied. The 1949 by-laws, accordingly, did not merely authorize an extension of the railway service, for which authority was provided by the earlier by-law (assented to by the electors), but constituted the grant of a new right, and could accordingly be valid only if they complied with The Municipal Franchises Act.

A MOTION to quash two by-laws of the City of Sudbury.

5th May 1949. The motion was hearl by SCHROEDER J. in Weekly Court at Toronto.

G. W. Mason, K.C., and *S. P. Parker*, for the applicant.

H. F. Parkinson, K.C., and *J. M. Cooper, K.C.*, for the City of Sudbury, respondent.

J. W. Pickup, K.C., for the Sudbury-Copper Cliff Suburban Electric Railway Company, respondent.

18th May 1949. SCHROEDER J.:—The applicant, a resident ratepayer of the city of Sudbury, moves in these proceedings to quash two by-laws of the City of Sudbury, being By-law no. 3017, passed on the 25th January 1949, and By-law no. 3032, passed on the 28th February 1949. By-law no. 3017 is in the following terms:

"1. The City of Sudbury hereby grants to the Sudbury-Copper Cliff Suburban Electric Railway Company the right and privilege of operating its buses over the route defined in the schedule attached hereto, such privilege to continue until such time as this by-law is revoked."

By-law no. 3032 is in the following terms:

"1. The Sudbury Copper-Cliff Suburban Electric Railway Company (hereinafter referred to as the Company) is hereby authorized to operate buses for the transportation of passengers so as to provide a bus service for the area known as Gilman and Simcoe Streets in the City of Sudbury over the route designated on the schedule hereto attached and marked with the letter 'A'.

"2. The Sudbury Copper-Cliff Suburban Electric Railway Company (hereinafter referred to as the Company) is further hereby authorized to operate buses for the transportation of passengers so as to provide a bus service for the area known as the David, Marion and McNaughton Street in the City of Sudbury over the route designated on the schedule hereto attached and marked with the letter 'B'.

"3. Such authorization is granted to the said company on the condition that the said service is commenced within thirty days immediately after the passing of this by-law."

The motion is based on three grounds:

(1) that the by-laws were passed without the assent of the municipal electors;

(2) that the by-laws do not limit the period for which the rights purported to be granted shall subsist;

(3) that the operation of buses is beyond the ambit of the powers of The Sudbury-Copper Cliff Suburban Electric Railway Company.

On the hearing of the motion The Sudbury-Copper Cliff Suburban Electric Railway Company, (hereinafter called "the Railway Company"), being directly affected, asked to be added as a party and I acceded to that request and heard the submissions made by it through counsel.

Subs. 1 of s. 3 of The Municipal Franchises Act, R.S.O. 1937, c. 277, as re-enacted by 1947, c. 70, s. 1, reads as follows:

"A municipal corporation shall not grant to any person nor shall any person acquire the right to use or occupy any of the highways of the municipality except as provided in *The Municipal Act*, or to construct or operate any part of a transportation system or public utility in the municipality, or to supply to the corporation or to the inhabitants of the municipality or any of them, gas, steam or electric light, heat or power, unless a by-law setting forth the terms and conditions upon which and the period for which such right is to be granted or acquired has been assented to by the municipal electors."

It is not disputed that the by-laws attacked had not been submitted to the electors of the Corporation of the City of Sudbury (hereinafter referred to as "the Corporation") for their assent and the by-laws on their face do not appear to set forth the period—or any defined period—for which the rights conferred are to be enjoyed, so that on first impression both by-laws would seem to be bad for want of compliance in both respects with the provisions of the statute quoted.

It is, however, contended by the Railway Company and on behalf of the Corporation that the effect of both by-laws involved on the part of the city council nothing more than carrying into effect the duties and obligations imposed upon council by the provisions of a pre-existing agreement entered into between the Corporation and the Company, which was validated by provincial statute. It becomes necessary, therefore, to examine this legislation.

The Railway Company was incorporated by an Act of the Province of Ontario being 1912, c. 149. Section 2 of that private Act confers upon the company the following powers:

"The Company is authorized and empowered to survey, lay out, construct, complete, equip and maintain a railway to be operated by steam or electricity, or partly by one and partly by the other, from a point at, in or near the Town of Sudbury,

thence westerly to a point at, in or near the Town of Copper Cliff; also from a point at, in or near the said Town of Sudbury, thence easterly to a point at, in or near the Village of Coniston, also from a point at, in or near the said Town of Sudbury to the Creighton Mine; and also from a point at, in or near the said Town of Sudbury to the Blezard Mine, with power to construct branches or extensions at different points along the route, not exceeding ten miles in length, and to connect with other railroads now operating or under construction within the said territory."

Attention has been directed to The Railway Act, R.S.O. 1937, c. 259, and to the fact that by s. 9 of the Act of incorporation the provisions of The Ontario Railway Act, 1906, apply to the company and to the railway constructed or to be constructed by it and that by virtue of s. 16(*b*) of The Interpretation Act, R.S.O. 1937, c. 1, the provisions of the present Railway Act apply thereto. Section 1 (*u*) of The Railway Act provides that in that Act and in any special Act, in so far as The Railway Act applies thereto:

"'Street railway' shall mean a railway constructed or operated along and upon a highway under an agreement with or by-law of a city or town, although it may at some point or points deviate from the highway to a right of way owned by the company, under the powers conferred by section 243, and shall include all portions of the railway within the city or town and for a distance of not more than one and one-half miles beyond the limits thereof, although such one and one-half miles may be constructed under a by-law of or agreement with a municipal corporation other than that of such city or town, and shall also include any part of an electric railway which lies within the limits of a city or town and is constructed or operated along and upon a highway *and shall include busses and other vehicular means of transportation operated as part of or in connection with a street railway.*" (The italics are mine.)

The effect of the two sections lastly mentioned can be no greater than to subject the Railway Company, and any buses which it may operate as part of its business, to the provisions of the general Railway Act of the Province. They can hardly be claimed to have the effect of conferring upon the company any powers not specifically conferred upon it by the Act of its

corporation or of adding to such powers in any respect so as to support the Railway Company's claim to the right to provide transportation by means of buses or by any other means not authorized by the terms of the incorporating statute.

". . . an interpretation clause should be used for the purpose of interpreting words which are ambiguous or equivocal, and not so as to disturb the meaning of such as are plain": per Lush J. in *Reg. v. Pearce et al.* (1880), 5 Q.B.D. 386 at 389.

"Another important rule with regard to the effect of an interpretation clause is, that an interpretation clause is not to be taken as substituting one set of words for another, or as strictly defining what the meaning of a term must be under *all* circumstances, but rather as declaring what may be comprehended within the term where the circumstances require that it should be so comprehended. If, therefore, an interpretation clause gives an extended meaning to a word, it does not follow as a matter of course that, if that word is used more than once in the Act, it is on each occasion used in the extended meaning, and it may be always a matter for argument whether or not the interpretation clause is to apply to the word as used in the particular clause of the Act which is under consideration": Craies on Statute Law, 4th ed. 1936, p. 195, citing *Reg. v. The Justices of Cambridgeshire; Reg. v. The Justices of Shropshire; Reg. v. The Justices of Gloucestershire* (1838), 7 Ad. & E. 480 at 491, 112 E.R. 551.

It is to be noted that interpretation clauses are not to be used for the purpose of enacting under the guise of definition, and have often fallen under severe judicial criticism by reason of failure to observe that rule.

In *London County Council v. The Attorney-General et al.* [1902] A.C. 165, it was held that where a corporation is the creature of statute its powers are confined to such as are, expressly or by necessary implication, conferred by the statute, so that the London County Council, constituted by The Local Government Act, 1888, and having thereunder, and in virtue of other statutes, the power of acquiring and working tramways, was not entitled to run a service of omnibuses, such service not being a necessary incident of the business of a tramway company.

On 25th August 1913 the council of the City of Sudbury enacted By-law no. 343 authorizing the City to enter into an agreement with the Railway Company. This by-law received the

assent of the municipal electors in due course and an agreement was entered into. Both the by-law and the agreement were validated and confirmed by statute in the year 1914, being c. 125 of that year. It is important to consider the provisions of s. 2 of the latter statute for the purpose of determining whether or not it did more than merely validate and confirm the agreement between the Corporation and the Railway Company. This section reads as follows:

"By-law Number 343 of the Municipal Corporation of the Town of Sudbury set forth in Schedule 1 to this Act is ratified and confirmed and declared legal and valid notwithstanding any want of jurisdiction on the part of the said Municipality to pass the said by-law and notwithstanding any defect in substance or in form of the said By-law or in the manner of passing the same and the said Corporation of the Town of Sudbury is authorized and empowered to do all necessary acts for the full and proper carrying out of the said By-law; and the agreement set forth as Schedule 'A' to the said by-law when executed by the said Corporation of the Town of Sudbury and the said railway company the parties thereto, *shall be binding upon the said Corporation of the Town of Sudbury and the ratepayers thereof and likewise upon the said The Sudbury-Copper Cliff Suburban Electric Railway Company.*" (The italics are mine.)

By s. 1 of the said Act the time for commencement and completion of the railway was extended.

It will be observed that something more than mere ratification and confirmation of the agreement is accomplished and the agreement should, therefore, in fact be construed as a statutory enactment: see *The Ottawa Electric Railway Company v. The City of Ottawa,* [1945] S.C.R. 105 at 122, 57 C.R.T.C. 273.

It is not sufficient for the purpose of making a schedule or agreement a part of an Act that words in the Act merely confirm and validate the schedule or agreement. There must be words in the Act from which there can be inferred the intention of the Legislature to make the schedule or agreement part of the Act: *Winnipeg v. Winnipeg Electric Railway Company,* 31 Man. R. 131, [1921] 2 W.W.R. 282, 59 D.L.R. 251.

In *City of Toronto v. Toronto R.W. Co.* (1918), 44 O.L.R. 308 at 316, 46 D.L.R. 435, affirmed [1920] A.C. 455, 17 O.W.N. 503, 51 D.L.R. 48, Riddell J. stated: "The contract is, by sec.

of the Act (1892) 55 Vict. ch. 99, sec. 1 (Ont.), declared to be 'valid and legal and to be binding upon the . . . parties:' but it is not made a part of the Act, so that it becomes itself statutory, as was the case with the agreement considered in this Court recently in *Re City of Toronto and Toronto and York Radial R.W. Co. and County of York* (1918), 42 O.L.R. 545 [43 D.L.R. 49, 23 C.R.C. 218]. While legal and binding, it is legal and binding as a contract upon the parties, it is no different from any other contract: *City of Kingston v. Kingston Electric R.W. Co.* (1898), 25 A.R. 462, at pp. 468, 469, and cases cited."

In my opinion s. 2 of the 1914 statute above mentioned does a great deal more than did the statute referred to by Mr. Justice Riddell in the case just mentioned.

This statute is one which confers exceptional privileges on the Railway Company and it has been held that Acts which establish monopolies or confer exceptional exemptions and privileges correlatively trenching on general rights are subject to the principle of strict construction: see Maxwell on The Interpretation of Statutes, 9th ed. 1946, p. 298; see also Maxwell at p. 289 where the learned author states:

"Statutes which encroach on the rights of the subject, whether as regards person or property, are similarly subject to a strict construction in the sense before explained. It is a recognized rule that they should be interpreted, if possible, so as to respect such rights."

At p. 305 of the same work the learned author, dealing with the construction of private Acts, states that enactments of a local or personal character which confer any exceptional exemption from a common burden or invest private persons or bodies for their own benefit and profit with privileges and powers interfering with the property or rights of others, are construed against those persons or bodies more strictly, perhaps, than any other kind of enactment; and later:

"The Courts take notice that the statutory powers are obtained on the petitions framed by their promoters and, in construing them, regard them, as they are in effect, as contracts between those persons, or those whom they represent, and the Legislature on behalf of the public and for the public good. Their language is therefore treated as the language of their promoters, who asked the Legislature for them and, when doubt arises

as to its construction, the maxim (ordinarily inapplicable to the interpretation of statutes) that *verba cartarum fortius accipiuntur contra proferentem,* or that words are to be understood most strongly against him who uses them, is justly applied. The benefit of the doubt is to be given to those who might be prejudiced by the exercise of the powers which the enactment grants and against those who claim to exercise them. Indeed, if words in a local or personal Act seem to express an intention to enact something unconnected with the purposes of the promoters which the committee, if they had done their duty, would not have allowed to be introduced, almost any construction, it has been said, would seem justifiable to prevent them from having that effect."

Even if the view be taken that the agreement annexed as a schedule to the 1914 Act is not to be regarded as having become part of the statute itself, it is still subject to a strict construction. Maxwell in the same edition, at pp. 306-7, writes:

"Even if such statutes were not regarded in the light of contracts, they would seem to be subject to strict construction on the same ground as grants from the Crown, to which they are analogous, are subject to it. As the latter are construed strictly against the grantee on the ground that prerogatives, rights, and emoluments are conferred on the Crown for great purposes and for the public use and are, therefore, not to be understood as diminished by any grant beyond what it takes away by necessary and unavoidable construction, so the Legislature, in granting away, in effect, the ordinary rights of the subject, should be understood as granting no more than actually passes by necessary and unavoidable construction."

It should be mentioned in passing that by s. 454 of The Municipal Act, R.S.O. 1937, c. 266, the soil and freehold of highways is vested in municipalities having jurisdiction over them but municipalities are not in the strict sense trustees of the rights of the general public to use those highways. I had occasion to deal with this point in *Williams and Wilson Limited v. The City of Toronto and The Attorney-General for Ontario,* [1946] O.R. 309, [1946] 4 D.L.R. 278, where it was held that the Attorney-General is the representative of the Crown in its capacity as *parens patriae* and is charged with the protection of the rights of the general public with respect to property which has become

devoted to highway purposes. Certainly when any person or group of persons or any private body is given the right to operate a transportation system over municipal highways, the rights of the general public with respect to the user and enjoyment of such highways is affected and the reason for the application of the principle of strict construction with reference to the particular rights conferred upon such persons or bodies would undeniably be well founded.

The following paragraphs of the agreement attached to the 1914 statute as schedule "A" were put forward by counsel as the portions of the agreement most relevant to the matters under consideration in the case at bar, and they are reproduced hereunder:

"5. The said Company, its successors and assigns, shall, subject to the conditions, restrictions, obligations, and provisions hereinafter contained, have in so far as the Corporation has power to grant the same, the authority, right and privilege to lay out, construct, complete, maintain and operate, by electricity and with the consent of the Corporation to be expressed by by-law any other power but steam, subject to the consent and approval of the engineer to be first had and obtained as a condition precedent to the construction of each and every part of the said railway, a street railway consisting of a single or double track, with necessary side tracks, switches, crossovers and turnouts, for the passage of cars upon and along the following streets and highways of the Town of Sudbury, that is to say: Regent, Lorne, Elm, Durham, Monk, College, Kathleen, Tedman, Morin Avenue, Notre Dame Avenue, Lisgar, Larch, Cedar, Station, Nelson, John, Elizabeth, McNaughton and Annie Street, and also to erect, construct and maintain upon the said streets and highways all poles, cables, wires and overhead constructions necessary to operate the said railway by trolley system or by any other system of electricity as the motive power, or by any motive power other than steam, for the term of twenty years from the date of the final passing of the by-law of the Corporation authorizing the entering into of this agreement, it being expressly provided and agreed that the town engineer in giving his approval as hereinbefore provided for, shall have the right to prescribe the situation, location and manner of construction of the said railway, poles, cables, wires and overhead constructions."

"6. Provided the Company first obtains the consent of the Corporation to be expressed by by-law passed by the Council of the said Corporation, it may, subject to the consent and approval of the engineer as hereinbefore provided for and to all other the terms, provisions, and conditions of this agreement, substitute other streets and highways within the municipality, or parts thereof, for the streets and highways named in paragraph five hereof, provided, however, that the provisions of this paragraph shall not be construed so as to prevent the Corporation from granting rights to any other railway or railways upon any streets or highways not hereinbefore expressly mentioned."

"9. The said Company shall also be entitled with the consent and approval of the Corporation expressed by by-law, subject to the terms, provisions and conditions of this agreement, to extend its street railway service along any other of the streets or highways of the Town of Sudbury, although the same are not specially named in this agreement."

"10. It is further provided and agreed that in the event of the Corporation determining that there should be a street railway service on any other street or highway in the Town of Sudbury, other than those mentioned in paragraph five hereof, and in the event of their passing a by-law for such purpose, then the said Company shall thereupon proceed to construct a street railway on such other street or streets, highway or highways, or portions thereof as may be set out in the said by-law, and shall commence such construction within three months after notice shall be given by the Corporation to the Company setting out the provisions of such by-law, provided, however, that if within thirty days from the receipt by the said Company of such notice the Company shall give notice that it will not accept such by-law, and will not proceed to construct such railway upon the streets and highways, or parts thereof designated in said by-law, or if after having received the said notice above provided to be given by the Corporation the said Company shall not proceed with the necessary work of constructing and completing the same within the time limited by such notice as given by the Corporation, the Corporation may itself construct or grant authority to construct a railway upon any such streets, highways, or parts thereof to any other person or persons, firm or corporation, and in such case said company, person or persons, firm or the corporation

itself shall be entitled to construct such railway in accordance with any such agreement as may be entered into between the Corporation and the said person or persons, firm or corporation, and shall be entitled to cross the street railway line of the Company, the party of the second part hereto, with their railway at such point or points as may be necessary, or may be designated by the Council of the Corporation, and further if required by the Corporation by by-law the said Company shall accept transfers from the line or lines of any such company, person or persons, firm or the Corporation itself, upon such terms as to the place of transfer, amount of payment to be made therefor, and otherwise as the said Corporation by such by-law shall determine and direct, provided, however, that in case the Company shall be dissatisfied with the determination of the Corporation, the Company may appeal to the Ontario Railway and Municipal Board, whose decision shall be final."

The franchise was granted to the Railway Company for a period of 20 years and was to be continued for successive periods of 5 years thereafter in the absence of any effort on the part of the Corporation to take the Railway Company's assets over as provided by clause 41 of the agreement. The agreement is still in full force and effect.

Now what was substantially authorized by the agreement and by-law of 1913 and by the terms of the statute of which they became a part was the construction and operation of a street railway and the operation of cars, whether propelled electrically or by motive power other than steam, which would run on rails constructed in the manner provided by the agreement. Clause 9 of the agreement empowering the Railway Company, with the consent of the Corporation, to "extend its railway service" along other streets not named in the agreement, must be read along with and subject to the provisions of clause 5.

In *The Grand Trunk Railway Company v. James* (1901), 31 S.C.R. 420, 1 C.R.C. 422, it was held that "railway" ordinarily means a way on which a train passes by means of rails. It must receive that meaning unless there is some all-powerful necessity compelling a departure from it and justifying the addition of other entities. The Court, by a majority, held that "railway" does

not extend to "railway property" on the interpretation of The Railway Act, 1888, c. 29, as amended by 1890, c. 28.

Counsel opposing this motion urged very strongly that the words "street railway" and "railway service" must be given a liberal construction even if the agreement is to be regarded in the light of a statutory enactment, and should be so construed as to include the operation of motor buses on the streets mentioned in the schedules to the by-laws under consideration. This argument is advanced having regard to the definition of "street railway" contained in The Railway Act of Ontario quoted above. For the reasons hereinbefore mentioned, I entertain the opinion that these words must be strictly construed and I find myself unable to agree with the contention made on behalf of the respondents.

Reliance is placed on the decision of the Judicial Committee of the Privy Council in *British Columbia Electric Railway Company, Limited v. Stewart et al.*, [1913] A.C. 816, 14 D.L.R. 8, C.R. [1913] A.C. 337, 5 W.W.R. 25, 25 W.L.R. 227. It may be stated at once that if the extension of the transportation service purporting to be authorized by the by-laws which are the subject of challenge in the present proceedings, were directed to an extension of the railway service as contemplated by the terms of the agreement between the Corporation and the Railway Company, the situation in the case at bar would be almost identical with the situation which existed in the case cited, and these by-laws would not require the assent of the electors at the present time, nor would it be necessary that the period during which the rights should subsist should be set forth in the by-laws; but what it is sought to authorize by these by-laws is an extension of the transportation service by means of motor buses, by means of a totally different kind of conveyance from that authorized by the agreement and by-law of the year 1913, to which the electors have assented.

As already stated, I feel that I am precluded by authority from giving effect to the very wide construction of the terms of the franchise agreement which has been urged upon me by counsel for the respondents. I hold that what By-laws 3017 and

3032 have sought to accomplish does not constitute the authorization of a mere extension of the railway service, for which authority is provided by the by-law and agreement of the year 1913 which then received the assent of the electors of the municipality. The recent by-laws constitute a grant to the Railway Company of the right to use or occupy certain highways of the municipality and to operate part of a transportation system in the municipality in a manner not heretofore authorized by by-law. Their effect, therefore, is to grant a new right which can only be granted subject to the provisions of s. 3(1) of The Municipal Franchises Act as amended. There being non-compliance with the provisions of the statute in the two respects mentioned earlier, I have no alternative but to grant the relief claimed by the appellants on this motion.

It is accordingly directed that an order issue quashing the said by-laws. The costs of this motion shall be paid by the respondents to the applicant forthwith after taxation thereof.

By-laws quashed.

Solicitors for the applicant: Lang, Michener, Day & Cranston, Toronto.

of the courts to enforce that policy if council has used reasonably clear and explicit words to give effect to its policy. According to the preamble contained in this by-law, Council of the City of Toronto determined that exhaled smoke and the smoke of burning cigarettes, cigars and pipes, constituted a health hazard or a discomfort to others, and that it was desirable for the health, safety and welfare of those other persons that smoking be regulated and in some cases prohibited. Section 26 of the by-law in my opinion is a reasonably clear and explicit expression of that policy, and I conceive it to be the duty of the court to give effect to it.

It is trite that a provision in a by-law which proscribes citizens' conduct must be reasonably explicit. If it is not reasonably explicit it will be unenforceable because of its vagueness. See Rogers, *The Law of Canadian Municipal Corporations*, 2nd ed., vol. 1, p. 470, *et seq*. And while by-laws may not be as benevolently interpreted now as they once were, it remains the duty of the court, if reasonably possible, to construe a by-law to give effect to the object intended by council.

It seems to me that the true and overriding considerations were restated in the House of Lords in *Fawcett Properties Ltd. v. Buckingham County Council*, [1961] A.C. 636. The following appears in the speech of Lord Cohen at p. 662:

> I turn now to the third argument, namely, that based on uncertainty. I confess that this point has caused me much difficulty but upon consideration I have come to the conclusion that for the reasons so clearly stated in the opinions which will soon be delivered by my noble and learned friends, Lords Denning and Jenkins, this argument also fails. It is based in the main on the principle relating to penal provisions of a statute which was concisely stated by my noble and learned friend, Viscount Simonds, in *London & North Eastern Railway Co. v. Berriman*, [[1946] A.C. 278, 313-314; 62 T.L.R. 170;] in these words: "A man is not to be put in peril upon an ambiguity." This principle involves that if a statutory provision is ambiguous, the court should adopt any reasonable interpretation which would avoid the penalty, but the court should not, I think, strike a provision out of an Act on the ground of uncertainty unless it is impossible to resolve the ambiguity which it is said to contain.

And at p. 677 Lord Denning said:

> I can well understand that a by-law will be held void for uncertainty if it can be given no meaning or no sensible or ascertainable meaning. But if the uncertainty stems only from the fact that the words of the by-law are ambiguous, it is well settled that it must, if possible, be given such a meaning as to make it reasonable and valid, rather than unreasonable and invalid.

Applying those considerations to the language of s. 26 of this by-law I am quite unable to say that there is no sensible or ascertainable meaning to its words. And if it can be said that some of the words of the section, either individually or in combination, might lead to a possible ambiguity, it is my opinion that any such ambiguity can be resolved by applying the ordinary English meaning of those words to the facts disclosed by the evidence in an individual case.

It is my opinion that the words of s. 26 are reasonably explicit and are not void for uncertainty.

The application is dismissed with costs.

Application dismissed.

[HIGH COURT OF JUSTICE]

City of Thunder Bay v. Potts et al.

DUPONT J. 10TH NOVEMBER 1982.

Municipal law — Landowners operating modelling school in area zoned residential — By-law allowing land within area to be used as a "school" — Construction of by-law.

The defendants operated a modelling school in a private dwelling and an adjacent building. The area in which the buildings were located was zoned for one and two family dwellings, but the by-law also allowed "a school" or "a home occupation" to be conducted on the premises. The plaintiff city alleged that the defendants were in breach of the by-law.

Held: the action should be dismissed.

The defendants could not claim to fall under the "home occupation" exemption as defined in the by-law, because there was no evidence that a modelling school could be said to be "customarily conducted entirely within a dwelling". Nor was the business "clearly incidental to the use of the dwelling for dwelling purposes", as required by the by-law.

The defendants could claim, however, to be operating "a school". As the municipality had chosen not to define the term in the by-law, it should be given a wide interpretation so as to include private vocational schools. Any ambiguity should be resolved in favour of the landowner.

[*Re Caldwell and Toronto*, [1935] O.R. 255, [1935] 2 D.L.R. 623; *St. Catharines v. Hulse*, [1936] O.W.N. 211, [1936] 2 D.L.R. 453; *Re L.D.C.M. Investments Ltd. et al. and Town of Newcastle et al.* (1975), 8 O.R. (2d) 504, 58 D.L.R. (3d) 376; *Re Coleman and McCallum* (1913), 4 O.W.N. 1127, 24 O.W.R. 470, 11 D.L.R. 138 [revd on other grounds 4 O.W.N. 1449, 24 O.W.R., 12 D.L.R. 140]; *Re Stronach* (1927), 61 O.L.R. 636, [1928] 3 D.L.R. 216, 49 C.C.C. 336; *R. v. Heit*, [1963] 2 O.R. 471, 40 D.L.R. (2d) 133, [1963] 3 C.C.C. 1, 41 C.R. 84; *Bayshore Shopping Centre Ltd. v. Township of Nepean et al.*, [1972] S.C.R. 755, 25 D.L.R. (3d) 443, apld; *Seafarers Training Institute v. Township of Williamsburg* (1982), 39 O.R. (2d) 370, refd to]

ACTION to restrain a breach of a municipal by-law.

D. G. Nattress, for plaintiff.
S. G. Kovanchak, for defendants.

DUPONT J. (orally):—The defendants are husband and wife and are the owners of real property municipally described as 176 Rupert Street and more particularly described as Lot 15, Plan M-34, the whole of Parcel 2602 in the register for Port Arthur Freehold. Such property, basically a private dwelling, is located within the municipal corporate limits of the plaintiff Corporation of the City of Thunder Bay and is zoned "A" No. 1 and 2 Family Dwelling pursuant to Zoning By-Law No. 2877 filed as ex. No. 1.

Prior to 1965 the defendants operated a professional modelling school in a rented hall and in 1965 they purchased the property in question and continued their operation, that is of the professional modelling school, on such property. The modelling school has approximately 50 or slightly more students enrolled at any given time ranging in ages from below nine to adults. The courses extend over a period of 10 weeks and incorporate instructions in posture, physical fitness and health, application of make-up, public relations and other activities related to fashion modelling, depending on the ages of the students. The cost varies from $85 to $120. In some years the business is operated at a deficit; in others marginal profits are realized.

To assist in the operation of this business, the defendant, Mrs. Potts, retains the services of an additional instructor, a secretary and a cleaner. Her husband, the co-defendant, keeps the ledger and prepares the financial statements. A sign is maintained on the front lawn referring to the modelling school business. A passerby will thereby be made aware of the existence of such modelling school activities in such building.

The business operation at one point occasioned a parking problem which led to complaints from a resident in the neighbourhood. I find that such problem has been largely resolved by obtaining access to a nearby vacant lot for parking purposes from which the defendant operates a student shuttle service to the studio.

The business outgrew the dwelling. The basement, of which three-quarters was designed as a studio, features a ceiling lower than that required to permit the physical exercises of the students. It was determined that an accessory building would be required for that purpose. On August 10, 1972, the defendants applied for, and received from the plaintiff a building permit, No. 3228, a copy of which has been tendered as an exhibit. The permit correctly indicates that the property is zoned "A"; contains a statement of the nature of the construction intended, namely a two car and storage garage; and provides that such construction is "not to be used for conducting business activities".

The husband defendant testified that he advised the permit issuer of the true intent to use the property in conjunction with the modelling school operation. He stated that such was his explanation for the written words on the permit "not to be used for conducting business activities". He alleged he was advised that the modelling school activities were classified as a "home occupation" as understood under the by-law thereby constituting a permissible use. He does not recall who so advised him and no one was called on the part of the plaintiff to contradict the defendant's evidence in that respect.

I refer to such details as they appear to relate to the defence of estoppel originally relied upon by the defence in their pleadings. Defence counsel now advises that such defence is not being advanced or relied upon, thereby rendering most of such evidence of little significance to the outcome of this trial.

The defendants constructed a building which, on the outside, appears to be a garage with what appears to be a normal garage door to permit car entry. Examination of the inside, however, revealed that the building was not a garage but was completely finished, with rugs, et cetera. It was not then or ever used as a garage. Its primary purpose was in carrying on the physical training associated with the modelling school operation.

Section 5 of By-law No. 2877 sets out the uses that are permissible on properties zoned "A" 1 and 2 Family Dwellings. Subsection 2 reads (I will leave out those parts that are not relevant) as follows:

> 5(2) No buildings or parts thereof and no land shall be used for purposes other than:
>
> (a) A one family dwelling.
> (b) A two family dwelling.
> (c) A church.
> (d) A school.
>
> . . . . . .
>
> (l) A home occupation, provided there shall be no external evidence of any home occupation.
>
> . . . . . .
>
> (p) One signboard not exceeding 12 sq. ft. in area pertaining to a business lawfully carried on upon the land or in a building or buildings situated thereon.

The first issue raised by the defence and requiring determination is whether the activities carried on by the defendants constitute "a home occupation" as understood by the by-law. The provisions of the by-law provide the following definition of "home occupation" which is relevant to the issues before the Court:

> 2(18) HOME OCCUPATIONS: Any use customarily conducted entirely within a dwelling and carried on by inhabitants thereof, which use is clearly incidental and secondary to the use of the dwelling for dwelling purposes, and does not change the character thereof. Clinics, hospitals, barber shops, beauty par-

lours, tea rooms and animal hospital shall not be deemed to be home occupations.

The definition that I have just referred to contains the words "any use customarily conducted entirely within a dwelling". Originally, the defendants carried on their business in a rented hall. There is no evidence before the Court suggesting that an operation of this sort, as described by the evidence, is one that can be said to be "customarily conducted entirely within a dwelling". I find the evidence consistent with the contrary.

In addition, the definition encompasses the words "and carried on by the inhabitants thereof". The evidence has established the business is carried on not only by the inhabitants but also by hired personnel who do not inhabit the premises.

The definition further requires that the use of the dwelling not change its character as a dwelling in that its use in the business "is clearly incidental and secondary to the use of the dwelling for dwelling purposes". It is questionable, indeed, whether the integrity or character of the dwelling in question has remained intact. The degree of activity and the commercial sign on the lawn advertising the modelling school operation strongly suggest that the character of the dwelling has been changed.

I have thus concluded that the modelling school and the premises described by the evidence does not constitute a "home occupation" as contemplated by the by-law.

The next issue for determination is whether the activity carried on by the defendants is a permissible use of the property as a "school" as that term is understood in para. 5(2)(d) of the by-law.

"School" is not defined in the by-law. It is argued by the plaintiff that such term ought to be restricted in interpretation to schools as defined in the *Education Act*, R.S.O. 1980, c. 129. Such definition is provided for by s. 1(1) ¶49 of that Act, which reads as follows:

> 49. "school" means,
>
> i. the body of public school pupils or separate school pupils or secondary school pupils that is organized as a unit for educational purposes under the jurisdiction of the appropriate board, or
>
> ii. the body of pupils enrolled in any of the elementary or secondary school courses of study in an educational institution operated by the Government of Ontario,
>
> and includes the teachers and other staff members associated with such unit or institution and the lands and premises used in connection therewith;

It is common ground between counsel that the operation of the defendants constitutes a private vocational school and clearly would not be included within the above statutory definition.

Considerable reliance has been placed upon definitions of "school" which are restricted to and describe elementary and secondary public school activities academically oriented. Such definitions evolved prior to the advent of much contemporary school activities not oriented to academic learning but related instead to the arts and vocations, although incorporating a degree of acadmic subjects. It can be said that what was understood by the term "school" 75 years ago may be restrictive when compared to what is conjured up by such terms in today's society. Notwithstanding, there exist definitions of some vintage that would incorporate within that term a program of instruction beyond those associated with public primary and secondary schools. I refer in particular to *Black's Law Dictionary*, 5th ed. (1979), which defines school as: "institution or place for instruction or education [including private schools]".

The *Shorter Oxford English Dictionary*, 3d ed., contains a wide variety of definitions in the traditional sense but includes the following "to send to school; to educate at school; to teach with superiority; to tutor; to chastise; to educate, train; to render wise, skillful or tractable by training or discipline; to instruct (a person) how to act to teach (a person) his part; to train or exercise . . .". The *Winston Dictionary, College Edition*, which also defines the term "school" in the traditional sense of a place where instruction is given, that is an institution for learning; schoolhouse; schoolroom; and the body of pupils collectively with their teacher in any education institution includes the following definition in a figurative sense: "any channel through which knowledge, training or discipline is gained". *Webster's New World Dictionary* (1956), includes the following definition of "school": "a place or institution for teaching and learning as a public school, dancing school, college or university". *Webster's New Collegiate Dictionary* provides the usual definition of school by reference to "schools oriented in academic instructions or learning," but includes the following: "to teach or drill in a specific knowledge or skill".

In my view the broader interpretations of "school" are consistent with and supported by the trend of recent jurisprudence. In *Seafarers Training Institute v. Township of Williamsburg*, unreported [since reported 39 O.R. (2d) 370] (September 8, 1982), my brother Smith, speaking for the Divisional Court, commented as follows on the meaning of the word "education" in the context of an assessment statute [at pp. 375-76]:

> The plain and ordinary meaning of education at the turn of the century might well have approximated the definition set out in *Gurdjieff* [*Gurdjieff Foundation v. Regional Assessment Com'r Region No. 9 et al.* (1981), 14 M.P.L.R. 303, 2 R.P.R. 176 Vol. 7-10, Court Decisions, Assessors Review Supplement, p. 31 Our society was elitist then and monolithic. What we must struggle with now is definition that will take account of changing attitudes and circumstances and the proliferation of occupations and schools and of job characterizations. The world is no longer divided neatly between the educated on the one hand

(lawyers, doctors, etc.), and the great mass of the unskilled on the other. After advancing to and beyond the stage of the artisan, we now understand the word "calling" as no longer being the private domain of the cleric, the politician, and other well-established high profile professions. The gardener, chauffeur, seafarer, sanitation engineer, artist, all follow vocations or callings and they pursue their own particular life's work. *Royal Choral Society v. Inland Revenue Com'rs*, [1943] 2 All E.R. 101, held that a body of persons established for the purpose of raising the artistic state of the country is established for educational purposes. We cannot countenance the treatment of plumbers, pipefitters or papermaker, who assure essential services in organized society, as belonging to classes that attract less deference because their members are involved in a more utilitarian activity. They cannot be assumed to be making less of a contribution, nor can we assume that the Legislature intended to discriminate in that way.

He added [at p. 376]:

In my view, each case must be approached in an effort to find whether the institution is a *bona fide* school, not a sham or a cloak. The word education should then be given the kind of broad interpretation which it has in common parlance. If a place has students, physical facilities, teachers or instructors, a curriculum designed to further the advancement in life of those in attendance so that they might better pursue their vocation or life's work, it should be held to be an institution (seminary) for educational purposes.

The modelling school operated by the defendants has been, for several years, registered as a vocational school under the *Private Vocational Schools Act*, R.S.O. 1980, c. 392. That Act defines "private vocational school" as meaning:

1(*c*) . . . a school or place at which instruction in any vocation is offered or provided by class room instruction or by correspondence, other than a college of applied arts and technology, a university recognized by the Ministry of Colleges and Universities or a school or course of instruction maintained under any other Act of the Legislature;

Vocation is also defined under the Act as follows:

(f) . . . the skill and knowledge requisite for employment in any vocation prescribed by the regulations.

Examination of the scheme of that Act reveals that the operator of a private vocational school is required to register under that Act in order to operate such school. The parties have agreed that the school operated by the defendants is covered by the terms of the Act.

The Court here is concerned with a potential restriction to a private property owner's right to enjoy his or her property as he or she wishes. Of course, such restriction may be imposed by statute or by-law but only if the language which purports to restrict such rights leaves no reasonable doubt of its meaning. In *Re Caldwell and Toronto*, [1935] O.R. 255, [1935] 2 D.L.R. 623 at 626, Mulock C.J.O. said:

If there is any doubt upon this subject [the meaning of a by-law], the doubt must be resolved in favour of the land owner. He not to be subject to have his property practically expropriated without compensation unless the situation is free from all doubt.

Similarly, in *St. Catharines v. Hulse*, [1936] O.W.N. 211, [1936] 2 D.L.R. 453 at 456 he said:

The Court should not give effect to language of a confiscatory character if its meaning admits of reasonable doubt.

More recently, the Divisional Court, in *Re L.D.C.M. Investments Ltd. et al. and Town of Newcastle et al.* (1975), 8 O.R. (2d) 504 at 511, 58 D.L.R. (3d) 376, adopted the following principle from Rogers, *Law of Canadian Municipal Corporations* (1959), vol. 2, p. 703:

If the expressions in By-laws . . . are of doubtful meaning as they relate to the lands in question, that doubt must be resolved in favour of the . . . [land owners.]

The Courts have, on occasions, held that a statute or by-law which purports to restrict rights of enjoyment normally vested in an owner of a property must be strictly construed. In *Re Coleman and McCallum* (1913), 4 O.W.N. 1127, 24 O.W.R. 470, 11 D.L.R. 138 [reversed on other grounds 4 O.W.N. 1449, 24 O.W.R. 754, 12 D.L.R. 140], Lennox J. said (at p. 1131 O.W.N.):

. . . statutes, and a fortiori by-laws, purporting to control or take away rights ordinarily incident to ownership, quasi-expropriation without payment, confiscation as it is often called, must be construed strictly, and the meaning must not be left in doubt — they must be definite and certain to all intents.

Grant J.A. expressed a similar view in *Re Stronach*, 61 O.L.R. 636, [1928] 3 D.L.R. 216, 49 C.C.C. 336 (App. Div.), stating (at p. 640 O.L.R.):

The law is . . . well established that common law rights are not held to have been taken away or affected by a statute, or by-law passed under its authority, unless it is so expressed in clear language, or must follow by necessary implication, and in such cases only to such an extent as may be necessary to give effect to the intention of the Legislative thus clearly manifested.

As Roach J.A. stated, in *R. v. Heit*, [1963] 2 O.R. 471 at 474, 40 D.L.R. (2d) 133, [1963] 3 C.C.C. 1:

It is a fundamental rule in the construction of by-laws in restraint of rights of property that they should be strictly construed . . .

Similarly, in *Bayshore Shopping Centre Ltd. v. Township of Nepean et al.*, [1972] S.C.R. 755 at 764, 25 D.L.R. (3d) 443, Spence J. said:

. . . a man's property is his own which he may utilize as he deems fit so long as in such utilization he does not commit nuisance, entrap the unwary or act in breach of statutory prohibitions, and therefore by-laws restrictive of that right should be strictly construed.

The corporate municipality, when drafting the existing zoning by-law, was free to define the term "school" for its purposes or describe in the list of permissible uses, the type of schools intended to be covered by such by-law. It chose to use the unrestricted term "school" which term, according to the above definitions and the contemporary use of that term, casts a very wide net. In my view the term "school" undefined or unrestricted as contained in the by-law, encompasses the type of schooling activity carried on by the defendants.

I have considered the term "school" in the context of the by-law as a whole in order to determine its true meaning. The municipality has, no doubt, attempted to create a relatively high standard residential community and intended to restrict the type of schools that might be permitted to those that would not detract from the residential nature or character of the residential community to be created. There is still, however, a degree of uncertainty relating to the type of schools contemplated by the term or those to be excluded or whether the type operated by the defendants is among those intended to be excluded. Such uncertainty must be resolved in favour of the defendants.

For these reasons the action is dismissed with costs.

Action dismissed.

[HIGH COURT OF JUSTICE]

Regina v. Musitano

STEELE J. 8TH OCTOBER 1982.

Criminal law — Procedure — Trial by judge and jury — Attorney-General directing trial by judge and jury — No notice given to accused — Fairness doctrine not to apply to Attorney-General's discretion — Criminal Code, R.S.C. 1970, c. C-34, s. 498.

Constitutional law — Charter of Rights — Presumption of innocence — Attorney-General directing trial by judge and jury — Action not contrary to Charter — Canadian Charter of Rights and Freedoms, s. 11(d).

The applicant was charged with conspiracy to possess explosive substances with intent to cause explosions likely to cause serious bodily harm or death. Although all of his co-accused elected trial by judge and jury, the applicant elected trial by judge alone. The Attorney-General, acting under s. 498 of the *Criminal Code*, R.S.C. 1970, c. C-34, and without notice to the applicant, directed that his trial be by judge and jury. The applicant sought an order quashing the indictment.

Held: the application should be dismissed.

In exercising the discretion conferred by s. 498 of the *Criminal Code* the

Attoreny-General is not required to give an accused notice and an opportunity t make representations. The "fairness" doctrine established in *Nicholson v. Haldimand-Norfolk Regional Board of Com'rs of Police et al.*, [1979] 1 S.C.R. 311, has n application.

Furthermore, the action of the Attorney-General did not contravene s. 11(*d*) of th *Canadian Charter of Rights and Freedoms*. A direction that a trial be before a judg and jury does not infringe nor deny the right to be presumed innocent until prove guilty according to law in a fair and public hearing by an independent and impartia tribunal.

[*Re Saikaly and The Queen* (1979), 48 C.C.C. (2d) 192; *Johnson v. Inglis et a* (1980), 17 C.R. (3d) 250, 52 C.C.C. (2d) 385; *Re Warren and The Queen* (1981), 6 C.C.C. (2d) 65, 22 C.R. (3d) 58, apld; *Nicholson v. Haldimand-Norfolk, Regiona Board of Com'rs of Police et al.*, [1979] 1 S.C.R. 311, 88 D.L.R. (3d) 671, 23 N.R 410, 78 C.L.L.C. 14, 181, distd; *A.-G. Can. v. Inuit Tapirisat of Canada et al.* [1980] 2 S.C.R. 735, 115 D.L.R. (3d) 1, 33 N.R. 304; *R. v. Miller*, unreporte (August 25, 1982), refd to]

EDITORIAL NOTE: An appeal from this decision to the Ontario Court of Appe was dismissed (MacKinnon A.C.J.O., Martin and Houlden JJ.A.) October 28, 198 The following was endorsed on the Appeal Record: "The appeal is dismissed for th reasons given by the learned Motions Court judge. Mr. Bowlby referred us to s. 7 c the Charter of Rights and noted that the Motions Court judge did not deal with it application to the facts of this case. In our view the procedures followed by the Attor ney-General did not infringe the provision of s. 7."

APPLICATION for an order in the nature of *certiorari* and for a order under s. 24(1) of the *Constitution Act, 1982* quashing a indictment of an accused.

John D. Bowlby, Q.C., and *George S. Gage*, for applicant.
John C. Pearson, for the Crown.

STEELE J.:—This is an application in the nature of *certiorari* t quash an indictment of the accused to the extent that his trial i required to be tried by judge and jury. The accused and others wer charged with conspiracy to possess explosive substances with th intent to cause explosions likely to cause serious bodily harm o death. The applicant elected trial by judge alone pursuant to s. 46 of the *Criminal Code*, R.S.C. 1970, c. C-34, whereas all his co accused elected trial by judge and jury. Subsequently, one co accused, Vanderkooi, pleaded guilty and, at his sentencing, a state ment of facts was alleged to be presented in open court whic included a purported link between the applicant and an organize crime group, and that these were subject to a prominently displaye newspaper article. In addition, in an unrelated trial, the judge sen tencing the accused therein heard evidence of purported expert tes timony pertaining to alleged operations of organized crime whic was given extensive press coverage. At the show-cause hearing o the present accused, an order was made prohibiting the publicatio of names.

1913 CarswellOnt 242, 24 O.W.R. 470, **4 O.W.N. 1127**, 11 D.L.R. 138

Coleman v. McCallum

Coleman v. McCallum & City of Toronto

Ontario Supreme Court (High Court of Justice)

Hon. Mr. Justice Lennox.

Judgment: April 19, 1913

Counsel: *W. N. Ferguson, K.C.*, for the applicant.

Irving S. Fairty, for the respondents.

Subject: Contracts; Public

Construction Law --- Statutory regulation — Building permits — Application for permit — Substantive requirements.

Municipal Law --- Zoning — Enactment and approval of zoning by-laws — Jurisdiction and powers — Extent of authority.

Municipal Law --- Zoning — Judicial interpretation of zoning by-laws and statutes — General principles of construction.

Municipal Corporations — Apartment House By-law — Definition Contained in Earlier By-law — Definition in Statute — Former Definition Adopted — 2 Geo. V. c. 40, s. 10 — "Private Temperance Hotel" — Mandamus Granted for Permit — Conditions — Undertaking.

Lennox, J., granted a mandamus compelling the city architect of defendant corporation to issue a building permit for the erection of a structure at the corner of Sherbourne and Rachael streets, Toronto, holding that by-law 6061 of defendants passed by virtue of statute 2 Geo. V. c. 40, s. 10, prohibiting the erection of apartment houses upon certain streets must be taken to have adopted the definition of "apartment house" set out in an earlier by-law of the defendant corporation as to buildings, and not that of the statute under which it was passed, and that therefore the proposed structure was not a contravention of the by-law.

Motion for a mandamus compelling defendant, city architect of defendant corporation, to issue a permit for the erection of a structure at the south-west corner of Sherbourne and Rachael streets, Toronto, according to plans filed.

Hon. Mr. Justice Lennox:

1 I think the applicant is entitled to a mandatory order, but not unconditionally.

2 On the 11th of March, 1907, the respondents, the City of Toronto, passed "No. 4861, A By-law for Regulating the Erection and to provide for the safety of Buildings;" and, subject to certain amendments not material to this application, this by-law continued in full force until the 1st of April instant. Under the head of "Definition of Terms," it was enacted by sec. 14. "The following terms of this by-law shall have the meaning assigned to them respectively. . . .

3 "Apartment or Tenement House. (32) A building which, or any portion of which, is or is intended to be occupied as a dwelling by three or more families living independent of one another and doing their cooking upon the premises." . . .

4 "Lodging House. (34) A building in which persons are accommodated with sleeping apartments, including hotels and apartment houses, where cooking is not done in the several apartments." The punctuation perhaps obscures the meaning a little but at all events it is plain that, for the purpose of "regulating the erection . . . of buildings" in the city of Toronto, suites or groups of apartments are divided into two classes, namely; (a) Suites in which the occupants do their own cooking — the building containing these is an apartment or tenement house; and (b) Suites in which the occupants do not do their own cooking — the building containing these is a lodging house.

5 Having thus eliminated from "Apartment House" a class of building which might otherwise have been called, which I think, would otherwise have been called, an apartment house, sec. 42 proceeds to provide for a special method of construction to prevent the spread of fire, in all apartment houses which are not fire proof, and to off-set the additional risk incident to the multitude of kitchens permitted in this class of building — precautions which are not enacted and which are obviously not so necessary in the case of a lodging house. This was the building law in Tor onto when the Legislature in 1912 amended sec. 541a of the Consolidated Municipal Act of 1903 as enacted by sec. 19 of the Municipal Amendment Act of 1904 by adding after clause (b) the following clauses: —

> (c) In cities having a population of not less than 100,000, to prohibit, regulate and control the location on certain streets to be named in the by-law of apartment or tenement houses and of garages to be used for hire or gain.
>
> (d) For the purposes of this section an apartment or tenement house shall mean a building proposed to be erected or altered for the purpose of providing three or more separate suites or sets of rooms for separate occupation by one or more persons. 2 Geo. V. ch. 40, sec. 10.

6 Subsequently on the 13th of May, 1912, and without repealing or amending the definitions of "apartment or tenement house" and "lodging house" above set out, and with by-law 4861 still in force "for regulating the erection of buildings" in this city, the respondents, the city of Toronto, passed "No. 6061, A by-law to prohibit the erection of apartment or tenement houses, and of garages to be used for hire or gain, on certain streets" and by clause 1 prohibited, as the council had power to do, the erection of any apartment or tenement house upon property fronting upon Rachael, Sherbourne and other streets.

7 With this provincial law and the by-laws referred to in force the applicant in the month of March last filed plans and specifications and applied to the city council for permission to erect what he calls a temperance hotel upon property fronting upon Rachael and Sherbourne streets. There have been several alterations in the plans. Coleman originally intended and the application was launched for permission to erect a building in which cooking would be done in the several suites, and clearly an apartment or tenement house as defined by by-law 4861; a class of building prohibited upon these streets by by-law No. 6061. The plans as now on file shew only provision for one kitchen and dining room in the building and the applicant swears that finding his first application was contrary to by-law 6061: "I decided to erect and conduct on the said premises an hotel conducted as an ordinary licensed hotel is conducted, excepting that I have no license for the sale of liquor and do not intend to apply for the same.

8 3. Following out my changed scheme, I had the plans altered so as to cut out all the separate kitchens, sinks, etc., and provided on one floor reading rooms, dining rooms, lavatories, baths, wash-house, catering department, and servants quarters and lavatories similar to that provided for in the ordinary licensed hotel, and it is my intention, and the plan of my building is drawn for use in this manner only, that none of the guests at my hotel shall be allowed to wash in my rooms or to cook in my rooms, and that the work of their rooms shall be done by my servants, and the light shall be furnished by me, and the heat shall be furnished by me and the meals shall be furnished by me in the general dining room, and in general the whole building shall be under my control and supervision."

9 As shewn by Mr. Benk's affidavit in the end, as at the beginning, the permit was refused upon the ground that the erection of the proposed building "would constitute a contravention of by-law No. 6061." Upon the argument it was mentioned, but only as affecting the size of the bed-rooms, that a new by-law was passed on the 1st of April instant. I have obtained a copy of this by-law 6401. It too is "a by-law for regulating the erection, and to provide for the safety of buildings," and it repeals No. 4861. Passed at a time when this motion was standing for argument, it may be that the city is not entitled to rely upon it, but as there were several stages in the applicant's proceedings I have decided to take this by-law into consideration in arriving at a conclusion. The only points to be noted are: (1) For "apartment or tenement house" this by-law adopts the definition contained in 2 Geo. V. ch. 40, sec. 10, above quoted. Under this definition, if the council had chosen to leave the matter there the narrowing effect of the definitions in the old by-law would have been avoided; and by a re-enactment of prohibitory by-law 6061 the probable object of the council might have been accomplished; (2) But, instead of this, this repealing by-law re-enacts, word for word, the definition of the former by-law as to what constitutes a lodging house, and thus again excludes from "Apartment or Tenement House" any building of the apartment house class in which cooking is not done or provided for in the several apartments.

10 (3) Under the new by-law bed-rooms shall have a floor area of at least one hundred square feet, in hotels, apartment, tenement, and lodging houses; and

11 (4) Section 42, for special safeguards against fire in apartment houses, is re-enacted.

12 After a very great deal of hesitation, I have come to the conclusion that perhaps the proposed building may be legitimately described as a temperance hotel. Hotels of course are not prohibited. I prefer, however, not to rest my decision wholly, or mainly, upon this view of the question.

13 Take it, however, that it is not an hotel, is the applicant entitled to be permitted to erect the proposed building upon the proposed site? I am of opinion that he is. The refusal, as I have stated, was based upon by-law

No. 6061, but the question cannot be determined by this by-law alone. It prohibits the erection of an "apartment or tenement house" upon the site in question. When it was passed building by-law No. 4861 was in force and this latter defined and constituted an apartment house where separate cooking is not done, as I have already quoted, "a lodging house." The proposed building as now shewn by the plans and specifications and described in the affidavits is a lodging house within the meaning of this definition. That it is called an hotel is immaterial as an hotel, by the same definition is also a lodging house. It is manifest then that by-law 6061 prohibited apartment and tenement houses as defined under this caption in the building by-law, only, and not those designated lodging houses in the same building by-law.

14 It was argued that you must adopt the unlimited description of the statute of 1912, but this contention is based on a misconception of the function of the statute. The statute is not intended to prohibit anything. It gives the power to prohibit and limits its extent. Within that limit the council can act, short of that limit they may stop — as they did here. Beyond that limit they cannot go. To adopt the full measure of the statutory definition, or rather limitation, the council had only to repeal the definitions quoted; and failing to do this these definitions govern.

15 Is the situation altered by the new by-law? I cannot see that it is, and I have already indicated the reason, namely, that it re-enacts the former definition of a lodging house. A lodging house as defined under the former by-law was not prohibited by No. 6061. A lodging house under the new by-law is just what it was under the old and is nowhere prohibited.

16 The wisdom or unwisdom, or the fairness or unfairness of the powers conferred by the Legislature, or, the exercise of these powers by the council, are not matters for me to deal with, but statutes, and *a fortiori* by-laws, purporting to control or take away rights ordinarily incident to ownership, quasi-expropriation without payment, confiscation as it is often called, must be construed strictly and the meaning must not be left in doubt — they must be definite and certain to all intents.

17 On the other hand having regard to the easy stages by which the applicant has developed his present proposals there should be some guarantee of the good faith of the applicant and that not only will a building be erected of the character now indicated but that afterwards it will be used for the purposes and in the manner declared.

18 Therefore upon the applicant amending the plans on file so as to provide that each of the bed-rooms shall have a clear floor area of 100 square feet at least and upon undertaking by his counsel that the building in question shall not at any time without the consent of the municipality or the Court be diverted from the uses and purposes or be occupied or used in a manner inconsistent with the uses and purposes now declared by the applicant and that in the event of the sale of the property due notice of this undertaking and of the order now to be made shall be given to the purchaser and he will be required, in and by the conveyance to him, to bind himself and his heirs and assigns to observe and abide by the conditions above set out and such order as the Court may make.

19 And the applicant for himself and his heirs and representatives in estate undertaking to abide by such order or judgment as the Court may make or pronounce touching the matters hereby provided for an order of peremptory mandamus reciting or embodying the foregoing conditions and an undertaking will issue to the purport and effect in the notice of motion claimed.

20 There will be no costs.

1913 CarswellOnt 242, 24 O.W.R. 470, 4 O.W.N. 1127, 11 D.L.R. 138

END OF DOCUMENT

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ServiceOntario
e-Laws

Electricity Act, 1998
Loi de 1998 sur l'électricité

ONTARIO REGULATION 160/99

DEFINITIONS AND EXEMPTIONS

Consolidation Period: From September 9, 2009 to the e-Laws currency date.

Last amendment: O. Reg. 328/09.

This Regulation is made in English only.

DEFINITIONS

1. (1) In the Act and the regulations,

"agricultural waste" has the same meaning as in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*;

"anaerobic digestion" means the decomposition of organic matter by bacteria in an oxygen-limiting environment;

"biodiesel" has the same meaning as in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*;

"biofuel" means a liquid fuel made solely from biomass and includes ethanol, methanol and biodiesel;

"biogas" means a gaseous fuel that is,

(a) landfill gas, or

(b) a gas made from the anaerobic digestion of, or any combination of,

(i) biomass,

(ii) source separated organics, or

(iii) organic matter, other than biomass, that is derived from a plant or animal and that is available at a farm operation;

"biomass" means organic matter, other than source separated organics, that is derived from a plant or animal, is available on a natural renewable basis and is,

(a) grown or harvested for the purpose of being used to generate electricity,

(b) waste from harvesting or processing agricultural products or waste from processing forestry

products, including spent pulping liquor,

(c) agricultural waste,

(d) organic waste materials from a greenhouse, nursery, garden centre or flower shop,

(e) pulp and paper biosolids,

(f) waste from food processing, distribution and preparation operations, such as food packing, food preserving, wine making, cheese making, restaurants and grocery stores, and includes, as an example, organic waste from the treatment of wastewater from facilities where food or feed is processed or prepared,

(g) sewage biosolids,

(h) hauled sewage,

(i) waste from the operation of a sewage works subject to the *Ontario Water Resources Act*,

(j) woodwaste, or

(k) forest resources made available under a forest management plan approved under the *Crown Forest Sustainability Act, 1994* or a managed forest plan approved under the Managed Forest Tax Incentive Program;

"farm operation" has the same meaning as in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*;

"hauled sewage" has the same meaning as in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*;

"independent director" means, with respect to the IMO, a person who,

(a) is not a director, officer or employee of,

(i) a generator, transmitter, distributor or retailer,

(ii) a person who sells electricity or ancillary services through the IMO-administered markets or directly to another person, other than a consumer,

(iii) an industrial consumer, or

(iv) an affiliate of a person referred to in subclause (i), (ii) or (iii), and

(b) does not have a direct or indirect legal or beneficial interest in or commercial affiliation with,

(i) a generator, transmitter, distributor or retailer,

(ii) a person who sells electricity or ancillary services through the IMO-administered markets or directly to another person, other than a consumer, or

(iii) an affiliate of a person referred to in subclause (i) or (ii);

"municipal waste" has the same meaning as in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*;

"person" includes,

(a) a municipal corporation,

(b) a commission established under the *Public Utilities Act* or any other general or special Act, and

(c) any body, however established, through which a municipal corporation generates, transmits, distributes or retails electricity;

"pulp and paper biosolids" has the same meaning as in Ontario Regulation 267/03 (General) made under the *Nutrient Management Act, 2002*;

"sewage biosolids" has the same meaning as in Ontario Regulation 267/03 (General) made under the *Nutrient Management Act, 2002*;

"source separated organics" means organic waste that has been separated from other waste under a program operated by or for a municipality;

"woodwaste" has the same meaning as in Regulation 347 of the Revised Regulations of Ontario, 1990 (General — Waste Management) made under the *Environmental Protection Act*. O. Reg. 160/99, s. 1; O. Reg. 310/01, s. 1 (1); O. Reg. 328/09, s. 1 (1).

(1.1) For the purposes of the definition of "biomass" in subsection (1), biomass does not include,

(a) peat or peat derivatives; and

(b) municipal waste, other than organic matter referred to in paragraphs (b) through (j) of the definition of "biomass". O. Reg. 328/09, s. 1 (2).

(2) For the purpose of clause (b) of the definition of "independent director" in subsection (1),

(a) an interest held as the beneficiary of a trust that does not permit the beneficiary to have any knowledge of the holdings of the trust is not a legal or beneficial interest; and

(b) an interest in a mutual fund as defined in section 1 of the *Securities Act* is not a legal or beneficial interest unless the mutual fund is operated as an investment club where,

(i) its shares or units are held by not more than 50 persons and its indebtedness has never been offered to the public,

(ii) it does not pay or give any remuneration for investment advice or in respect of trades in securities, except normal brokerage fees, and

(iii) all of its members are required to make contributions in proportion to the shares or units each holds for the purpose of financing its operations. O. Reg. 310/01, s. 1 (2).

(3) For the purpose of clause (b) of the definition of "independent director" in subsection (1), a person has a commercial affiliation with another person if the person supplies goods or services to or receives goods or services from the other person, unless,

(a) the person receives the goods or services in the ordinary course of being a customer of a distributor or retailer or an affiliate of a distributor or retailer; or

(b) a person or committee appointed by the Minister for the purposes of this clause determines that the supply or receipt of the goods or services does not materially affect the independence of the person from,

(i) generators, transmitters, distributors and retailers,

(ii) persons who sell electricity or ancillary services through the IMO-administered markets or directly to another person, other than a consumer, or

(iii) affiliates of persons referred to in subclauses (i) and (ii). O. Reg. 310/01, s. 1 (2).

(4) For the purposes of the definition of "renewable energy generation facility" in the Act, the

following associated or ancillary equipment, systems and technologies are prescribed:

1. Transmission or distribution lines of less than 50 kilometres in length that are associated with or ancillary to a renewable energy generation facility.
2. Transformer stations or distribution stations that are associated with or ancillary to a renewable energy generation facility.
3. Any transportation systems that are associated with or ancillary to the provision of access to a renewable energy generation facility, during the construction, installation, use, operation, changing or retiring of a renewable energy generation facility. O. Reg. 328/09, s. 1 (2).

(5) For the purposes of subsection (4), the following apply:

1. A distribution line is associated with or ancillary to a renewable energy generation facility if the line is used to distribute electricity within the facility or from the facility to the distribution system of the distributor in whose distribution service area the renewable energy generation facility is located.
2. A transmission line is associated with or ancillary to a renewable energy generation facility if the line is used to transmit electricity within the facility or from the facility to the IESO-controlled grid.
3. A transformer station or distribution station is associated with or ancillary to a renewable energy generation facility if the station is used to transform the voltage of electricity at the facility, on a transmission line or on a distributor's distribution system which is associated with or ancillary to the facility.
4. A transportation system includes all transportation systems constructed solely to provide access to the renewable energy generation facility, including transportation systems on Crown land, but does not include a highway which is intended for or used by the general public for the passage of vehicles. O. Reg. 328/09, s. 1 (2).

(6) For the purposes of the definition of "renewable energy generation facility" in the Act, the following classes of waste disposal sites are prescribed:

1. A waste disposal site where the material referred to in clause (b) of the definition of biogas is subject to anaerobic digestion.
2. A waste disposal site where biomass is thermally treated. O. Reg. 328/09, s. 1 (2).

2. In sections 125 and 152 of the Act,

"execute" includes, with respect to an instrument that may be in an electronic format, to do what is required to complete the instrument in the electronic format. O. Reg. 160/99, s. 2.

EXEMPTIONS

2.0.1 (1) Subsection 26 (1) and (6) of the Act do not apply to Cornwall Street Railway Light & Power Company Limited with respect to serving those consumers who are subject to,

(a) the agreement entered into by Cornwall Street Railway Light & Power Company Limited and The Corporation of the Township of Charlottenburgh on October 8, 1985;

(b) the agreement entered into by Cornwall Street Railway Light & Power Company Limited and The Corporation of the Township of Cornwall on December 4, 1985; or

PART V
REGULATION OF ELECTRICITY

Definitions, Part V

56. In this Part,

"alternative energy source" means an energy source that is an alternative energy source for the purposes of the *Electricity Act, 1998*; ("source d'énergie de remplacement")

"ancillary services" means services necessary to maintain the reliability of the IESO-controlled grid, including frequency control, voltage control, reactive power and operating reserve services; ("services accessoires")

"consumer" means a person who uses, for the person's own consumption, electricity that the person did not generate; ("consommateur")

"designated consumer" means a consumer, other than a low-volume consumer, that,

(a) is a municipality as defined in the *Municipal Act, 2001*,

(b) is a university or college of applied arts and technology or other post-secondary education institution that receives regular and ongoing operating funds from Ontario for the purpose of providing post-secondary education,

(c) is a board or private school, both as defined in the *Education Act*,

(d) is a hospital as defined in the *Public Hospitals Act*, a private hospital operated under the authority of a licence issued under the *Private Hospitals Act* or a long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*,

(e) is a registered charity as defined in subsection 248 (1) of the *Income Tax Act* (Canada) that has a registration number issued by the Canada Revenue Agency, or

(f) is a consumer prescribed by the regulations or a member of a class of consumers prescribed by the regulations; ("consommateur désigné")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "designated consumer" is repealed by the Statutes of Ontario, 2004, chapter 23, Schedule B, subsection 9 (3). See: 2004, c. 23, Sched. B, ss. 9 (3), 34 (2).

"Financial Corporation" has the same meaning as in the *Electricity Act, 1998*; ("Société financière")

"generate", with respect to electricity, means to produce electricity or provide ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system; ("produire")

"generation facility" means a facility for generating electricity or providing ancillary services, other than ancillary services provided by a transmitter or distributor through the operation of a transmission or distribution system, and includes any structures, equipment or other things used for that purpose; ("installation de production")

"generator" means a person who owns or operates a generation facility; ("producteur")

"IESO-administered markets" means the markets established by the market rules under the *Electricity Act, 1998*; ("marchés administrés par la SIERE")

"IESO-controlled grid" means the transmission systems with respect to which, pursuant to

agreements, the IESO has authority to direct operations; ("réseau dirigé par la SIERE")

"low-volume consumer" means a consumer who annually uses less than 150,000 kilowatt hours of electricity or such other amount of electricity as is prescribed by the regulations; ("petit consommateur")

Note: On a day to be named by proclamation of the Lieutenant Governor, the definition of "low-volume consumer" is repealed by the Statutes of Ontario, 2004, chapter 23, Schedule B, subsection 9 (6). See: 2004, c. 23, Sched. B, ss. 9 (6), 34 (2).

"market participant" means a person who is authorized by the market rules to participate in the IESO-administered markets or to cause or permit electricity to be conveyed into, through or out of the IESO-controlled grid; ("intervenant du marché")

"market rules" means the rules made under section 32 of the *Electricity Act, 1998*; ("règles du marché")

"renewable energy source" means an energy source that is a renewable energy source for the purposes of the *Electricity Act, 1998*; ("source d'énergie renouvelable")

"retail", with respect to electricity, means,

(a) to sell or offer to sell electricity to a consumer,

(b) to act as agent or broker for a retailer with respect to the sale or offering for sale of electricity, or

(c) to act or offer to act as an agent or broker for a consumer with respect to the sale or offering for sale of electricity; ("vendre au détail")

"Retail Settlement Code" means the Retail Settlement Code issued by the Board, as amended from time to time; ("code appelé Retail Settlement Code")

"retailer" means a person who retails electricity. ("détaillant") 1998, c. 15, Sched. B, s. 56; 2002, c. 23, s. 4 (6, 7); 2003, c. 3, s. 40; 2004, c. 23, Sched. B, s. 9 (1, 2), (4, 5), (7-9); 2007, c. 8, s. 222; 2009, c. 12, Sched. D, s. 9; 2009, c. 33, Sched. 18, s. 21.

Requirement to hold licence

57. Neither the OPA nor the Smart Metering Entity shall exercise their powers or perform their duties under the *Electricity Act, 1998* unless licensed to do so under this Part and no other person shall, unless licensed to do so under this Part,

(a) own or operate a distribution system;

(b) own or operate a transmission system;

(c) generate electricity or provide ancillary services for sale through the IESO-administered markets or directly to another person;

Note: On a day to be named by proclamation of the Lieutenant Governor, section 57 is amended by adding the following clause:

(c.1) engage in unit sub-metering;

See: 2010, c. 8, ss. 38 (8), 40.

(d) retail electricity;

Requirement to hold licence

57. Neither the OPA nor the Smart Metering Entity shall exercise their powers or perform their duties under the *Electricity Act, 1998* unless licensed to do so under this Part and no other person shall, unless licensed to do so under this Part,

(a) own or operate a distribution system;

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Note: On a day to be named by proclamation of the Lieutenant Governor, section 57 is amended by adding the following clause:

(c.1) engage in unit sub-metering;

See: 2010, c. 8, ss. 38 (8), 40.

(d) retail electricity;

(e) purchase electricity or ancillary services in the IESO-administered markets or directly from a generator;

(f) sell electricity or ancillary services through the IESO-administered markets or directly to another person, other than a consumer;

(g) direct the operation of transmission systems in Ontario;

(h) operate the market established by the market rules; or

(i) engage in an activity prescribed by the regulations that relates to electricity. 1998, c. 15, Sched. B, s. 57; 2002, c. 1, Sched. B, s. 6; 2004, c. 23, Sched. B, s. 10; 2006, c. 3, Sched. C, s. 4.

Distinction between transmission and distribution, determination

84. In making a decision in any proceeding under this Part or under the *Electricity Act, 1998*, the Board may determine that,

(a) a system or part of a system that forms part of a transmission system is a distribution system or part of a distribution system; and

(b) a system or part of a system that forms part of a distribution system is a transmission system or part of a transmission system. 1998, c. 15, Sched. B, s. 84; 2003, c. 3, s. 53.

85. Repealed: 2003, c. 3, s. 54.

vehicle fuel gas if,

(i) the value of the gas immediately before it was liquefied or compressed into motor vehicle fuel gas is recorded in a special account,

(ii) the value recorded is approved by the Board, and

(iii) all amounts recorded in the special account are reported as revenue for the purposes of section 36 of the Act; or

(b) any other person in respect of the sale, transmission, distribution or storage of motor vehicle fuel gas. O. Reg. 161/99, s. 2 (2).

3. Section 36 of the Act does not apply to the sale, transmission, distribution or storage of gas by a distributor who distributes less than 3,000,000 cubic metres of gas annually. O. Reg. 161/99, s. 3.

4. Clauses 57 (a) and (b) of the Act do not apply to a municipal corporation that owns a transmission system or distribution system if,

(a) the system is operated by a commission established under the *Public Utilities Act* or any other general or special Act; and

(b) the commission is licensed to operate the system. O. Reg. 161/99, s. 4.

4.0.1 (1) Clause 57 (a) and sections 71, 72, 78, 80 and 86 of the Act do not apply to a distributor who distributes electricity for a price no greater than that required to recover all reasonable costs,

(a) with respect to a distribution system owned or operated by the distributor that is entirely located on land on which one or more of the following types of building or facilities is also located:

1. A building that forms part of a property as defined in the *Condominium Act, 1998.*

2. A residential complex as defined in the *Tenant Protection Act, 1997.*

3. An industrial, commercial or office building.

4. A university, a college of applied arts and technology established under the *Ministry of Training, Colleges and Universities Act* or another post-secondary institution.

5. A school or private school as defined in the *Education Act.*

6. A hospital as defined in the *Public Hospitals Act*, a private hospital as defined in the *Private Hospitals Act* or an institution as defined in the *Mental Hospitals Act.*

7. A shopping mall.

8. An airport.

9. A marina.

10. A mine as defined in the *Mining Act*;

(b) with respect to a distribution system owned or operated by the distributor that is entirely located on land owned or leased by the distributor;

(c) with respect to a distribution system that was owned or operated by the distributor as of January 1, 2002, if the distributor meets all of the following conditions:

1. The distributor is not incorporated under section 48 or 142 of the *Electricity Act, 1998.*

2. The distributor is not incorporated under the *Business Corporations Act* or the *Canada Business Corporations Act* as an electricity company or an electricity distribution company and was not so incorporated as of January 1, 2002.

3. The distributor is not Cornwall Street Railway Light and Power Company Limited, Great Lakes Power Limited, Granite Power Distribution Corporation or Canadian Niagara Power; or

(d) with respect to a distribution system owned or operated by a distributor, if the distributor is a generator and distributes electricity solely for the purpose of conveying it into the IESO-controlled grid. O. Reg. 72/02, s. 2; O. Reg. 15/03, s. 1; O. Reg. 41/04, s. 2; O. Reg. 478/05, s. 1.

(2) Despite clause (1) (c), clause 57 (a) of the Act applies to Dubreuil Forest Products Limited with respect to a distribution system described in clause (1) (c). O. Reg. 98/03, s. 1.

4.0.2 (1) Clause 57 (b) of the Act and the other provisions of the Act listed in subsection (2) do not apply to a transmitter that transmits electricity for a price, if any, that is no greater than that required to recover all reasonable costs if,

(a) the transmitter owns or operates a transmission system that is entirely or partially located on land on which one or more of the types of buildings or facilities described in subsection 4.0.1 (1) is also located;

(b) the transmission system owned or operated by the transmitter was in existence on January 1, 2002 and, since that day has been used, if at all, for the sole purpose of permitting another person that holds a licence authorizing the other person to own or operate a transmission system to convey electricity from the IMO-controlled grid to consumers;

(c) the transmitter is a consumer and transmits electricity only for,

(i) the purpose of using it for the transmitter's own consumption, or

(ii) the purpose described in clause (b), if the transmission system owned or operated by the transmitter was in existence on January 1, 2002 and, since that day, has been used, if at all, for the sole purpose described in clause (b);

(d) the transmitter is a generator and transmits electricity only for,

(i) the purpose of conveying it into the IMO-controlled grid,

(ii) the purpose of transmitting electricity during,

(A) planned outages as defined in the market rules that have been approved by the IMO in accordance with the market rules,

(B) forced outages as defined in the market rules, or

(C) emergencies as defined in the market rules, or

(iii) the purpose described in clause (b), if the transmission system owned or operated by the transmitter was in existence on January 1, 2002 and, since that day has been used, if at all, solely for the purposes described in clause (e); or

(e) the transmitter is a consumer and a generator and transmits electricity only for,

(i) the purpose described in subclause (c) (i),

Distribution System Code

1 GENERAL AND ADMINISTRATIVE PROVISIONS

1.1 The Purpose of this Code

This Code sets the minimum conditions that a distributor must meet in carrying out its obligations to distribute electricity under its licence and the *Energy Competition Act, 1998.* Unless otherwise stated in the licence or Code, these conditions apply to all transactions and interactions between a distributor and all retailers, generators, distributors, transmitters and consumers of electricity who use the distributor's distribution system.

1.2 Definitions

In this Code:

"Accounting Procedures Handbook" means the handbook approved by the Board and in effect at the relevant time, which specifies the accounting records, accounting principles and accounting separation standards to be followed by the distributor;

"Act" means the Ontario Energy Board Act, 1998, S.O. 1998, C. 15, Schedule B;

"Affiliate Relationships Code" means the code, approved by the Board and in effect at the relevant time, which among other things, establishes the standards and conditions for the interaction between electricity distributors or transmitters and their respective affiliated companies;

"ancillary services" means services necessary to maintain the reliability of the IESO-controlled grid; including frequency control, voltage control, reactive power and operating reserve services;

"bandwidth" means a distributor's defined tolerance used to flag data for further scrutiny at the stage in the VEE process where a current reading is compared to a reading from an equivalent historical billing period. For example, a 30 percent bandwidth means a current reading that is either 30 percent lower or 30 percent higher than the measurement from an equivalent historical billing period will be identified by the VEE process as requiring further scrutiny and verification;

Distribution System Code

"Board" means the Ontario Energy Board;

"capacity allocation exempt small embedded generation facility" means an embedded generation facility which is not a micro-embedded generation facility and which has a name-plate rated capacity of 250 kW or less in the case of a facility connected to a less than 15 kV line and 500 kW or less in the case of a facility connected to a 15 kV or greater line;

"Code" means the Distribution System Code;

"competitive retailer" is a person who retails electricity to consumers who do not take Standard Supply Service ("SSS");

"complex metering installation" means a metering installation where instrument transformers, test blocks, recorders, pulse duplicators and multiple meters may be employed;

"Conditions of Service" means the document developed by a distributor in accordance with subsection 2.3 of this Code that describes the operating practices and connection rules for the distributor;

"connection" means the process of installing and activating connection assets in order to distribute electricity;

"Connection Agreement" means an agreement entered into between a distributor and a person connected to its distribution system that delineates the conditions of the connection and delivery of electricity to or from that connection;

"connection assets" means that portion of the distribution system used to connect a customer to the existing main distribution system, and consists of the assets between the point of connection on a distributor's main distribution system and the ownership demarcation point with that customer;

"connection cost agreement" means the agreement referred to in section 6.2.18;

"consumer" means a person who uses, for the person's own consumption, electricity that the person did not generate;

"customer" means a person that has contracted for or intends to contract for connection of a building or an embedded generation facility. This includes developers of residential or commercial sub-divisions;

Distribution System Code

"demand meter" means a meter that measures a consumer's peak usage during a specified period of time;

"disconnection" means a deactivation of connection assets that results in cessation of distribution services to a consumer;

"disconnect/collect trip" is a visit to a customer's premises by an employee or agent of the distributor to demand payment of an outstanding amount or to shut off or limit distribution of electricity to the customer failing payment.

"distribute", with respect to electricity, means to convey electricity at voltages of 50 kilovolts or less;

"distribution losses" means energy losses that result from the interaction of intrinsic characteristics of the distribution network such as electrical resistance with network voltages and current flows;

"distribution loss factor" has the meaning described to it in the Retail Settlement Code;

"distribution services" means services related to the distribution of electricity and the services the Board has required distributors to carry out;

"distribution system" means a system for distributing electricity, and includes any structures, equipment or other things used for that purpose. A distribution system is comprised of the main system capable of distributing electricity to many customers and the connection assets used to connect a customer to the main distribution system;

"Distribution System Code" means the code, approved by the Board, and in effect at the relevant time, which, among other things, establishes the obligations of a distributor with respect to the services and terms of service to be offered to customers and retailers and provides minimum technical operating standards of distribution systems;

"distributor" means a person who owns or operates a distribution system;

"*Electricity Act*" means the *Electricity Act, 1998*, S.O. 1998, c.15, Schedule A;

"*Energy Competition Act*" means the *Energy Competition Act, 1998*, S.O. 1998, c. 15;

"Electrical Safety Authority" or "ESA" means the person or body designated under the *Electricity Act* regulations as the Electrical Safety Authority;

"embedded distributor" means a distributor who is not a wholesale market participant and that is provided electricity by a host distributor;

1. Promptly notify the other party of the force majeure event and its assessment in good faith of the effect that the event will have on its ability to perform any of its obligations. If the immediate notice is not in writing, it shall be confirmed in writing as soon as reasonably practicable.
2. Not be entitled to suspend performance of any of its obligations under this Code to any greater extent or for any longer time than the force majeure event requires it to do;
3. Use its best efforts to mitigate the effects of the force majeure event, remedy its inability to perform, and resume full performance of its obligations;
4. Keep the other party continually informed of its efforts; and
5. Provide written notice to the other party when it resumes performance of any obligations affected by the force majeure event.

2.3.3 Notwithstanding any of the foregoing, settlement of any strike, lockout, or labor dispute constituting a force majeure event shall be within the sole discretion of the party to the agreement involved in the strike, lockout, or labour dispute. The requirement that a party must use its best efforts to remedy the cause of the force majeure event, mitigate its effects, and resume full performance under this Code shall not apply to strikes, lockouts, or labour disputes

2.4 Conditions of Service

2.4.1 A distributor shall document its Conditions of Service that describe the operating practices and connection policies of the distributor. All distributors shall have a Conditions of Service. Subject to this Code and other applicable laws, a distributor shall comply with its Conditions of Service but may waive a provision of its Conditions of Service in favour of a customer or potential customer.

2.4.2 A distributor shall file a copy of its Conditions of Service with the Board, make its Conditions of Service publicly available and provide a copy to any person requesting it. A distributor shall provide one copy per revision for each person that requests it.

2.4.3 A distributor's existing Conditions of Service will be deemed to meet the standards set out in this Code for a period of one year following the coming into force of this Code, after which point the distributor must comply.

2.4.4 Note: Section 2.4.4 revoked by amendment, effective March 22, 2004.

POWER CORPORATION ACT

tions Act to attend and investigate the damage complained of.

Idem

(3) The board of negotiation may award such compensation as appears to it to be just if it is satisfied that,

(a) there was reasonable excuse for the failure to give or the insufficiency of the notice; and

(b) the Corporation was not thereby prejudiced.

Idem

(4) A finding of the board of negotiation under subsection (3) is final and binding upon the owner and the Corporation. 1989, c. 53, s. 15.

Powers of Corporation as to lines on highways

41. In the exercise of the powers conferred and in carrying out any work authorized by this Act or any other general or special Act, the Corporation has and always has had authority to put down, carry, construct, erect and maintain such conduits, wires, poles, towers and other equipment and works used in the generation, transmission or distribution of power as it considers necessary or desirable, under, along, across or upon any public street or highway and to remove or replace them without taking any of the proceedings prescribed by the *Expropriations Act* for the taking of land without the consent of its owner, and the provisions of the *Expropriations Act* with regard to compensation do not apply, but the location of any such conduits, wires, poles, towers, equipment or works to be put down, carried, constructed or erected under, along, across or upon a public street or highway shall be agreed upon by the Corporation and the municipal corporation or other authority having control of the public street or highway, and in case of disagreement shall be determined by the Ontario Municipal Board. R.S.O. 1980, c. 384, s. 36.

Buildings

42.—(1) Subject to the *Expropriations Act*, the Corporation may expropriate, purchase, lease or otherwise acquire lands that the Corporation considers necessary for office, service, or other buildings and may erect thereon such buildings and works as the Corporation requires for its purposes.

Expense repayable by municipalities

(2) All expenditures by the Corporation for the purposes mentioned in subsection (1) are repayable to the Corporation by the municipal corporations having contracts with the Corporation, and shall be repaid by annual sums sufficient to form in forty years a sinking fund for the repayment of the cost thereof. R.S.O. 1980, c. 384, s. 37.

lieux du dommage faisant l'objet de la plainte et d'enquêter.

Idem

(3) La commission de négociation peut accorder l'indemnité qu'elle estime juste si elle est convaincue :

a) d'une part, que l'absence d'avis ou son insuffisance était justifiée par une excuse raisonnable;

b) d'autre part, que la Société n'en a subi aucun préjudice.

Idem

(4) La décision de la commission de négociation aux termes du paragraphe (3) est définitive et lie le propriétaire et la Société. 1989, chap. 53, art. 15.

Pouvoirs de la Société sur les lignes de transport

41 Dans l'exercice des pouvoirs conférés et de l'exécution de tout ouvrage autorisé par la présente loi ou toute autre loi d'application générale ou spéciale, la Société est et a toujours été investie du pouvoir de mettre en place, de transporter, de construire, d'ériger et d'entretenir, selon ce qu'elle juge nécessaire ou opportun, les canalisations, fils, poteaux, pylônes et autres matériel et ouvrages servant à la production, au transport ou à la distribution de l'électricité, le long, au-dessus, en dessous ou en travers de toute rue ou voie publique, et de les enlever ou remplacer, sans engager l'une des procédures prévues à la *Loi sur l'expropriation* pour la prise de possession d'un bien-fonds sans le consentement de son propriétaire, et sans que s'appliquent les dispositions de cette dernière loi en matière d'indemnisation. Toutefois, l'emplacement de ces canalisations, fils, poteaux, pylônes, matériel ou ouvrages devant être mis en place, transportés, construits ou érigés le long, au-dessus, en dessous ou en travers d'une rue ou d'une voie publique, doit faire l'objet d'un accord entre la Société et la municipalité ou autre autorité dont relève cette rue ou voie publique. Tout désaccord est tranché par la Commission des affaires municipales de l'Ontario. L.R.O. 1980, chap. 384, art. 36.

Bâtiments

42 (1) Sous réserve de la *Loi sur l'expropriation*, la Société peut acquérir, notamment par expropriation, achat ou location, les biens-fonds qu'elle estime nécessaires pour les bureaux, services ou autres bâtiments. Elle peut y ériger les bâtiments et ouvrages dont elle a besoin aux fins qu'elle poursuit.

Remboursement par les municipalités

(2) Les municipalités liées par contrat avec la Société lui remboursent les dépenses subies aux fins visées au paragraphe (1), en paiements annuels suffisants pour constituer en quarante ans un fonds d'amortissement destiné à ce remboursement. L.R.O. 1980, chap. 384, art. 37.

Note: By proclamation dated March 30, 1999, the Lieutenant Governor named April 1, 1999 as the day on which subsection 28 (1) of Schedule E to the *Energy Competition Act, 1998* comes into force. The proclamation provided that with respect to the repeal of the *Power Corporation Act* by subsection 28 (1) of Schedule E to the *Energy Competition Act, 1998*, the proclamation applied only to specified provisions of the *Power Corporation Act*, including "Sections 25 to 26" and "Subsections 26 (1) and (2)". Subsection 26 (3) of the *Power Corporation Act* provides:

Idem

(3) Despite anything to the contrary in the trade agreement entered into between the governments of Canada and the United States of America on the 2nd day of January, 1988 or any law of Canada implementing the agreement, the Lieutenant Governor in Council may by regulation,

(a) authorize the Corporation to participate in one or more government programs relating to economic development and named in the regulation; and

(b) prescribe the region or regions to which that authority extends, the manner in which that authority shall be exercised and the conditions to which that authority is subject. R.S.O. 1990, c. P.18, s. 26 (3).

27.-51. Repealed: 1998, c. 15, Sched. E, s. 28 (1).

thereby prejudiced, may award such compensation as appears to him to be just, and in that event the finding of the board of valuation is final and binding upon the owner and the Commission. R.S.O. 1960, c. 300, s. 36.

Powers of Commission as to lines on highways

37. In the exercise of the powers conferred and in carrying out any work authorized by this Act or any other general or special Act, the Commission has and always has had authority to put down, carry, construct, erect and maintain such conduits, wires, poles, towers and other equipment and works used in the generation, transmission or distribution of power as it considers necessary or desirable, under, along, across or upon any public street or highway and to remove or replace them without taking any of the proceedings prescribed by *The Expropriations Act* for the taking of land without the consent of its owner, and the provisions of *The Expropriations Act* with regard to compensation do not apply, but the location of any such conduits, wires, poles, towers, equipment or works to be put down, carried, constructed or erected under, along, across or upon a public street or highway shall be agreed upon by the Commission and the municipal corporation or other authority having control of the public street or highway, and in case of disagreement shall be determined by the Ontario Municipal Board. R.S.O. 1960 c. 300, s. 37, *amended.*

R.S.O. 1970, c. 154

Buildings

38.—(1) Subject to *The Expropriations Act*, the Commission may expropriate, purchase, lease or otherwise acquire lands that the Commission considers necessary for office, service, or other buildings and may erect thereon such buildings and works as the Commission requires for its purposes. R.S.O. 1960, c. 300, s. 38 (1), *amended.*

Expense repayable by municipalities

(2) All expenditures by the Commission for the purposes mentioned in subsection 1 are repayable to the Commission by the municipal corporations having contracts with the Commission, and shall be repaid by annual sums sufficient to form in forty years a sinking fund for the repayment of the cost thereof. R.S.O. 1960, c. 300, s. 38 (2).

Disposal of works to a municipality

39.—(1) The Commission, upon such terms as it considers proper, may lease, sell or otherwise dispose of to a municipal corporation or commission any works or any interest therein that the Commission is or has been using and that it considers advisable to so dispose of.

Acquiring property from municipality

(2) The Commission may acquire from a municipal corporation or commission by purchase, lease or otherwise, upon such terms as the Commission considers proper, any works or other property, real or personal, that the Commission considers advisable for its purposes and such municipal corporation or commission

CHAPTER P.52

Public Utilities Act

Definition

1. In Parts III, IV, V and VI, "public utility" means water, artificial or natural gas, electrical power or energy, steam or hot water. R.S.O. 1980, c. 423, s. 1.

PART I
MUNICIPAL WATERWORKS

Establishment of works and expropriation of land, etc.

2.—(1) The corporation of a local municipality may, under and subject to the provisions of this Part, acquire, establish, maintain and operate waterworks, and may acquire by purchase or otherwise and may enter on and expropriate land, waters and water privileges and the right to divert any lake, river, pond, spring or stream of water, within or without the municipality, as may be considered necessary for waterworks purposes, or for protecting the waterworks or preserving the purity of the water supply.

Power to acquire existing works

(2) The corporation may purchase the waterworks of any person situate within or in the neighbourhood of the municipality and may improve and extend them, and, for the purpose of any improvement or extension, may exercise all the powers conferred by this Part.

Areas

(3) The council of the corporation may define an area in the municipality and may assess and levy on the rateable property in the area the cost of the waterworks including debenture charges, the cost of maintenance and management and the cost of the water, or any part thereof. R.S.O. 1980, c. 423, s. 2.

Application of certain Acts

3. Parts XIII and XIV of the *Municipal Act* and the *Expropriations Act* apply to the exercise by the corporation of any of the powers conferred by this Part. R.S.O. 1980, c. 423, s. 3.

Construction of necessary works

4.—(1) The corporation may construct and maintain, in and upon the land acquired by it, such reservoirs, water and other works, plant and machinery as may be requisite for the undertaking, and may, by pipes or other-

CHAPITRE P.52

Loi sur les services publics

Définition

1 Dans les parties III, IV, V et VI, «service public» s'entend de l'eau, du gaz naturel ou synthétique, de l'électricité, de la vapeur ou de l'eau chaude. L.R.O. 1980, chap. 423, art. 1.

PARTIE I
OUVRAGES MUNICIPAUX DE PURIFICATION DE L'EAU

Construction d'ouvrages et expropriation des biens-fonds à cette fin

2 (1) Une municipalité locale peut, en vertu et sous réserve de la présente partie, acquérir, construire, entretenir et faire fonctionner des ouvrages de purification de l'eau. Elle peut aussi acquérir, notamment par achat, et peut occuper et exproprier des biens-fonds, des sources d'approvisionnement en eau, des concessions d'eau ainsi que le droit de détourner les eaux d'un lac, d'une rivière, d'un étang, d'une source ou d'un ruisseau, à l'intérieur ou à l'extérieur des limites de la municipalité, selon ce qu'elle estime nécessaire aux fins des ouvrages de purification de l'eau, à la protection de ces derniers ou au maintien de la pureté de l'approvisionnement en eau.

Pouvoir d'acquérir des ouvrages existants

(2) La municipalité peut acheter les ouvrages de purification de l'eau situés dans les limites ou les environs de la municipalité et peut les améliorer et les prolonger; à ces fins, elle peut exercer tous les pouvoirs qui lui sont conférés par la présente partie.

Zones

(3) Le conseil municipal peut établir une zone dans la municipalité et peut évaluer les biens imposables de cette zone et percevoir sur eux le coût, en tout ou partie, de l'ouvrage de purification de l'eau y compris les frais de débentures, les dépenses d'entretien et de gestion ainsi que le coût de l'eau, ou d'une partie de ceux-ci. L.R.O. 1980, chap. 423, art. 2.

Champ d'application de certaines lois

3 Les parties XIII et XIV de la *Loi sur les municipalités* et la *Loi sur l'expropriation* s'appliquent à l'exercice, par la municipalité, des pouvoirs que lui confère la présente partie. L.R.O. 1980, chap. 423, art. 3.

Construction des ouvrages nécessaires

4 (1) La municipalité peut construire et entretenir, sur les biens-fonds qu'elle a acquis, des réservoirs, des ouvrages de purification de l'eau et d'autres ouvrages, des usines et des machines nécessaires à l'entre-

Power to levy special rate

16.—(1) The corporation may impose a special rate or rent in respect of the cost or maintenance of a water main on persons who own or occupy land in the municipality or in a water area where the land fronts or abuts on a highway, lane or other public communication in, through or along which the main is laid, but no such person is liable to pay a special rate or rent in respect of the cost of the main where local improvement rates for the main have been or are being levied upon the land so owned or occupied.

Manner of collection

(2) The special rate or rent may be collected in the same manner and with like remedies as water rates or in the same manner and with like remedies as taxes under the *Municipal Act*. R.S.O. 1980, c. 423, s. 16.

Pouvoir de percevoir une redevance extraordinaire

16 (1) La municipalité peut, pour payer le coût ou l'entretien d'une conduite principale, prélever une redevance ou un loyer extraordinaires des personnes qui sont propriétaires ou occupants des biens-fonds dans la municipalité ou dans une zone dont les biens-fonds sont attenants aux voies publiques, aux voies ou aux autres voies de communication publique dans lesquelles ou le long desquelles une conduite principale est installée. Toutefois, ces propriétaires ou occupants n'ont pas à payer de redevance ou de loyer extraordinaires pour le coût de la conduite principale lorsque des impôts d'aménagement local ont été imposés ou sont imposés sur leurs biens-fonds.

Perception

(2) La perception de l'impôt ou du loyer extraordinaires peut se faire de la même façon et en utilisant les mêmes recours que ceux qui sont prévus pour la perception des redevances d'adduction d'eau ou des impôts dans la *Loi sur les municipalités*. L.R.O. 1980, chap. 423, art. 16.

PART II
MUNICIPAL PUBLIC UTILITY WORKS OTHER THAN WATERWORKS

Definition

17. In this Part, "public utility" means artificial and natural gas, electrical power or energy, steam or hot water. R.S.O. 1980, c. 423, s. 17.

Power of corporation to produce and supply public utilities

18.—(1) The corporation of any municipality may manufacture, procure, produce and supply for its own use and the use of the inhabitants of the municipality any public utility for any purpose for which the utility may be used, and for such purposes may purchase, construct, improve, extend, maintain and operate any works that may be considered requisite and may acquire any patent or other right for the manufacture, production or supply of any such public utility, and for any of the said purposes or for any purpose for which a public utility may be used, may acquire by purchase or otherwise fittings, fixtures, apparatus, appliances, machines, meters and other equipment and may supply or dispose of the same by sale, lease or otherwise and may provide for the installation and maintenance thereof in or upon the lands and premises of users of the public utility.

May sell by-products

(2) The corporation may sell and dispose of coke, tar, and every other by-product or residuum obtained in or from its works, and any surplus coal it may have on hand.

May rent or purchase lands

(3) The corporation may purchase or rent such land and buildings as may be considered necessary for the purpose of its undertaking. R.S.O. 1980, c. 423, s. 18.

PARTIE II
SERVICES PUBLICS MUNICIPAUX AUTRES QUE LE SERVICE DE PURIFICATION DE L'EAU

Définition

17 Dans la présente partie, «service public» s'entend du gaz naturel et synthétique, de l'électricité, de la vapeur ou de l'eau chaude. L.R.O. 1980, chap. 423, art. 17.

Pouvoir de la municipalité en matière de production et d'approvisionnement de services publics

18 (1) Une municipalité peut fabriquer, obtenir, produire et fournir pour son propre usage et celui de ses habitants un service public à toute fin pour laquelle il peut être utilisé. Elle peut, à ces fins, acheter, construire, améliorer, agrandir, entretenir et faire fonctionner un ouvrage qui peut être considéré nécessaire et peut acquérir les droits de brevets ou autres droits pour manufacturer, produire ou fournir le service public. Elle peut aussi, à ces mêmes fins ou aux fins pour lesquelles le service public peut être utilisé, acquérir, notamment par achat, des accessoires, des instruments, des installations, des appareils, des machines, des compteurs ou autres pièces d'équipement et peut fournir ou aliéner ces objets, notamment par vente ou location, et peut s'occuper de leur installation et de leur entretien sur les biens-fonds et les lieux des usagers du service public.

Vente des produits dérivés

(2) La municipalité peut aliéner, notamment par vente, du coke, du goudron et des autres produits dérivés ou résidus obtenus de ses ouvrages ainsi que tout surplus de charbon qu'elle peut avoir en main.

Achat ou location de biens-fonds

(3) La municipalité peut acheter ou louer les biens-fonds et bâtiments qu'elle considère nécessaires aux fins de son entreprise. L.R.O. 1980, chap. 423, art. 18.

Definition

19.—(1) In this section, "energy conservation program" has the same meaning as in the *Power Corporation Act*.

Energy conservation program

(2) A municipal corporation, as principal or as agent for Ontario Hydro, may provide, arrange for or participate in the provision of an energy conservation program in the municipality.

Limitation

(3) Subsection (2) does not apply to authorize the corporation of a municipality to loan money out of its own funds as part of an energy conservation program. 1981, c. 16, s. 9.

Allocation and distribution of available power

20.—(1) Despite anything in this Act or in any general or special Act or in any contract heretofore or hereafter entered into, the corporation of any municipality or any municipal commission established under this or any other Act which supplies to any person electrical power or energy supplied to it by Ontario Hydro may allocate and distribute its available power amongst its customers and interrupt or decrease the delivery of electrical power or energy under any contract at any time that its own supply of electrical power or energy is interrupted or decreased by Ontario Hydro pursuant to the *Power Corporation Act*.

No breach of contract

(2) Nothing done under subsection (1) shall be deemed a breach of contract or entitles any person to rescind any contract or release any guarantor from performance of the guarantor's obligations. R.S.O. 1980, c. 423, s. 19.

Power to expropriate lands for works

21. The corporation may acquire by purchase, lease or otherwise, or may expropriate any land in the municipality that may be required for its works or any extension thereof, and Part XIII of the *Municipal Act* and the *Expropriations Act* apply where appropriate to the exercise by the corporation of the power to expropriate and of the power conferred by section 24. R.S.O. 1980, c. 423, s. 20.

Corporation may carry pipes, etc., on highways

22. The corporation, for the purpose of any municipal public utility works, has and always has had authority to put down, carry, install, construct, erect and maintain such conduits, pipes, wires, poles, rods, cables, transformers, machinery, apparatus, devices, appliances, equipment, materials, structures or works as it considers necessary or desirable, on, over, under or across any highway, lane or other public communication or, with the consent of the owner of private property, on, over, under or across such private property and has and always has had authority to remove or replace any of them. R.S.O. 1980, c. 423, s. 21.

Définition

19 (1) Dans le présent article, «programme de conservation de l'énergie» s'entend au sens de la *Loi sur la Société de l'électricité*.

Programme de conservation de l'énergie

(2) Une municipalité peut, à titre de mandant ou de mandataire d'Ontario Hydro, mettre sur pied ou organiser un programme de conservation de l'énergie dans la municipalité ou y participer.

Limitation

(3) Le paragraphe (2) ne permet pas à la municipalité de prêter des sommes, prélevées sur ses propres fonds, en vue d'un programme de conservation de l'énergie. 1981, chap. 16, art. 9.

Répartition et distribution de l'électricité disponible

20 (1) Malgré la présente loi, une loi d'application générale ou spéciale ou un contrat conclu avant ou après l'entrée en vigueur de la présente loi, une municipalité ou une commission municipale créée en vertu de la présente loi ou d'une autre loi, qui alimentent quiconque en électricité fournie par Ontario Hydro peut, lorsque celle-ci, conformément à la *Loi sur la Société de l'électricité*, interrompt ou réduit sa fourniture d'électricité, répartir et distribuer l'électricité disponible parmi ses clients et interrompre ou réduire l'électricité qu'elle doit livrer en vertu d'un contrat.

Pas de violation de contrat

(2) Aucune mesure prise en vertu du paragraphe (1) n'est réputée une violation de contrat, ne donne le droit à une personne de résilier un contrat, ni ne libère une caution de son obligation. L.R.O. 1980, chap. 423, art. 19.

Pouvoir d'expropriation des biens-fonds

21 La municipalité peut acquérir, notamment par achat ou location, ou peut exproprier les biens-fonds situés dans ses limites et nécessaires à ses ouvrages ou à leur prolongement. La partie XIII de la *Loi sur les municipalités* et la *Loi sur l'expropriation* s'appliquent à l'exercice par la municipalité de son pouvoir d'expropriation et du pouvoir qui lui est conféré par l'article 24. L.R.O. 1980, chap. 423, art. 20.

La municipalité peut faire passer son équipement sur les voies publiques

22 La municipalité conserve toujours le pouvoir de poser, de faire passer, d'installer, de construire et d'entretenir les conduites, les tuyaux, les fils et poteaux, les tiges, les câbles, les transformateurs, la machinerie, les instruments, les dispositifs, les appareils, l'équipement, le matériel, les constructions ou les ouvrages qu'elle juge nécessaires ou utiles aux fins des services publics municipaux, sur, à travers, au-dessus ou en dessous des voies publiques, des voies ou des autres voies de communication publique ou, avec le consentement du propriétaire d'une propriété privée, sur, à travers, au-dessus ou en dessous de cette propriété. Elle continue de conserver le pouvoir d'enlever ou de remplacer ces objets. L.R.O. 1980, chap. 423, art. 21.

May carry pipes, etc., through buildings to serve other parts of buildings

23.—(1) The corporation may carry conduits, pipes, wires, rods, cables and other apparatus, devices, appliances and equipment to any part of any building within the municipality parts of which belong to different owners, or are in possession of different tenants or occupants, passing over the property of any owner or of any tenant or occupant to convey the public utility to the part of the building to which it is to be conveyed.

Method

(2) Such conduits, pipes, wires, rods, cables and other apparatus, devices, appliances and equipment shall be carried up and attached to the outside of the building unless consent is obtained from the owner, tenant or occupant concerned to carry them in the inside of the building. R.S.O. 1980, c. 423, s. 22.

May break up passages common to neighbouring owners, etc.

24. The corporation may also break up and uplift all passages common to neighbouring owners, tenants or occupants, and dig or cut trenches therein, for the purpose of laying down conduits, pipes, wires, rods, cables and other apparatus, devices, appliances and equipment, or taking up, examining or repairing the same, and shall do as little damage as possible in the execution of the powers hereby conferred, and shall restore such passages to their original condition without unnecessary delay. R.S.O. 1980, c. 423, s. 23.

Contracts for supply of utility

25. The corporation may enter into a contract for the supply of a public utility to any person, including a municipality as defined in the *Municipal Affairs Act*, for a term not exceeding twenty years, and may renew any such contract. R.S.O. 1980, c. 423, s. 24.

Power to carry works into adjoining municipalities

26. A corporation possessing or intending to construct works under this Act may, under the authority of a by-law of an adjoining local municipality, exercise the like powers within the adjoining municipality, including the power to supply the public utility to owners and occupants of land in the adjoining municipality, as it may exercise within its own municipality upon such terms and conditions as may be agreed upon. R.S.O. 1980, c. 423, s. 25.

PART III
ALL MUNICIPAL PUBLIC UTILITIES

Application of Part

27. This Part applies to all municipal corporations owning or operating public utilities. R.S.O. 1980, c. 423, s. 26.

By-laws for maintenance and management of works

28.—(1) The council may pass by-laws for the maintenance and management of the works and the conduct of the officers and

Passage des installations dans les bâtiments

23 (1) Pour transporter le service public à une partie d'un bâtiment situé dans la municipalité, dont les parties appartiennent à des propriétaires différents ou dont des locataires ou occupants différents sont en possession, la municipalité peut passer sur les biens-fonds de ces derniers pour faire passer les conduites, les tuyaux, les fils, les tiges, les câbles ainsi que les autres instruments, dispositifs, appareils et pièces d'équipement nécessaires.

Méthode

(2) Les conduites, les tuyaux, les fils, les tiges, les câbles ainsi que les autres instruments, dispositifs, appareils et pièces d'équipement sont transportés jusqu'à l'extérieur du bâtiment et y sont fixés à moins que le propriétaire, le locataire ou l'occupant ne consente à les faire transporter à l'intérieur. L.R.O. 1980, chap. 423, art. 22.

Passage commun aux propriétaires voisins

24 La municipalité peut aussi défoncer et soulever les passages communs aux propriétaires, locataires ou occupants voisins, et y creuser des tranchées pour poser des conduites, tuyaux, fils, tiges, câbles et autres instruments, dispositifs, appareils et pièces d'équipement ou pour les enlever, les examiner ou les réparer. Elle exécute les pouvoirs conférés par le présent article en causant le moins de dommages possibles et remet les passages dans leur état original sans retard injustifié. L.R.O. 1980, chap. 423, art. 23.

Contrat de fourniture d'un service

25 La municipalité peut conclure un contrat pour fournir un service public à une personne, y compris une municipalité au sens de la *Loi sur les affaires municipales*, pour une durée ne dépassant pas vingt ans. Elle peut également renouveler le contrat. L.R.O. 1980, chap. 423, art. 24.

Pouvoir de prolonger des ouvrages dans les municipalités adjacentes

26 Une municipalité qui possède des ouvrages ou qui a l'intention d'en construire aux termes de la présente loi peut exercer dans une municipalité locale adjacente, si un règlement municipal de cette dernière l'autorise, les pouvoirs, y compris le pouvoir de fournir le service public aux propriétaires et aux occupants des biens-fonds de la municipalité adjacente, qu'elle peut exercer sur son territoire, selon les conditions qui peuvent être convenues. L.R.O. 1980, chap. 423, art. 25.

PARTIE III
TOUS LES SERVICES PUBLICS MUNICIPAUX

Champ d'application de la présente partie

27 La présente partie s'applique à toutes les municipalités qui sont propriétaires de services publics ou qui en assument le fonctionnement. L.R.O. 1980, chap. 423, art. 26.

Règlement municipal pour l'entretien et la gestion des ouvrages

28 (1) Le conseil peut adopter des règlements municipaux visant à l'entretien et à la gestion des ouvrages ainsi qu'à la conduite

Public Utilities Act

R.S.O. 1990, CHAPTER P.52

Consolidation Period: From January 1, 2007 to the e-Laws currency date.

Last amendment: 2006, c.32, Sched.D, s.14.

SKIP TABLE OF CONTENTS

CONTENTS

Definition

1. In this Act,

"public utility" means water, artificial or natural gas, steam or hot water. 2001, c. 25, s. 482 (1).

PART I Repealed: 2001, c. 25, s. 482 (2).

2.-10., 10.1, 11.-16. Repealed: 2001, c. 25, s. 482 (2).

PART II Repealed: 2001, c. 25, s. 482 (2).

17.-19. Repealed: 2001, c. 25, s. 482 (2).

20. Repealed: 1998, c. 15, Sched. E, s. 32 (6).

21.-26. Repealed: 2001, c. 25, s. 482 (2).

PART III Repealed: 2001, c. 25, s. 482 (2).

27.-29. Repealed: 2001, c. 25, s. 482 (2).

30. Repealed: 1998, c. 15, Sched. E, s. 32 (9).

31.-35. Repealed: 2001, c. 25, s. 482 (2).

36. Repealed: 1998, c. 15, Sched. E, s. 32 (13).

37.-48. Repealed: 2001, c. 25, s. 482 (2).