EB-2011-0120

ONTARIO ENERGY BOARD

IN THE MATTER OF the *Ontario Energy Board Act, 1998,* S.O. 1998, c. 15 (Schedule B);

AND IN THE MATTER OF an Application by the **Canadian Distributed Antenna Systems Coalition** for certain orders under the *Ontario Energy Board Act, 1998.*

APPLICANT'S BOOK OF AUTHORITIES[1]

[1] This Book of Authorities only identifies materials that have not already been filed.

Other Authorities

July 16, 2012

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TAB 1

CANADA

CONSOLIDATION

CODIFICATION

Telecommunications Act

Loi sur les télécommunications

S.C. 1993, c. 38

L.C. 1993, ch. 38

Current to June 27, 2012

À jour au 27 juin 2012

Last amended on July 12, 2010

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S.C. 1993, c. 38 **L.C. 1993, ch. 38**

An Act respecting telecommunications

[*Assented to 23rd June 1993*]

Loi concernant les télécommunications

[*Sanctionnée le 23 juin 1993*]

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

Sa Majesté, sur l'avis et avec le consentement du Sénat et de la Chambre des communes du Canada, édicte :

SHORT TITLE

Short title

1. This Act may be cited as the *Telecommunications Act*.

TITRE ABRÉGÉ

Titre abrégé

1. *Loi sur les télécommunications*.

PART I

GENERAL

INTERPRETATION

PARTIE I

DISPOSITIONS GÉNÉRALES

DÉFINITIONS

Definitions

2. (1) In this Act,

"broadcasting undertaking" « *entreprise de radiodiffusion* »

"broadcasting undertaking" has the same meaning as in subsection 2(1) of the *Broadcasting Act*;

"Canadian carrier" « *entreprise canadienne* »

"Canadian carrier" means a telecommunications common carrier that is subject to the legislative authority of Parliament;

"Canadian telecommunications policy objectives" *Version anglaise seulement*

"Canadian telecommunications policy objectives" means the objectives set out in section 7;

"charge" *Version anglaise seulement*

"charge" includes to receive in payment;

"Commission" « *Conseil* »

"Commission" means the Canadian Radio-television and Telecommunications Commission;

"control" « *contrôle* »

"control" means control in any manner that results in control in fact, whether directly through the ownership of securities or indirectly through a trust, agreement or arrangement, the ownership of any body corporate or otherwise;

Définitions

2. (1) Les définitions qui suivent s'appliquent à la présente loi.

« administration publique » "*public authority*"

« administration publique » S'entend notamment de Sa Majesté du chef du Canada ou d'une province.

« appareil de transmission exclu » "*exempt transmission apparatus*"

« appareil de transmission exclu » Appareil effectuant une ou plusieurs des opérations suivantes :

a) commutation des télécommunications;

b) saisie, réception, mise en mémoire, classement, modification, récupération, sortie ou tout autre traitement de l'information;

c) commande de la vitesse, du code, du protocole, du contenu, de la forme, de l'acheminement ou d'autres aspects semblables de la transmission de l'information.

« câble sous-marin international » "*international submarine cable*"

« câble sous-marin international » S'entend d'une ligne sous-marine servant aux télécommunications soit entre le Canada et l'étranger, soit entre des points de l'étranger par le

"decision" « *décision* »
"decision" includes a determination made by the Commission in any form;

"exempt transmission apparatus" « *appareil de transmission exclu* »
"exempt transmission apparatus" means any apparatus whose functions are limited to one or more of the following:

(*a*) the switching of telecommunications,

(*b*) the input, capture, storage, organization, modification, retrieval, output or other processing of intelligence, or

(*c*) control of the speed, code, protocol, content, format, routing or similar aspects of the transmission of intelligence;

"intelligence" « *information* »
"intelligence" means signs, signals, writing, images, sounds or intelligence of any nature;

"international submarine cable" « *câble sous-marin international* »
"international submarine cable" means a submarine telecommunications line that extends between Canada and any place outside Canada, or between places outside Canada through Canada, other than a line situated entirely under fresh water;

"international submarine cable licence" « *licence de câble sous-marin international* »
"international submarine cable licence" means a licence issued under section 19;

"Minister" « *ministre* »
"Minister" means the Minister of Industry;

"person" « *personne* »
"person" includes any individual, partnership, body corporate, unincorporated organization, government, government agency and any other person or entity that acts in the name of or for the benefit of another, including a trustee, executor, administrator, liquidator of the succession, guardian, curator or tutor;

"prescribed" *Version anglaise seulement*
"prescribed" means prescribed by regulation;

"public authority" « *administration publique* »
"public authority" includes Her Majesty in right of Canada or a province;

"rate" « *tarif* »
"rate" means an amount of money or other consideration and includes zero consideration;

"special Act" « *loi spéciale* »
"special Act" means an Act of Parliament respecting the operations of a particular Canadian carrier;

"telecommunications" « *télécommunication* »
"telecommunications" means the emission, transmission or reception of intelligence by any wire, cable, radio, optical or other electromagnetic system, or any combination of systems, but does not include broadcasting;

« Conseil » "*Commission*"
« Conseil » Le Conseil de la radiodiffusion et des télécommunications canadiennes.

« contrôle » "*control*"
« contrôle » Situation qui crée une maîtrise de fait, soit directe, par la propriété de valeurs mobilières, soit indirecte, en particulier au moyen d'une fiducie, d'un accord, d'une entente ou de la propriété d'une personne morale.

« décision » "*decision*"
« décision » Toute mesure prise par le Conseil, quelle qu'en soit la forme.

« entreprise canadienne » "*Canadian carrier*"
« entreprise canadienne » Entreprise de télécommunication qui relève de la compétence fédérale.

« entreprise de radiodiffusion » "*broadcasting undertaking*"
« entreprise de radiodiffusion » S'entend de l'entreprise au sens de la *Loi sur la radiodiffusion*.

« entreprise de télécommunication » "*telecommunications common carrier*"
« entreprise de télécommunication » Propriétaire ou exploitant d'une installation de transmission grâce à laquelle sont fournis par lui-même ou une autre personne des services de télécommunication au public moyennant contrepartie.

« fournisseur de services de télécommunication » "*telecommunications service provider*"
« fournisseur de services de télécommunication » La personne qui fournit des services de télécommunication de base, y compris au moyen d'un appareil de transmission exclu.

« information » "*intelligence*"
« information » Signes, signaux, écrits, images, sons ou renseignements de toute nature.

« installation de télécommunication » "*telecommunications facility*"
« installation de télécommunication » Installation, appareils ou toute autre chose servant ou pouvant servir à la télécommunication ou à toute opération qui y est directement liée, y compris les installations de transmission.

« installation de transmission » "*transmission facility*"
« installation de transmission » Tout système électromagnétique — notamment fil, câble ou système radio ou optique — ou tout autre procédé technique pour la transmission d'information entre des points d'arrivée du réseau, à l'exception des appareils de transmission exclus.

« licence de câble sous-marin international » "*international submarine cable licence*"
« licence de câble sous-marin international » Licence attribuée au titre de l'article 19.

« loi spéciale » "*special Act*"
« loi spéciale » Loi fédérale relative aux activités d'une entreprise canadienne particulière.

netic system, or by any similar technical system;

"telecommunications common carrier" « *entreprise de télécommunication* »

"telecommunications common carrier" means a person who owns or operates a transmission facility used by that person or another person to provide telecommunications services to the public for compensation;

"telecommunications facility" « *installation de télécommunication* »

"telecommunications facility" means any facility, apparatus or other thing that is used or is capable of being used for telecommunications or for any operation directly connected with telecommunications, and includes a transmission facility;

"telecommunications service" « *service de télécommunication* »

"telecommunications service" means a service provided by means of telecommunications facilities and includes the provision in whole or in part of telecommunications facilities and any related equipment, whether by sale, lease or otherwise;

"telecommunications service provider" « *fournisseur de services de télécommunication* »

"telecommunications service provider" means a person who provides basic telecommunications services, including by exempt transmission apparatus;

"transmission facility" « *installation de transmission* »

"transmission facility" means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points, but does not include any exempt transmission apparatus.

Definition of "network termination point"

(2) The Commission may define the expression "network termination point" for purposes of the definition "transmission facility" in subsection (1).

1993, c. 38, s. 2; 1995, c. 1, s. 62; 1998, c. 8, s. 1; 2004, c. 25, s. 174.

« ministre » "*Minister*"

« ministre » Le ministre de l'Industrie.

« personne » "*person*"

« personne » Sont compris parmi les personnes les particuliers, les sociétés de personnes, les personnes morales, les organisations non personnalisées, les gouvernements ou leurs organismes, ainsi que les personnes ou entités qui agissent au nom ou pour le compte d'autrui, notamment les fiduciaires, les liquidateurs de succession, les exécuteurs testamentaires, les administrateurs successoraux, les curateurs et les tuteurs.

« service de télécommunication » "*telecommunications service*"

« service de télécommunication » Service fourni au moyen d'installations de télécommunication, y compris la fourniture — notamment par vente ou location — , même partielle, de celles-ci ou de matériel connexe.

« tarif » "*rate*"

« tarif » Somme d'argent ou toute autre contrepartie; la présente définition vise également les tarifs n'entraînant aucune contrepartie.

« télécommunication » "*telecommunications*"

« télécommunication » La transmission, l'émission ou la réception d'information soit par système électromagnétique, notamment par fil, câble ou système radio ou optique, soit par tout autre procédé technique semblable.

Définition de « point d'arrivée du réseau »

(2) Le Conseil peut définir l'expression « point d'arrivée du réseau » pour les besoins de la définition de « installation de transmission » au paragraphe (1).

1993, ch. 38, art. 2; 1995, ch. 1, art. 62; 1998, ch. 8, art. 1; 2004, ch. 25, art. 174.

HER MAJESTY

Act binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

SA MAJESTÉ

Obligation de Sa Majesté

3. La présente loi lie Sa Majesté du chef du Canada ou d'une province.

APPLICATION

Broadcasting excluded

4. This Act does not apply in respect of broadcasting by a broadcasting undertaking.

CHAMP D'APPLICATION

Exclusion des activités de radiodiffusion

4. La présente loi ne s'applique pas aux entreprises de radiodiffusion pour tout ce qui concerne leurs activités de radiodiffusion.

Application

5. A trustee, trustee in bankruptcy, receiver, sequestrator, manager, administrator of the property of another or any other person who, under the authority of any court, or any legal

Assujettissement à la loi

5. Le fiduciaire, le syndic, le séquestre, l'administrateur du bien d'autrui ou toute autre personne qui gère ou exploite une installation de transmission d'une entreprise canadienne sous

TAB 2

Français

Ontario Energy Board Act, 1998

S.O. 1998, CHAPTER 15
Schedule B

Consolidation Period: From December 31, 2011 to the e-Laws currency date.

Last amendment: See Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Skip Table of Contents

CONTENTS

PART I
GENERAL

Board objectives, electricity

1. (1) The Board, in carrying out its responsibilities under this or any other Act in relation to electricity, shall be guided by the following objectives:

1. To protect the interests of consumers with respect to prices and the adequacy, reliability and quality of electricity service.
2. To promote economic efficiency and cost effectiveness in the generation, transmission, distribution, sale and demand management of electricity and to facilitate the maintenance of a financially viable electricity industry.
3. To promote electricity conservation and demand management in a manner consistent with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.
4. To facilitate the implementation of a smart grid in Ontario.
5. To promote the use and generation of electricity from renewable energy sources in a manner consistent with the policies of the Government of Ontario, including the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities. 2004, c. 23, Sched. B, s. 1; 2009, c. 12, Sched. D, s. 1.

Facilitation of integrated power system plans

(2) In exercising its powers and performing its duties under this or any other Act in relation to electricity, the Board shall facilitate the implementation of all integrated power system plans approved under the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 1.

Board objectives, gas

2. The Board, in carrying out its responsibilities under this or any other Act in relation to gas, shall be guided by the following objectives:

1. To facilitate competition in the sale of gas to users.
2. To protect the interests of consumers with respect to prices and the reliability and quality of gas service.
3. To facilitate rational expansion of transmission and distribution systems.
4. To facilitate rational development and safe operation of gas storage.
5. To promote energy conservation and energy efficiency in accordance with the policies of the Government of Ontario, including having regard to the consumer's economic circumstances.

5.1 To facilitate the maintenance of a financially viable gas industry for the transmission, distribution and storage of gas.

6. To promote communication within the gas industry and the education of consumers. 1998, c. 15, Sched. B, s. 2; 2002, c. 23, s. 4 (2); 2003, c. 3, s. 3; 2004, c. 23, Sched. B, s. 2; 2009, c. 12, Sched. D, s. 2.

Definitions

3. In this Act,

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

"associate", where used to indicate a relationship with any person, means,

(a) any body corporate of which the person owns, directly or indirectly, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of the body corporate for the time being outstanding,

(b) any partner of that person,

(c) any trust or estate in which the person has a substantial beneficial interest or as to which the person serves as trustee or in a similar capacity,

(d) any relative of the person, including the person's spouse as defined in the *Business Corporations Act*, where the relative has the same home as the person, or

(e) any relative of the spouse, as defined in the *Business Corporations Act*, of the person, where the relative has the same home as the person; ("personne qui a un lien")

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

"construct" means construct, reconstruct, relocate, enlarge or extend; ("construire")

"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")

"enforceable provision" means,

(a) a provision of this Act or the regulations,

(b) a provision of Part II of the *Energy Consumer Protection Act, 2010* or of the regulations made under it,

(c) a provision of Part III of the *Energy Consumer Protection Act, 2010* or of the regulations made under it,

(c.1) a provision of the *Ontario Clean Energy Benefit Act, 2010* or the regulations made under it;

(d) section 25.33, 25.34, 25.36, 25.37, 26, 27, 28, 28.1, 29, 30.1, 31, 53.11, 53.13, 53.15, 53.16 or 53.18 of the *Electricity Act, 1998*, or any other provision of that Act that is prescribed by the regulations,

(e) regulations made under clause 114 (1.3) (f) or (h) of the *Electricity Act, 1998*,

(f) a condition of a licence issued under Part IV, V or V.1,

(g) a provision of the rules made by the Board under section 44 or a code issued under section 70.1, 70.2 or 70.3,

(h) a provision of an order of the Board,

(i) a provision of an assurance of voluntary compliance that is given to the Board under section 112.7 or that was entered into under section 88.8 before that section was repealed, or

(j) a provision of any other Act or the regulations made under an Act, as may be prescribed by regulation; ("disposition exécutoire")

"fuel oil" means any liquid hydrocarbon within the meaning from time to time of the Canadian General Standards Board specification CAN/CGSB-3.2-M89 entitled FUEL OIL HEATING, CAN/CGSB-3.3-M89 entitled KEROSENE, CAN/CGSB-3.6-M90 entitled AUTOMOTIVE DIESEL FUEL or, when used for heating, cooking or lighting, within the meaning from time to time of CAN/CGSB-3.27-M89 entitled NAPHTHA FUEL; ("mazout")

"gas" means natural gas, substitute natural gas, synthetic gas, manufactured gas, propane-air gas or any mixture of any of them; ("gaz")

"gas distributor" means a person who delivers gas to a consumer and "distribute" and "distribution" have corresponding meanings; ("distributeur de gaz", "distribuer", "distribution")

"gas transmitter" means a person who carries gas by hydrocarbon transmission line, and "transmit" and "transmission" have corresponding meanings; ("transporteur de gaz", "transporter", "transport")

"IESO" means the Independent Electricity System Operator established under the *Electricity Act, 1998*; ("SIERE")

"land" includes any interest in land; ("bien-fonds")

"manufactured gas" means any artificially produced fuel gas, except acetylene and any other gas used principally in welding or cutting metals; ("gaz manufacturé")

"Minister" means the Minister of Energy or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; ("ministre")

"oil" means crude oil, and includes any hydrocarbon that can be recovered in liquid form from a pool through a well; ("pétrole")

"OPA" means the Ontario Power Authority established under the *Electricity Act, 1998*; ("OEO")

"pipe line" means a pipe that carries a hydrocarbon and includes every part of the pipe and adjunct thereto; ("pipeline")

"pool" means an underground accumulation of oil or natural gas or both, separated or appearing to be separated from any other such underground accumulation; ("gisement")

"producer" means a person who has the right to remove gas or oil from a well, and "produce" and "production" have corresponding meanings except when referring to documents or records; ("producteur", "produire", "production")

"propane" means a hydrocarbon consisting of 95 per cent or more of propane, propylene, butane or butylene, or any blend thereof; ("propane")

"rate" means a rate, charge or other consideration and includes a penalty for late payment; ("tarif")

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

"renewable energy generation facility" has the same meaning as in the *Electricity Act, 1998*; ("installation de production d'énergie renouvelable")

"renewable energy source" has the same meaning as in the *Electricity Act, 1998*; ("source d'énergie renouvelable")

"smart grid" has the same meaning as in the *Electricity Act, 1998*; ("réseau intelligent")

"Smart Metering Entity" means the corporation incorporated, the limited partnership or the partnership formed or the entity designated pursuant to section 53.7 of the *Electricity Act, 1998*; ("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")

"station" means a compressor station, a metering station, an odorizing station or a regulating station; ("station")

"storage company" means a person engaged in the business of storing gas; ("compagnie de stockage")

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

"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")

"unit smart metering" has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs intelligents d'unité")

"unit smart meter provider" has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs intelligents d'unité")

"unit sub-metering" has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; ("activités liées aux compteurs divisionnaires d'unité")

"unit sub-meter provider" has the same meaning as in Part III of the *Energy Consumer Protection Act, 2010*; ("fournisseur de compteurs divisionnaires d'unité")

"utility line" means a pipe line, a telephone, telegraph, electric power or water line, or any other line that supplies a service or commodity to the public; ("ligne de service public")

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

"well" means a hole drilled into a geological formation of Cambrian or more recent age, except a hole where no gas or oil is encountered that is drilled for the production of fresh water or salt. ("puits") 1998, c. 15, Sched. B, s. 3; 1999, c. 6, s. 48; 2002, c. 1, Sched. B, s. 1; 2002, c. 23, s. 4 (3); 2003, c. 3, s. 4; 2005, c. 5, s. 51; 2006, c. 3, Sched. C, s. 1; 2009, c. 12, Sched. D, s. 3; 2010, c. 8, s. 38 (1); 2010, c. 26, Sched. 13, s. 17 (1); 2011, c. 9, Sched. 27, s. 34 (1).

PART II
THE BOARD

Ontario Energy Board

Board continued

4. (1) The Ontario Energy Board is continued as a corporation without share capital under the name Ontario Energy Board in English and Commission de l'énergie de l'Ontario in French. 2003, c. 3, s. 5 (2).

Powers

(2) The Board has the capacity and the rights, powers and privileges of a natural person for the purpose of exercising and performing its powers and duties under this or any other Act, except as otherwise provided in this Act. 2003, c. 3, s. 5 (4).

Duties

(3) The Board shall perform the duties assigned to it under this or any other Act. 2003, c. 3, s. 5 (4).

Crown agency

(4) The Board is an agent of Her Majesty in right of Ontario, and its powers may be exercised only as an agent of Her Majesty. 2003, c. 3, s. 5 (4).

(5) REPEALED: 2003, c. 3, s. 5 (3).

Composition

4.1 (1) The Board shall be composed of at least five members. 2003, c. 3, s. 6.

Appointment

(2) The members shall be appointed by the Lieutenant Governor in Council. 2003, c. 3, s. 6.

Term of initial appointment

(3) The first term of office of a person who is appointed to the Board shall not exceed two years. 2003, c. 3, s. 6.

Transition

(4) Subsection (3) does not apply to a person who is a member of the Board when subsection (3) comes into force. 2003, c. 3, s. 6.

Reappointments

(5) A member of the Board may be reappointed for one or more terms of office, each of which does not exceed five years. 2003, c. 3, s. 6.

Chair and vice-chairs

(6) The Lieutenant Governor in Council shall, by order, designate a member of the Board as chair and shall designate two members as vice-chairs. 2003, c. 3, s. 6.

Same

(7) The chair and each vice-chair holds office for the term specified by the Lieutenant Governor in Council which shall not exceed his or her term as a member of the Board. 2003, c. 3, s. 6.

Same

(8) Despite subsections (3) and (5), when a member of the Board is designated as chair, the designation may provide that his or her term of office as a member continues for a period that does not exceed five years from the date of the designation as chair, and subsection (5) applies to any subsequent reappointment as a member. 2003, c. 3, s. 6.

Duties of chair

(9) The chair is the chief executive officer of the Board and, unless otherwise authorized by the Minister, shall devote his or her full time to the work of the Board. 2003, c. 3, s. 6.

Chair may delegate

(10) The chair may in writing delegate any of his or her powers or duties to a vice-chair. 2003, c. 3, s. 6.

Conditions and restrictions

(11) A delegation under subsection (10) is subject to such conditions and restrictions as the chair may specify in writing. 2003, c. 3, s. 6.

Acting chair

(12) If no one is available to exercise or perform a power or duty of the chair, any vice-chair may exercise the power or duty. 2003, c. 3, s. 6.

Management committee

4.2 (1) The Board shall have a management committee composed of the chair and the vice-chairs. 2003, c. 3, s. 7.

Duties

(2) The management committee shall manage the activities of the Board, including the Board's budgeting and the allocation of the Board's resources, and shall perform such other duties as are assigned to the management committee under this Act. 2003, c. 3, s. 7.

Rules of practice and procedure

(3) The Board's authority to make rules governing practice and procedure under section 25.1 of the *Statutory Powers Procedure Act* shall be exercised by the management committee on behalf of the Board. 2003, c. 3, s. 7.

Quorum

(4) Subject to the by-laws made under section 4.10, two members of the management committee constitute a quorum. 2003, c. 3, s. 7.

Presiding officer

(5) The chair shall preside over management committee meetings. 2003, c. 3, s. 7.

Delegation

(6) The management committee shall not delegate any of its powers or duties under the following provisions:

1. Sections 4.8 to 4.10.
2. Subsection 6 (1).
3. Section 26.

3.1 Section 26.1.

4. Any other provision prescribed by the regulations. 2003, c. 3, s. 7; 2009, c. 12, Sched. D, s. 4.

Same

(7) Subject to subsection (6), the management committee may delegate its powers and duties, but only to a member of the management committee. 2003, c. 3, s. 7.

Conditions and restrictions

(8) A delegation under subsection (7) is subject to such conditions and restrictions as the management committee may specify in writing. 2003, c. 3, s. 7.

Panels

4.3 (1) The chair may assign one or more members of the Board to a panel to hear or determine any matter and, for that purpose, the panel has all the jurisdiction and powers of the Board. 2003, c. 3, s. 8.

Same

(2) A member of the Board shall not exercise or perform any power or duty of the Board except as a member of a panel to which he or she has been assigned. 2003, c. 3, s. 8.

Same

(3) Subsection (2) does not apply to the powers of the Board under sections 44 and 70.1. 2003, c. 3, s. 8.

Market Surveillance Panel

4.3.1 (1) The Market Surveillance Panel established by the board of directors of the Independent Electricity Market Operator under subsection 13 (1) of the *Electricity Act, 1998* as it read on January 1, 2004 is continued as the Market Surveillance Panel of the Board. 2004, c. 23, Sched. B, s. 3.

Appointment

(2) The Board's management committee shall appoint the members of the Market Surveillance Panel. 2004, c. 23, Sched. B, s. 3.

Membership

(3) No person shall be appointed as a member of the Market Surveillance Panel if he or she has any material interest in a market participant or is a director, officer, employee or agent of,

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

(b) a person who sells electricity or ancillary services through the IESO-administered markets or directly to another person who is not a consumer;

(c) a market participant;

(d) an industry association that represents a person referred to in clause (a), (b) or (c);

(e) the OPA;

(f) the IESO; or

(g) an affiliate of a person listed in clause (a), (b), (c), (e) or (f). 2004, c. 23, Sched. B, s. 3.

Same

(4) Subsection (3) applies only with respect to persons who first become members of the Market Surveillance Panel on or after the day subsection (3) comes into force. 2004, c. 23, Sched. B, s. 3.

Staff and assistance

(5) Subject to the by-laws made under section 4.10, the Market Surveillance Panel may use the services of employees of the Board and the IESO, with the consent of their employers, and of persons who have technical or professional expertise that the panel considers necessary. 2004, c. 23, Sched. B, s. 3.

Testimony

(6) A person who is a member of the Market Surveillance Panel or an employee of the IESO or the Board and who is acting on behalf of the Panel shall not be required in any civil proceeding to give testimony with respect to information obtained in the course of his or her duties. 2004, c. 23, Sched. B, s. 3.

Law enforcement information

(7) A record that contains information provided to or obtained by the Market Surveillance Panel and that is designated by the Panel as relating to activity in the IESO-administered markets or to the conduct of a market participant shall be deemed, for the purpose of section 14 of the *Freedom of Information and Protection of Privacy Act*, to be a record the disclosure of which could reasonably be expected to interfere with a law enforcement matter. 2004, c. 23, Sched. B, s. 3.

Confidential information relating to market participant

(8) A record that contains information provided to or obtained by the Market Surveillance Panel relating to a market participant and that is designated by the Panel as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. 2004, c. 23, Sched. B, s. 3.

Regulations

(9) The Lieutenant Governor in Council may make regulations,

(a) prescribing a day on which the Market Surveillance Panel is dissolved and the Board commences to exercise the powers and perform the duties of the Panel under this or any other Act;

(b) governing the application, after the dissolution of the Panel, of any provision of this or any other Act that relates to the Market Surveillance Panel or its powers or duties. 2004, c. 23, Sched. B, s. 3.

Stakeholder input

4.4 The Board shall establish one or more processes by which consumers, distributors, generators, transmitters and other persons who have an interest in the electricity industry may provide advice and recommendations for consideration by the Board. 2004, c. 23, Sched. B, s. 4.

Fiscal year

4.5 The fiscal year of the Board begins on April 1. 2003, c. 3, s. 10.

Memorandum of understanding

4.6 (1) Every three years beginning with the Board's 2003-2004 fiscal year, the chair of the Board, on behalf of the Board and its management committee, and the Minister shall enter into a memorandum of understanding setting out,

(a) the respective roles and responsibilities of the Minister, the chair and the management committee;

(b) the accountability relationships between the chair, the management committee and the Minister;

(c) limitations on the Board's powers to borrow and invest;

(d) the responsibility of the chair and the management committee to provide the Minister with business plans, operational budgets and plans for proposed significant changes in the operations or activities of the Board;

(e) details of an obligation that requires the management committee to provide the Minister with statements of the Board's priorities and to publish those statements;

(f) details of an obligation that requires the management committee,

(i) to provide the Minister with regulatory calendars that set out anticipated dates for,

(A) dealing with proceedings that are expected to be heard or determined by the Board, and

(B) exercising the power to make rules under section 44 or issue codes under section 70.1, and

(ii) to publish the regulatory calendars described in subclause (i);

(g) details of an obligation that requires the management committee to establish performance standards for the Board;

(h) details of an obligation that requires the management committee to establish and maintain a pay for performance plan for full-time members of the Board that links payment of bonuses to the achievement of performance standards;

(i) details of an obligation respecting consumer protection support that requires the management committee, on behalf of the Board, to make and maintain rules governing practice and procedure under section 25.1 of the *Statutory Powers Procedure Act* that govern interim and final awards of costs to organizations representing consumers;

(j) details of an obligation that requires the management committee to consult with the advisory committee established under section 4.4 with respect to the obligations referred to in clauses (e) to (i); and

(k) any other matter that the parties consider necessary or appropriate. 2003, c. 3, s. 11.

Same

(2) The Board shall comply with the memorandum of understanding in exercising its powers and performing its duties under this Act, but the failure to do so does not affect the validity of any action taken by the Board or give rise to any rights or remedies by any person, other than rights or remedies provided by the memorandum of understanding. 2003, c. 3, s. 11.

Publication

(3) The management committee shall publish the memorandum of understanding on the Board's website on the Internet as soon as practicable after the memorandum is entered into. 2003, c. 3, s. 11.

Minister's request for information

4.7 (1) The Board's management committee shall promptly give the Minister such information about the Board's activities, operations and financial affairs as the Minister requests. 2003, c. 3, s. 11.

Examination

(2) The Minister may designate a person to examine any financial or accounting procedures, activities or practices of the Board and report the results of the examination to the Minister. 2003, c. 3, s. 11.

Duty to assist, etc.

(3) The members and employees of the Board shall give the person designated by the Minister all the assistance and co-operation necessary to enable him or her to complete the examination. 2003, c. 3, s. 11.

Financial statements

4.8 (1) The Board's management committee shall cause annual financial statements to be prepared for the Board in accordance with generally accepted accounting principles. 2003, c. 3, s. 11.

Same

(2) The financial statements must present the financial position, results of operations and changes in the financial position of the Board for its most recent fiscal year. 2003, c. 3, s. 11.

Auditors

(3) The management committee shall appoint one or more auditors licensed under the *Public Accounting Act, 2004* to audit the financial statements of the Board for each fiscal year. 2003, c. 3, s. 11; 2004, c. 8, s. 46.

Auditor General

(4) The Auditor General may also audit the financial statements of the Board. 2003, c. 3, s. 11; 2004, c. 17, s. 32.

Annual report

4.9 (1) Within six months after the end of each fiscal year, the Board's management committee shall deliver to the Minister an annual report, including the Board's audited financial statements, on the affairs of the Board for that fiscal year. 2003, c. 3, s. 11.

Report to be laid before Assembly

(2) Within one month after receiving the annual report, the Minister shall lay the report before the Assembly by delivering the report to the Clerk. 2003, c. 3, s. 11.

By-laws

4.10 (1) The Board's management committee may make by-laws,

(a) governing the administration, management and conduct of the affairs of the Board;

(b) prescribing emergency circumstances in which the quorum of the management committee is one member;

(c) governing the appointment of an auditor;

(d) setting out the powers, functions and duties of the chair, the vice-chairs and the officers employed by the Board;

(e) governing the remuneration and benefits of the chair, the vice-chairs and the other members of the Board;

(f) governing the composition and functions of the Market Surveillance Panel and the appointment, removal and remuneration of members of the Market Surveillance Panel. 2003, c. 3, s. 11; 2004, c. 23, Sched. B, s. 5.

Notice to Minister

(2) The management committee shall deliver to the Minister a copy of every by-law passed by it. 2003, c. 3, s. 11.

Minister's review of remuneration and benefits by-laws

(3) Within 60 days after delivery of a by-law made under clause (1) (e), the Minister may approve, reject or return it to the management committee for further consideration. 2003, c. 3, s. 11.

Effect of approval

(4) A by-law made under clause (1) (e) that is approved by the Minister becomes effective on the date of the approval or on such later date as the by-law may provide. 2003, c. 3, s. 11.

Effect of rejection

(5) A by-law made under clause (1) (e) that is rejected by the Minister does not become effective. 2003, c. 3, s. 11.

Effect of return for further consideration

(6) A by-law made under clause (1) (e) that is returned to the management committee for further consideration does not become effective until the committee returns it to the Minister and the Minister approves it. 2003, c. 3, s. 11.

Expiry of review period

(7) If, within the 60-day period referred to in subsection (3), the Minister does not approve, reject or return the by-law for further consideration, the by-law becomes effective on the 75th day after it is delivered to the Minister or on such later date as the by-law may provide. 2003, c. 3, s. 11.

Publication

(8) The management committee shall publish every by-law made under subsection (1) on the Board's website on the Internet as soon as practicable after the by-law becomes effective. 2003, c. 3, s. 11.

***Legislation Act, 2006*, Part III**

(9) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made by the management committee under subsection (1). 2003, c. 3, s. 11; 2006, c. 21, Sched. F, s. 136 (1).

Restrictions on Board powers

4.11 The Board shall not, without the approval of the Lieutenant Governor in Council,

(a) create a subsidiary;

(b) purchase or sell real property;

(c) borrow money, pledge, mortgage or hypothecate any of its property, or create or grant a security interest in any of its property;

(d) enter into a contract of a class prescribed by the regulations; or

(e) exercise other rights, powers or privileges under subsection 4 (2) that are prescribed by the regulations. 2003, c. 3, s. 12.

Purchases and loans by Province

4.12 (1) The Minister of Finance, on behalf of Ontario, may purchase securities of or make loans to the Board in such amounts, at such times and on such terms and conditions as the Lieutenant Governor in Council considers expedient. 2003, c. 3, s. 12.

Same

(2) The Minister of Finance may pay from the Consolidated Revenue Fund the money necessary for a purchase or loan made under subsection (1). 2003, c. 3, s. 12.

Authority re income

4.13 (1) Despite Part I of the *Financial Administration Act* and subject to subsection 26.1 (5), revenue from the exercise of a power conferred or the discharge of a duty imposed on the Board or the Board's management committee under this or any other Act, and the investments held by the Board, do not form part of the Consolidated Revenue Fund and, subject to this section, shall be applied to carrying out the powers conferred and duties imposed on the Board under this or any other Act. 2003, c. 3, s. 12; 2009, c. 12, Sched. D, s. 5.

Same

(2) The revenue referred to in subsection (1) includes the following:

1. Fees payable under section 12.1.
2. Assessments payable under section 26.
3. Costs payable to the Board under section 30.

4. Administrative penalties payable under section 112.5. 2003, c. 3, s. 12.

Collection of personal information

4.14 The Board may collect personal information within the meaning of section 38 of the *Freedom of Information and Protection of Privacy Act* for the purpose of carrying out its duties and exercising its powers under this or any other Act. 2003, c. 3, s. 12.

Non-application of certain Acts

4.15 The *Corporations Act* and the *Corporations Information Act* do not apply with respect to the Board. 2003, c. 3, s. 12.

Members and employees

4.16 (1) REPEALED: 2006, c. 35, Sched. C, s. 98.

Status of members

(2) The members of the Board are not its employees, and the chair and vice-chairs shall not hold any other office in the Board or be employed by it in any other capacity. 2003, c. 3, s. 12.

Conflict of interest, indemnification

(3) Sections 132 (conflict of interest) and 136 (indemnification) of the *Business Corporations Act* apply with necessary modifications with respect to the Board as if the Minister were its sole shareholder. 2003, c. 3, s. 12.

Agreement for services

(4) The Board and a ministry of the Crown may enter into agreements for the provision by employees of the Crown of any service required by the Board to carry out its duties and powers, and the Board shall pay the agreed amount for services provided to it. 2003, c. 3, s. 12.

Chief operating officer and secretary

5. The Board's management committee shall appoint a chief operating officer of the Board and a secretary of the Board from among the Board's employees. 2003, c. 3, s. 13.

Delegation of Board's powers and duties

6. (1) The Board's management committee may in writing delegate any power or duty of the Board to an employee of the Board. 2003, c. 3, s. 13.

Exceptions

(2) Subsection (1) does not apply to the following powers and duties:

1. Any power or duty of the Board's management committee.
2. The power to make rules under section 44.
3. The power to issue codes under section 70.1.
4. The power to make rules under section 25.1 of the *Statutory Powers Procedure Act.*
5. Hearing and determining an appeal under section 7 or a review under section 8.
6. The power to make an order against a person under section 112.3, 112.4 or 112.5, if the person gives notice requiring the Board to hold a hearing under section 112.2.
7. A power or duty prescribed by the regulations. 2003, c. 3, s. 13.

Conditions and restrictions

(3) A delegation under this section is subject to such conditions and restrictions as the management committee may specify in writing. 2003, c. 3, s. 13.

No hearing

(4) An employee of the Board may exercise powers and duties that are delegated under this section without holding a hearing. 2003, c. 3, s. 13.

Statutory Powers Procedure Act

(5) If an employee of the Board holds a hearing pursuant to this section, the *Statutory Powers Procedure Act* applies to the same extent as if members of the Board were holding the hearing. 2003, c. 3, s. 13.

Review by employee

(6) An employee of the Board who makes an order pursuant to this section may, within a reasonable time after the order is made and if he or she considers it advisable, review all or part of the order, and may confirm, vary or cancel the order. 2003, c. 3, s. 13.

Transfer to Board

(7) At any time before an employee of the Board makes an order in respect of a matter pursuant to this section, the management committee may direct that the matter be transferred to the Board for determination. 2003, c. 3, s. 13.

Effect of employees' orders, etc.

(8) Anything done by an employee of the Board pursuant to this section shall be deemed, for the purpose of this or any other Act, to have been done by the Board. 2003, c. 3, s. 13.

Application of s. 33

(9) Despite subsection (8), section 33 and subsection 38 (4) do not apply to an order made by an employee of the Board pursuant to this section. 2003, c. 3, s. 13; 2009, c. 33, Sched. 2, s. 51 (1).

Appeal from delegated function

7. (1) A person directly affected by an order made by an employee of the Board pursuant to section 6 may, within 15 days after receiving notice of the order, appeal the order to the Board. 2003, c. 3, s. 13.

Exception

(2) Subsection (1) does not apply to,

(a) a person who did not make submissions to the employee after being given notice of the opportunity to do so; or

(b) a person who did not give notice requiring the Board to hold a hearing under section 112.2, in the case of an order made by the employee under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 13.

Parties

(3) The parties to the appeal are:

1. The appellant.
2. The applicant, if the order is made in a proceeding commenced by an application.
3. The employee who made the order.
4. Any other person added as a party by the Board. 2003, c. 3, s. 13.

Powers of Board

(4) The Board may confirm, vary or cancel the order. 2003, c. 3, s. 13.

Stay

(5) An appeal under this section does not stay the order of the employee, unless the Board orders otherwise. 2003, c. 3, s. 13.

Review of delegated function

8. (1) The Board's management committee may, on its own motion, within 15 days after the making of an order by an employee of the Board pursuant to section 6, direct the Board to review the order. 2003, c. 3, s. 13.

Parties

(2) The parties to the review are:

1. Every person directly affected by the order, including, if the order is made in a proceeding commenced by an application, the applicant.
2. The employee who made the order.
3. Any other person added as a party by the Board. 2003, c. 3, s. 13.

Exception

(3) Despite paragraph 1 of subsection (2), a person is not a party to the review if the person did not make submissions to the employee after being given notice of the opportunity to do so. 2003, c. 3, s. 13.

Application of subss. 7 (4) and (5)

(4) Subsections 7 (4) and (5) apply, with necessary modifications, to a review under this section. 2003, c. 3, s. 13.

Power to administer oaths

9. The secretary of the Board and an inspector appointed under section 106 has, in carrying out his or her duties under this Act, the same powers as a commissioner for taking affidavits in Ontario. 2003, c. 3, s. 14.

Not required to testify

10. Members of the Board and employees of the Board are not required to give testimony in any civil proceeding with regard to information obtained in the discharge of their official duties. 1998, c. 15, Sched. B, s. 10.

Liability

11. (1) No action or other civil proceeding shall be commenced against any of the following persons for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act or regulation or for any neglect or default in the exercise or performance in good faith of such a power or duty:

1. A member of the Board.
2. An officer, employee or agent of the Board.
3. A member of the Market Surveillance Panel.
4. An officer, employee or agent of the IESO acting on behalf of the Market Surveillance Panel. 2004, c. 23, Sched. B, s. 6.

Same

(2) A member of the Board is not liable for an act, an omission, an obligation or a liability of the Board or its employees. 2003, c. 3, s. 15.

Crown liability

(3) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsections (1) and (2) do not relieve the Crown of any liability to which it would otherwise be subject in respect of a tort committed by any person referred to in subsection (1) or (2). 2003, c. 3, s. 15.

Fees and access to licences

12. (1) REPEALED: 2003, c. 3, s. 16.

(2) REPEALED: 2003, c. 3, s. 16.

(3) REPEALED: 2003, c. 3, s. 16.

Inspection

(4) The Board shall make all licences available for public inspection during normal business hours. 1998, c. 15, Sched. B, s. 12 (4).

Fees

12.1 (1) The Board's management committee may set and charge fees for copies of Board orders, decisions, reasons, reports, recordings or other documents or things, including documents certified by a member of the Board or the secretary of the Board. 2003, c. 3, s. 17.

Application and other fees

(2) The management committee may set and charge licence fees, application fees and other fees relating to an application or appeal to the Board. 2003, c. 3, s. 17.

Classes

(3) The management committee may establish different fees for different classes of persons and for different types of proceedings and types of licences. 2003, c. 3, s. 17.

Mandatory fees re gas marketers and retailers of electricity

(4) The management committee shall, as of the time or times prescribed by regulation, set and charge fees for the licensing of gas marketers under section 48 and retailers of electricity under section 57. 2010, c. 8, s. 38 (2).

Forms

13. The Board's management committee may,

(a) establish forms and require their use in connection with any matter relating to the Board; or

(b) approve forms or the content of the forms and require that any application, appeal or information submitted to the Board be in the approved form. 2003, c. 3, s. 18.

Assistance

14. The Board may appoint persons having technical or special knowledge to assist the Board. 1998, c. 15, Sched. B, s. 14.

Orders and licences

15. (1) All orders made and licences issued by the Board shall be signed by the chair, a vice-chair or the secretary. 2003, c. 3, s. 19.

Same

(2) Despite subsection (1), an order made or licence issued by the Board pursuant to section 6 may be signed by the employee who made the order or issued the licence. 2003, c. 3, s. 19.

Judicial notice

(3) An order or licence that purports to be signed by a person referred to in subsection (1) or (2) shall be judicially noticed without further proof. 2003, c. 3, s. 19.

***Legislation Act, 2006*, Part III**

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the orders made or licences issued by the Board. 2003, c. 3, s. 19; 2006, c. 21, Sched. F, s. 136 (1).

16. REPEALED: 2003, c. 3, s. 19.

17. REPEALED: 2003, c. 3, s. 19.

Transfer of authority or licence

18. (1) No authority given by the Board under this or any other Act shall be transferred or assigned without leave of the Board. 1998, c. 15, Sched. B, s. 18 (1).

Same

(2) A licence issued under this Act is not transferable or assignable without leave of the Board. 1998, c. 15, Sched. B, s. 18 (2).

Board's powers, general

Power to determine law and fact

19. (1) The Board has in all matters within its jurisdiction authority to hear and determine all questions of law and of fact. 1998, c. 15, Sched. B, s. 19 (1).

Order

(2) The Board shall make any determination in a proceeding by order. 1998, c. 15, Sched. B, s. 19 (2); 2001, c. 9, Sched. F, s. 2 (1).

Reference

(3) If a proceeding before the Board is commenced by a reference to the Board by the Minister of Natural Resources, the Board shall proceed in accordance with the reference. 1998, c. 15, Sched. B, s. 19 (3).

Additional powers and duties

(4) The Board of its own motion may, and if so directed by the Minister under section 28 or otherwise shall, determine any matter that under this Act or the regulations it may upon an application determine and in so doing the Board has and may exercise the same powers as upon an application. 1998, c. 15, Sched. B, s. 19 (4).

Exception

(5) Unless specifically provided otherwise, subsection (4) does not apply to any application under the *Electricity Act, 1998* or any other Act. 1998, c. 15, Sched. B, s. 19 (5).

Jurisdiction exclusive

(6) The Board has exclusive jurisdiction in all cases and in respect of all matters in which jurisdiction is conferred on it by this or any other Act. 1998, c. 15, Sched. B, s. 19 (6).

Powers, procedures applicable to all matters

20. Subject to any provision to the contrary in this or any other Act, the powers and procedures of the Board set out in this Part apply to all matters before the Board under this or any other Act. 1998, c. 15, Sched. B, s. 20.

Board's powers, miscellaneous

21. (1) The Board may at any time on its own motion and without a hearing give directions or require the preparation of evidence incidental to the exercise of the powers conferred upon the Board by this or any other Act. 1998, c. 15, Sched. B, s. 21 (1).

Hearing upon notice

(2) Subject to any provision to the contrary in this or any other Act, the Board shall not make an order under this or any other Act until it has held a hearing after giving notice in such manner and to such persons as the Board may direct. 1998, c. 15, Sched. B, s. 21 (2).

(3) REPEALED: 2000, c. 26, Sched. D, s. 2 (2).

No hearing

(4) Despite section 4.1 of the *Statutory Powers Procedure Act*, the Board may, in addition to its power under that section, dispose of a proceeding without a hearing if,

(a) no person requests a hearing within a reasonable time set by the Board after the Board gives notice of the right to request a hearing; or

(b) the Board determines that no person, other than the applicant, appellant or licence holder will be adversely affected in a material way by the outcome of the proceeding and the applicant, appellant or licence holder has consented to disposing of a proceeding without a hearing.

(c) REPEALED: 2003, c. 3, s. 20 (1).

1998, c. 15, Sched. B, s. 21 (4); 2002, c. 1, Sched. B, s. 3; 2003, c. 3, s. 20 (1).

Consolidation of proceedings

(5) Despite subsection 9.1 (1) of the *Statutory Powers Procedure Act*, the Board may combine two or more proceedings or any part of them, or hear two or more proceedings at the same time, without the consent of the parties. 2003, c. 3, s. 20 (2).

Non-application

(6) Subsection 9.1 (3) of the *Statutory Powers Procedure Act* does not apply to proceedings before the Board. 1998, c. 15, Sched. B, s. 21 (6).

Use of same evidence

(6.1) Despite subsection 9.1 (5) of the *Statutory Powers Procedure Act*, the Board may treat evidence that is admitted in a proceeding as if it were also admitted in another proceeding that is heard at the same time, without the consent of the parties to the second-named proceeding. 2003, c. 3, s. 20 (3).

Interim orders

(7) The Board may make interim orders pending the final disposition of a matter before it. 1998, c. 15, Sched. B, s. 21 (7).

Hearings under *Consolidated Hearings Act*

22. (1) Despite subsection 4 (4) of the *Consolidated Hearings Act*, the establishing authority under that Act may appoint one or more members of the Board to be members of a joint board holding a hearing under that Act with respect to an undertaking for which, but for the application of the *Consolidated Hearings Act*, a hearing before the Board is or may be required. 1998, c. 15, Sched. B, s. 22 (1).

Where term of member ends

(2) If a joint board commences to hold a hearing under the *Consolidated Hearings Act* and the term of office on the Ontario Energy Board of a member sitting for the joint hearing expires or is terminated before the proceeding is disposed of, the member shall remain a member of the joint board for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated. 1998, c. 15, Sched. B, s. 22 (2).

Final decision

22.1 (1) The Board shall issue an order that embodies its final decision in a proceeding within 60 days after making the final decision. 2003, c. 3, s. 21.

Validity of decision not affected

(2) Failure to comply with subsection (1) does not affect the validity of the Board's decision. 2003, c. 3, s. 21.

Conditions of orders

23. (1) The Board in making an order may impose such conditions as it considers proper, and an order may be general or particular in its application. 1998, c. 15, Sched. B, s. 23.

(2) REPEALED: 2003, c. 3, s. 22.

Written reasons to be made available

24. All written reasons of the Board shall be kept by the secretary and be made available to any person upon payment of the required fee. 1998, c. 15, Sched. B, s. 24; 2003, c. 3, s. 23.

Obedience to orders of Board a good defence

25. An order of the Board is a good and sufficient defence to any proceeding brought or taken against any person in so far as the act or omission that is the subject of the proceeding is in accordance with the order. 1998, c. 15, Sched. B, s. 25.

Assessment

26. (1) Subject to the regulations, the Board's management committee may assess those persons or classes of persons prescribed by regulation with respect to all expenses incurred and expenditures made by the Board in the exercise of any powers or duties under this or any other Act. 1998, c. 15, Sched. B, s. 26 (1) ; 2003, c. 3, s. 24.

Obligation to pay assessment

(2) Every person assessed under subsection (1) shall pay the amount assessed. 1998, c. 15, Sched. B, s. 26 (2).

Order to pay assessment

(3) If a person fails to pay an assessment made under subsection (1), the Board may, without a hearing, order that person to pay the assessment. 1998, c. 15, Sched. B, s. 26 (3).

Failure to pay

(4) If a licensee fails to pay an assessment in accordance with the order, the Board, without a hearing, may suspend or cancel that person's licence. 1998, c. 15, Sched. B, s. 26 (4).

Payment of full amount

(5) The Board may reinstate the licence of a person whose licence was suspended or cancelled under subsection (4) if the person pays all amounts owing under this section. 1998, c. 15, Sched. B, s. 26 (5).

Regulations

(6) The Lieutenant Governor in Council may make regulations,

(a) prescribing persons or classes of persons liable to pay an assessment under subsection (1);

(b) prescribing the frequency of the assessments;

(c) respecting the manner in which an assessment under this section is carried out;

(d) prescribing the amount of the assessment or the method of calculating the amount;

(e) prescribing the proportion of the assessment for which each person or class of persons is liable or a method of determining the proportion;

(f) prescribing such other matters relating to the carrying out of an assessment as the Lieutenant Governor in Council considers appropriate. 1998, c. 15, Sched. B, s. 26 (6).

Scope

(7) A regulation under this section may be general or particular in its application. 1998, c. 15, Sched. B, s. 26 (7).

Assessment, Ministry conservation programs, etc.

26.1 (1) Subject to the regulations, the Board shall assess the following persons or classes of persons, as prescribed by regulation, with respect to the expenses incurred and expenditures made by the Ministry of Energy in respect of its energy

conservation programs or renewable energy programs provided under this Act, the *Green Energy Act, 2009*, the *Ministry of Energy Act, 2011* or any other Act:

1. In respect of consumers in their service areas, gas distributors and licensed distributors.
2. The IESO.
3. Any other person prescribed by regulation. 2009, c. 12, Sched. D, s. 6; 2011, c. 9, Sched. 27, s. 34 (2).

Assessments, collection by gas distributors and licensed distributors

(2) Gas distributors and licensed distributors may collect the amounts assessed under subsection (1) from the consumers or classes of consumers as are prescribed by regulation and in the manner prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessments, IESO

(3) The IESO may collect the amounts assessed under subsection (1) from market participants or classes of market participants as are prescribed by regulation and in the manner prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessment, amount and timing

(4) For the purposes of subsection (1), the Board shall assess the amount prescribed by regulation within the time prescribed by regulation in accordance with the methods or rules prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Assessment, obligation to pay

(5) Every person assessed under subsection (1) shall pay the amount assessed in accordance with the Board's assessment by remitting the amount to the Minister of Finance. 2009, c. 12, Sched. D, s. 6.

Failure to pay

(6) If a person fails to pay an assessment made under subsection (1), the Board may, without a hearing, order the person to pay the assessment. 2009, c. 12, Sched. D, s. 6.

Reporting

(7) Persons referred to in subsection (1) shall report such information in such manner and at such times to the Board or to the Minister as is prescribed by regulation. 2009, c. 12, Sched. D, s. 6.

Regulations

(8) The Lieutenant Governor in Council may make regulations,

(a) governing assessments under this section, including,

(i) prescribing the amount to be assessed or the amounts to be assessed against each person, or class of person liable to pay an assessment or the method of calculating the amount or amounts, and

(ii) prescribing the time within which the assessments must occur;

(b) prescribing persons or classes of persons liable to pay an assessment under subsection (1);

(c) prescribing the frequency of the assessments;

(d) respecting the manner by which an assessment under this section is carried out;

(e) prescribing the proportion of the assessment for which each person or class of persons is liable or a method of determining the proportion;

(f) with respect to subsection (7), prescribing the time at which such reports must be made or submitted, the manner by which such reports must be made or submitted, and governing the information to be provided, including the manner in which such information is presented or provided;

(g) prescribing such other matters relating to the carrying out of an assessment as the Lieutenant Governor in Council considers appropriate. 2009, c. 12, Sched. D, s. 6.

Special purposes

26.2 (1) For the purpose of the *Financial Administration Act*, all amounts collected under section 26.1 relating to assessments paid shall be deemed to be money paid to Ontario for the special purposes set out in subsection (2). 2009, c. 12, Sched. D, s. 6.

Same

(2) The following are the special purposes for which amounts collected under section 26.1 relating to assessments are paid to Ontario:

1. To fund conservation or renewable energy programs aimed at decreasing the consumption of two or more of the following fuels:
   i. natural gas,
   ii. electricity,
   iii. propane,
   iv. oil,
   v. coal, and
   vi. wood.
2. To fund conservation or renewable energy programs aimed at causing consumers of fuel to change from one or more of the fuels listed in paragraph 1 to any other fuel or fuels listed in that paragraph.
3. To fund conservation or renewable energy programs aimed at decreasing peak electricity demand, while increasing or decreasing the consumption of another type of fuel.
4. To fund research and development or other engineering or scientific activities aimed at furthering the conservation or the efficient use of fuels.
5. To fund conservation or renewable energy programs aimed at a specific geographical, social, income or other sector of Ontario.
6. To reimburse the Province for expenditures it incurs for any of the above purposes. 2009, c. 12, Sched. D, s. 6.

Special Purpose Conservation and Renewable Energy Fund

(3) The Minister of Finance shall maintain in the Public Accounts an account to be known as the Ministry of Energy Special Purpose Conservation and Renewable Energy Fund in which shall be recorded all receipts and disbursements of public money under this section. 2009, c. 12, Sched. D, s. 6; 2011, c. 9, Sched. 27, s. 34 (3).

Non-interest bearing account

(4) The balances from time to time in the account do not bear interest. 2009, c. 12, Sched. D, s. 6.

Interpretation

(5) For the purposes of this section, the terms used in it that are not defined in this Act but that are defined in section 1 of the *Financial Administration Act* have the meanings provided in that Act. 2009, c. 12, Sched. D, s. 6.

Policy directives

27. (1) The Minister may issue, and the Board shall implement, policy directives that have been approved by the Lieutenant Governor in Council concerning general policy and the objectives to be pursued by the Board. 1998, c. 15, Sched. B, s. 27 (1).

Publication

(2) A policy directive issued under this section shall be published in *The Ontario Gazette*. 1998, c. 15, Sched. B, s. 27 (2).

Conservation directives

27.1 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directives to promote energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources. 2002, c. 23, s. 4 (4).

Publication

(2) A directive issued under this section shall be published in *The Ontario Gazette*. 2002, c. 23, s. 4 (4).

Directives re conservation and demand management targets

27.2 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board to take steps specified in the directive to establish conservation and demand management targets to be met by distributors and other licensees. 2009, c. 12, Sched. D, s. 7.

Directives, specified targets

(2) To promote conservation and demand management, a directive may require the Board to specify, as a condition of a licence, the conservation targets associated with those specified in the directive, and the targets shall be apportioned by the Board between distributors and other licensees in accordance with the directive. 2009, c. 12, Sched. D, s. 7.

Same

(3) A directive made under subsection (2) may require the OPA to provide information to the Board or to the Ministry about the conservation targets referred to in subsection (2) or the contracts referred to in subsection (5). 2009, c. 12, Sched. D, s. 7.

Directives re distributors

(4) Subject to subsection (7), a directive may require the Board to specify, as a condition of a licence, that a distributor may meet, at its discretion, any portion of its conservation target by seeking the approval of the Board for the conservation and demand management programs to be offered in its service area. 2009, c. 12, Sched. D, s. 7.

Directives, contracting with the OPA

(5) A directive may require the Board to specify, as a condition of a licence, that a distributor meet, at its discretion, any portion of its conservation target by contracting with the OPA to meet the target through province-wide programs offered by the OPA. 2009, c. 12, Sched. D, s. 7.

Public reporting

(6) To promote a culture of conservation and demand management, a directive may require the Board to specify, as a condition of a licence, that the licensee make public, by such means and at such time as specified in the directive, the steps that the licensee has taken to meet its targets and the results that have been achieved in meeting those targets. 2009, c. 12, Sched. D, s. 7.

Hearings

(7) A directive may specify whether the Board is to hold a hearing, the circumstances under which a hearing may or may not be held and, if a hearing is to be held, the type of hearing to be held. 2009, c. 12, Sched. D, s. 7.

Publication

(8) A directive issued under this section shall be published in *The Ontario Gazette*. 2009, c. 12, Sched. D, s. 7.

Directives re: market rules, conditions

28. (1) In order to address the abuse or possible abuse of market power in the electricity sector, the Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council concerning market rules made under section 32 of the *Electricity Act, 1998* and existing or proposed licence conditions. 1998, c. 15, Sched. B, s. 28 (1).

Hearing

(2) A directive issued under subsection (1) may require the Board to hold a hearing or not to hold a hearing. 1998, c. 15, Sched. B, s. 28 (2).

Licence condition directives

28.1 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council that require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to the directive issued to the Board pursuant to an order of the Lieutenant Governor in Council that was dated March 24, 1999 and is available on request from the Minister. 2002, c. 23, s. 4 (5).

No hearing

(2) The Board shall amend the conditions as required by a directive without holding a hearing. 2002, c. 23, s. 4 (5).

Directives re: commodity risk

28.2 The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council directing the Board to take such steps or develop such processes as may be required by the directive to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 2004, c. 23, Sched. B, s. 7.

Directives re smart metering initiative

28.3 (1) The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council relating to the government's smart metering initiative. 2006, c. 3, Sched. C, s. 2.

Directives re licence conditions

(2) The directives may require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to the Smart Metering Entity, distributors, retailers and transmitters or licences issued pursuant to section 57, including the following:

1. Conditions granting the exclusive right to the Smart Metering Entity to carry out any or all of its objects set out in section 53.8 of the *Electricity Act, 1998*.
2. Conditions granting the exclusive right to store information and data derived from smart meters to the Smart Metering Entity, including conditions in respect of the manner in which the information and data is stored.
3. Conditions providing for performance standards to be achieved by the Smart Metering Entity.
4. Conditions identifying arrangements and agreements, including procurement, service or operating arrangements or agreements, to be entered into by the Smart Metering Entity, distributors, transmitters, retailers or other persons and providing that the arrangements or agreements must contain specific conditions, restrictions, criteria or requirements relating to the arrangements or agreements.
5. Conditions providing for circumstances in which the Smart Metering Entity shall provide a person with access to information and data relating to consumers' consumption or use of electricity collected pursuant to paragraph 2 of section 53.8 of the *Electricity Act, 1998*, including conditions relating to the protection of privacy.
6. Conditions providing the Smart Metering Entity with the authority to conduct its metering activities in relation to the distribution of gas.
7. Conditions providing the Minister with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers.
8. After a date prescribed by regulation made under the *Electricity Act, 1998*, conditions providing the Board with exclusive authority to approve the base design, requirements, specifications and performance standards for smart meters, metering equipment, systems and technology and associated equipment, systems and technologies or classes of smart meters, equipment, systems and technology to be installed for prescribed classes of property and prescribed classes of consumers. 2006, c. 3, Sched. C, s. 2.

Directives re amending conditions in licences

(3) A directive may require the Board, in the manner specified in the directive, to amend conditions in licences granted to the Smart Metering Entity, distributors, transmitters, retailers or others granting the Smart Metering Entity exclusive jurisdiction in Ontario with respect to some or all of the activities it is authorized to undertake under Part IV.2 of the *Electricity Act, 1998*. 2006, c. 3, Sched. C, s. 2.

Publication

(4) A directive issued under this section shall be published in *The Ontario Gazette*. 2006, c. 3, Sched. C, s. 2.

No hearing

(5) The Board shall amend the conditions as required by a directive without holding a hearing. 2006, c. 3, Sched. C, s. 2.

Directives re regulatory and accounting treatment of costs

28.4 The Minister may issue, and the Board shall implement, directives approved by the Lieutenant Governor in Council in respect of the regulatory and accounting treatment of costs in orders made under section 78 and associated with meters owned before January 1, 2006 to ensure that distributors, transmitters, retailers or other persons are not financially disadvantaged by the implementation of the smart metering initiative. 2006, c. 3, Sched. C, s. 2.

Directives, smart grid

28.5 (1) The Minister may issue, and the Board shall implement directives, approved by the Lieutenant Governor in Council, requiring the Board to take such steps as are specified in the directive relating to the establishment, implementation or promotion of a smart grid for Ontario. 2009, c. 12, Sched. D, s. 8.

Hearings

(2) A directive may specify whether the Board is to hold a hearing and the circumstances under which a hearing may or may not be held. 2009, c. 12, Sched. D, s. 8.

Publication

(3) A directive issued under this section shall be published in *The Ontario Gazette*. 2009, c. 12, Sched. D, s. 8.

Directives, connections

28.6 (1) The Minister may issue, and the Board shall implement directives, approved by the Lieutenant Governor in Council, requiring the Board to take such steps as are specified in the directive relating to the connection of renewable energy generation facilities to a transmitter's transmission system or a distributor's distribution system. 2009, c. 12, Sched. D, s. 8.

Directives, transmission and distribution systems

(2) A directive issued under subsection (1) may require the Board to amend the licence conditions of distributors, transmitters and other licensees to take the actions specified in the directive in relation to their transmission systems, distribution systems or other associated systems, including enhancing, re-enforcing or expanding their transmission system or distribution system. 2009, c. 12, Sched. D, s. 8.

Hearings

(3) A directive may specify whether the Board is to hold a hearing and the circumstances under which a hearing may or may not be held. 2009, c. 12, Sched. D, s. 8.

Guidelines re processes and timing

(4) In relation to paragraph 5 of subsection 1 (1), the Minister may issue guidelines setting out goals or targets for the Board in relation to its processes associated with the timely expansion or reinforcement of transmission systems and distribution systems to accommodate the connection of renewable energy generation facilities, including the timing of those processes and the time within which the Board completes the processes. 2009, c. 12, Sched. D, s. 8.

Directives, gas marketers and electricity retailers

28.7 (1) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council in relation to the marketing of gas and the retailing of electricity in Ontario. 2010, c. 8, s. 38 (3).

Same

(2) A directive issued under subsection (1) may require the Board to take steps specified in the directive to promote fairness, efficiency and transparency in the retail market for gas and for electricity in Ontario or in respect of any activity associated with the marketing of gas or the retailing of electricity within Ontario. 2010, c. 8, s. 38 (3).

Same

(3) A directive may require the Board to amend licences referred to in section 48 in respect of gas marketers or under section 57 in respect of retailers of electricity and may require the Board to amend all licences so issued or to amend specific licences of specified licensees. 2010, c. 8, s. 38 (3).

Licence conditions

(4) The directives may require the Board, in the manner specified in the directives, to amend conditions in licences issued by the Board that relate to gas marketers or retailers of electricity, including the following:

1. Conditions regarding the operations and management and business practices of a gas marketer or retailer of electricity, including but not limited to the conduct of employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
2. Activities, conduct or practices that must, may or may not be undertaken by a gas marketer or retailer of electricity, its employees, agents or third parties acting on behalf of the gas marketer or the retailer of electricity.
3. Conditions requiring or imposing standards that are required to be met by a gas marketer or retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including standards related to,
    i. education, training, certification and communications,
    ii. business practices,
    iii. performance standards,
    iv. background verifications and assessments as required under paragraph 6,

v. record keeping,

vi. contracting, including standards related to contracting with certain specified classes of vulnerable consumers, and

vii. such other matters as may be specified in the directive.

4. Conditions requiring a gas marketer or retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity to provide such information orally or in writing to a consumer or a member of a class of consumers specified in the directive, the Board or the Ministry or to such other person or entity as may be specified in the directive, in the circumstances specified in the directive and within such time or times as may be specified in the directive.

5. Conditions requiring a gas marketer or retailer of electricity to meet criteria or requirements related to identification as specified in the directive, including criteria or requirements related to the identification credentials or badges or other forms of identification provided to its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity as may be specified in the directive.

6. Conditions requiring a gas marketer or retailer of electricity to meet specific criteria and requirements related to background verification and assessment of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the requirement to establish a process or processes to conduct the verifications and assessments, and the criteria and requirements may include the time or times at which the verifications and assessments must be performed.

7. Conditions requiring a gas marketer or retailer of electricity to take the following steps or do the following things in respect of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity:

   i. To establish a process or to follow or adhere to a process or processes as are prescribed by regulation or are approved by an order of the Board, for the following activities in respect of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity:

      A. licensing, including renewal, suspension and cancellation of licences,

      B. bonding and insurance,

      C. examination for credentials, certificates, accreditations or designations,

      D. the creation of codes of conduct, best practices and policies,

      E. requirements in relation to independence from or permissible investment in or association with the gas marketer or retailer of electricity or another licensee, and

      F. such other matters as may be specified in the directive.

   ii. To conduct, at such times as may be specified in the directive, the activities referred to in this section in relation to each of its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.

   iii. To ensure that its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity adhere to the process or processes referred to in this section and, in particular, obtain any specified credentials, accreditations or designations referred to in this section by such time or times as may be specified in the directive.

8. Conditions identifying provisions which must be included in any arrangements or agreements, including arrangements or agreements relating to the marketing of gas or the retailing of electricity with specified classes of consumers, entered into by the gas marketer or retailer of electricity or third parties acting on behalf of the gas marketer or retailer of electricity and such conditions may specify or provide that the arrangements or agreements must contain specific conditions, restrictions, criteria or requirements relating to the arrangements or agreements. 2010, c. 8, s. 38 (3).

Verification

(5) For the purposes of the verification of a contract required under Part II of the *Energy Consumer Protection Act, 2010*, a directive,

(a) may require the Board to prepare specified information, including preparing the information in languages specified in the directive, and to do so within the time specified in the directive; and

(b) may require that the Board require that gas marketers or retailers of electricity or specified classes of them,

   (i) use the information in the manner specified in the directive, and

   (ii) take such steps as may be specified in the directive to ensure that persons engaged by them in activities related to verification use the information in the manner specified in the directive. 2010, c. 8, s. 38 (3).

Audit and investigation

(6) A directive issued under this section may require the Board to,

(a) exercise its authority under Part V.1 to audit the records and information of the gas marketer or retailer of electricity specified in the directive, in such manner as is specified in the directive;

(b) exercise its authority under Part VII to inspect the activities or conduct of the gas marketers or retailers of electricity or the classes of gas marketers or retailers of electricity, as are specified in the directive, in relation to compliance with this Act or its regulations;

(c) exercise its authority under Part VII to undertake random inspections of the activities or conduct, as are specified in the directive, of the gas marketers or retailers of electricity specified in the directive, in relation to compliance with this Act or its regulations;

(d) exercise its authority under Part VII.0.1 to investigate the activities or conduct or the classes of activities or conduct, as are specified in the directive, of gas marketers or retailers of electricity generally or of the classes of gas marketers or retailers of electricity as are specified in the directive, in relation to compliance with this Act or its regulations;

(e) exercise its authority under Part VII.0.1 to investigate the number or percentage, as is specified in the directive, of complaints received by the Board against gas marketers or retailers of electricity and reasonably considered by the Board to have merit, in relation to compliance with this Act or its regulations. 2010, c. 8, s. 38 (3).

Publication

(7) A directive issued under this section shall be published in *The Ontario Gazette*. 2010, c. 8, s. 38 (3).

No hearing

(8) The Board shall amend the conditions as required by a directive without holding a hearing. 2010, c. 8, s. 38 (3).

Refrain from exercising power

29. (1) On an application or in a proceeding, the Board shall make a determination to refrain, in whole or part, from exercising any power or performing any duty under this Act if it finds as a question of fact that a licensee, person, product, class of products, service or class of services is or will be subject to competition sufficient to protect the public interest. 1998, c. 15, Sched. B, s. 29 (1).

Scope

(2) Subsection (1) applies to the exercise of any power or the performance of any duty of the Board in relation to,

(a) any matter before the Board;

(b) any licensee;

(c) any person who is subject to this Act;

(d) any person selling, transmitting, distributing or storing gas; or

(e) any product or class of products supplied or service or class of services rendered within the province by a licensee or a person who is subject to this Act. 1998, c. 15, Sched. B, s. 29 (2).

Where determination made

(3) For greater certainty, where the Board makes a determination to refrain in whole or in part from the exercise of any power or the performance of any duty under this Act, and does so refrain, nothing in this Act limits the application of the *Competition Act* (Canada) to those matters with respect to which the Board refrains. 1998, c. 15, Sched. B, s. 29 (3).

Notice

(4) Where the Board makes a determination under this section, it shall promptly give notice of that fact to the Minister. 1998, c. 15, Sched. B, s. 29 (4).

Costs

30. (1) The Board may order a person to pay all or part of a person's costs of participating in a proceeding before the Board, a notice and comment process under section 45 or 70.2 or any other consultation process initiated by the Board. 2004, c. 23, Sched. B, s. 8.

Same

(2) The Board may make an interim or final order that provides,

(a) by whom and to whom any costs are to be paid;

(b) the amount of any costs to be paid or by whom any costs are to be assessed and allowed; and

(c) when any costs are to be paid. 2003, c. 3, s. 25 (1).

Rules

(3) The rules governing practice and procedure that are made under section 25.1 of the *Statutory Powers Procedure Act* may prescribe a scale under which costs shall be assessed. 2003, c. 3, s. 25 (1).

Inclusion of Board costs

(4) The costs may include the costs of the Board, regard being had to the time and expenses of the Board. 1998, c. 15, Sched. B, s. 30 (4).

Considerations not limited

(5) In awarding costs, the Board is not limited to the considerations that govern awards of costs in any court. 1998, c. 15, Sched. B, s. 30 (5).

Application

(6) This section applies despite section 17.1 of the *Statutory Powers Procedure Act*. 2003, c. 3, s. 25 (2).

31. (1) REPEALED: 2002, c. 1, Sched. B, s. 5.

(2) REPEALED: 2003, c. 3, s. 26.

Stated case

32. (1) The Board may, at the request of the Lieutenant Governor in Council or of its own motion or upon the motion of any party to proceedings before the Board and upon such security being given as it directs, state a case in writing for the opinion of the Divisional Court upon any question that is a question of law within the jurisdiction of the Board. 1998, c. 15, Sched. B, s. 32 (1); 2003, c. 3, s. 27.

Same

(2) The Divisional Court shall hear and determine the stated case and remit it to the Board with its opinion. 1998, c. 15, Sched. B, s. 32 (2).

Appeal to Divisional Court

33. (1) An appeal lies to the Divisional Court from,

(a) an order of the Board;

(b) the making of a rule under section 44; or

(c) the issuance of a code under section 70.1. 2003, c. 3, s. 28 (1).

Nature of appeal, timing

(2) An appeal may be made only upon a question of law or jurisdiction and must be commenced not later than 30 days after the making of the order or rule or the issuance of the code. 1998, c. 15, Sched. B, s. 33 (2); 2003, c. 3, s. 28 (2).

Board may be heard

(3) The Board is entitled to be heard by counsel upon the argument of an appeal. 1998, c. 15, Sched. B, s. 33 (3).

Board to act on court's opinion

(4) The Divisional Court shall certify its opinion to the Board and the Board shall make an order in accordance with the opinion, but the order shall not be retroactive in its effect. 1998, c. 15, Sched. B, s. 33 (4).

Board not liable for costs

(5) The Board, or any member of the Board, is not liable for costs in connection with any appeal under this section. 1998, c. 15, Sched. B, s. 33 (5).

Order to take effect despite appeal

(6) Subject to subsection (7), every order made by the Board takes effect at the time prescribed in the order, and its operation is not stayed by an appeal, unless the Board orders otherwise. 2006, c. 33, Sched. X, s. 1.

Court may stay the order

(7) The Divisional Court may, on an appeal of an order made by the Board,

(a) stay the operation of the order; or

(b) set aside a stay of the operation of the order that was ordered by the Board under subsection (6). 2006, c. 33, Sched. X, s. 1.

No petition to Lieutenant Governor in Council

Definition

34. (1) In this section,

"old section 34" means this section as it read immediately before the day the *Good Government Act, 2009* received Royal Assent. 2009, c. 33, Sched. 2, s. 51 (2).

Not subject to petition

(2) Every order, rule or code of the Board that is the subject of a petition filed under the old section 34 that is not disposed of or withdrawn before the day the *Good Government Act, 2009* receives Royal Assent is deemed not to be subject to petition to the Lieutenant Governor in Council, and shall not be considered or continue to be considered, as the case may be, by the Lieutenant Governor in Council. 2009, c. 33, Sched. 2, s. 51 (2).

Same

(3) Every order, rule or code of the Board that may be the subject of a petition under the old section 34 is deemed not to be subject to petition to the Lieutenant Governor in Council, and shall not be considered by the Lieutenant Governor in Council. 2009, c. 33, Sched. 2, s. 51 (2).

No effect on validity

(4) Nothing in this section affects the validity of an order, rule or code of the Board that, but for subsection 51 (2) of Schedule 2 to the *Good Government Act, 2009*, was or could have been the subject of a petition filed under the old section 34. 2009, c. 33, Sched. 2, s. 51 (2).

Question referred to Board

35. The Minister may require the Board to examine, report and advise on any question respecting energy. 1998, c. 15, Sched. B, s. 35.

PART III
GAS REGULATION

Order of Board required

36. (1) No gas transmitter, gas distributor or storage company shall sell gas or charge for the transmission, distribution or storage of gas except in accordance with an order of the Board, which is not bound by the terms of any contract. 1998, c. 15, Sched. B, s. 36 (1).

Order of Board re Smart Metering Entity

(1.1) Neither the Smart Metering Entity nor any other person licensed to do so shall conduct activities relating to the metering of gas except in accordance with an order of the Board, which is not bound by the terms of any contract. 2006, c. 3, Sched. C, s. 3.

Order re: rates

(2) The Board may make orders approving or fixing just and reasonable rates for the sale of gas by gas transmitters, gas distributors and storage companies, and for the transmission, distribution and storage of gas. 1998, c. 15, Sched. B, s. 36 (2).

Power of Board

(3) In approving or fixing just and reasonable rates, the Board may adopt any method or technique that it considers appropriate. 1998, c. 15, Sched. B, s. 36 (3).

Contents of order

(4) An order under this section may include conditions, classifications or practices applicable to the sale, transmission, distribution or storage of gas, including rules respecting the calculation of rates. 1998, c. 15, Sched. B, s. 36 (4).

Deferral or variance accounts

(4.1) If a gas distributor has a deferral or variance account that relates to the commodity of gas, the Board shall, at least once every three months, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 30.

Same

(4.2) If a gas distributor has a deferral or variance account that does not relate to the commodity of gas, the Board shall, at least once every 12 months, or such shorter period as is prescribed by the regulations, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 30.

Same

(4.3) An order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates shall be made in accordance with the regulations. 2003, c. 3, s. 30.

Same

(4.4) If an order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates is made after the time required by subsection (4.1) or (4.2) and the delay is due in whole or in part to the conduct of a gas distributor, the Board may reduce the amount that is reflected in rates. 2003, c. 3, s. 30.

Same

(4.5) If an amount recorded in a deferral or variance account of a gas distributor is reflected in rates, the Board shall consider the appropriate number of billing periods over which the amount shall be divided in order to mitigate the impact on consumers. 2003, c. 3, s. 30.

Fixing other rates

(5) Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable. 1998, c. 15, Sched. B, s. 36 (5).

Burden of proof

(6) Subject to subsection (7), in an application with respect to rates for the sale, transmission, distribution or storage of gas, the burden of proof is on the applicant. 1998, c. 15, Sched. B, s. 36 (6).

Order, motion of Board or at request of Minister

(7) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates for the sale, transmission, distribution or storage of gas by any gas transmitter, gas distributor or storage company are just and reasonable, the Board shall make an order under subsection (2) and the burden of establishing that the rates are just and reasonable is on the gas transmitter, gas distributor or storage company, as the case may be. 1998, c. 15, Sched. B, s. 36 (7).

Exception

(8) This section does not apply to a municipality or municipal public utility commission transmitting or distributing gas under the *Public Utilities Act* on the day before this section comes into force. 1998, c. 15, Sched. B, s. 36 (8).

Gas storage areas

36.1 (1) The Board may by order,

(a) designate an area as a gas storage area for the purposes of this Act; or

(b) amend or revoke a designation made under clause (a). 2001, c. 9, Sched. F, s. 2 (2).

Transition

(2) Every area that was designated by regulation as a gas storage area on the day before this section came into force shall be deemed to have been designated under clause (1) (a) as a gas storage area on the day the regulation came into force. 2001, c. 9, Sched. F, s. 2 (2).

Prohibition, gas storage in undesignated areas

37. No person shall inject gas for storage into a geological formation unless the geological formation is within a designated gas storage area and unless, in the case of gas storage areas designated after January 31, 1962, authorization to do so has been obtained under section 38 or its predecessor. 1998, c. 15, Sched. B, s. 37; 2001, c. 9, Sched. F, s. 2 (3).

Authority to store

38. (1) The Board by order may authorize a person to inject gas into, store gas in and remove gas from a designated gas storage area, and to enter into and upon the land in the area and use the land for that purpose. 1998, c. 15, Sched. B, s. 38 (1).

Right to compensation

(2) Subject to any agreement with respect thereto, the person authorized by an order under subsection (1),

(a) shall make to the owners of any gas or oil rights or of any right to store gas in the area just and equitable compensation in respect of the gas or oil rights or the right to store gas; and

(b) shall make to the owner of any land in the area just and equitable compensation for any damage necessarily resulting from the exercise of the authority given by the order. 1998, c. 15, Sched. B, s. 38 (2).

Determination of amount of compensation

(3) No action or other proceeding lies in respect of compensation payable under this section and, failing agreement, the amount shall be determined by the Board. 1998, c. 15, Sched. B, s. 38 (3).

Appeal

(4) An appeal within the meaning of section 31 of the *Expropriations Act* lies from a determination of the Board under subsection (3) to the Divisional Court, in which case that section applies and section 33 of this Act does not apply. 1998, c. 15, Sched. B, s. 38 (4); 2003, c. 3, s. 31.

Gas storage, surplus facilities and approval of agreements

Allocation of surplus storage facilities

39. (1) Upon the application of a gas transmitter or gas distributor, the Board by order may direct a storage company having storage capacity and facilities that are not in full use to provide all or part of the storage capacity and facilities for the applicant upon such conditions as may be determined by the Board. 1998, c. 15, Sched. B, s. 39 (1).

Gas storage agreements to be approved

(2) No storage company shall enter into an agreement or renew an agreement with any person for the storage of gas unless the Board, with or without a hearing has approved,

(a) the parties to the agreement or renewal;

(b) the period for which the agreement or renewal is to be in operation; and

(c) the storage that is the subject of the agreement or renewal. 1998, c. 15, Sched. B, s. 39 (2).

Referral to Board of application for well licence

40. (1) The Minister of Natural Resources shall refer to the Board every application for the granting of a licence relating to a well in a designated gas storage area, and the Board shall report to the Minister of Natural Resources on it. 1998, c. 15, Sched. B, s. 40 (1).

Hearing

(2) The Board may hold a hearing before reporting to the Minister if the applicant does not have authority to store gas in the area or, in the Board's opinion, the special circumstances of the case require a hearing. 1998, c. 15, Sched. B, s. 40 (2).

Copy of report to be sent to parties

(3) The Board shall send to each of the parties a copy of its report to the Minister made under subsection (1) within 10 days after submitting it to the Minister and such report shall be deemed to be an order of the Board within the meaning of section 34. 1998, c. 15, Sched. B, s. 40 (3).

Minister's decision

(4) The Minister of Natural Resources shall grant or refuse to grant the licence in accordance with the report. 1998, c. 15, Sched. B, s. 40 (4).

Allocation of market demand

41. The Board by order may allocate a just and equitable share of the market demands for gas or oil to the several sources from which the gas or oil is produced and to the several interests within a field or pool. 1998, c. 15, Sched. B, s. 41.

Duties of gas transmitters and distributors

Discontinuance of transmission or distribution

42. (1) Subject to the *Technical Standards and Safety Act, 2000* and the regulations made under that Act, and in the absence of an agreement to the contrary between the parties affected, no gas transmitter shall voluntarily discontinue transmitting gas to a gas distributor without leave of the Board. 1998, c. 15, Sched. B, s. 42 (1); 2002, c. 17, Sched. F, Table; 2003, c. 3, s. 32.

Duty of gas distributor

(2) Subject to the *Public Utilities Act*, the *Technical Standards and Safety Act, 2000* and the regulations made under the latter Act, sections 80, 81, 82 and 83 of the *Municipal Act, 2001* and sections 64, 65, 66 and 67 of the *City of Toronto Act, 2006*, a gas distributor shall provide gas distribution services to any building along the line of any of the gas distributor's distribution pipe lines upon the request in writing of the owner, occupant or other person in charge of the building. 2006, c. 32, Sched. C, s. 42.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 42 is amended by adding the following subsections:

Security

(2.1) In exercising its authority under subsection 50 (4) of the *Public Utilities Act* or any other Act, where a gas distributor requires security for the payment of charges related to gas by or on behalf of a consumer or a member of a class of consumers prescribed by regulation, the gas distributor shall,

(a) meet the criteria prescribed by regulation; and

(b) satisfy the criteria or requirements in any order made by the Board or rule issued by the Board. 2010, c. 8, s. 38 (4).

Security, requirements, etc.

(2.2) If required to do so by regulation, a gas distributor shall,

(a) meet specific requirements in relation to any security being required by it in respect of consumers or members of a class of consumers;

(b) accept forms of security prescribed by regulation and, in circumstances prescribed by regulation, shall forego any requirement for security; and

(c) provide consumers or classes of consumers with alternative security arrangements, which meet the criteria prescribed by regulation, where the conditions or circumstances prescribed by regulation are satisfied by the consumers or classes of consumers. 2010, c. 8, s. 38 (4).

Additional requirements

(2.3) In addition to the matters referred to in subsection (2.2), a gas distributor shall comply with such other requirements with respect to security as may be prescribed by regulation. 2010, c. 8, s. 38 (4).

Definition

(2.4) For the purposes of subsections (2.1), (2.2) and (2.3),

"security" has the meaning as may be prescribed by regulation. 2010, c. 8, s. 38 (4).

See: 2010, c. 8, ss. 38 (4), 40.

Order

(3) Upon application, the Board may order a gas transmitter, gas distributor or storage company to provide any gas sale, transmission, distribution or storage service or cease to provide any gas sale service. 1998, c. 15, Sched. B, s. 42 (3).

Restriction

(4) Despite subsection 19 (4), the Board may not commence a proceeding under subsection (3) on its own motion. 1998, c. 15, Sched. B, s. 42 (4).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 42 is amended by adding the following subsections:

Stopping the distribution of gas

(5) In exercising its authority under section 59 of the *Public Utilities Act* or any other Act, a gas distributor may stop the distribution of gas to a property,

(a) if any amount payable by a person for the distribution or sale of gas is overdue; and

(b) if the stopping of the distribution of gas to the property complies with rules made under clause 44 (1) (b.1). 2010, c. 8, s. 38 (4).

Notice, to whom

(6) A gas distributor shall provide notice of the proposal to stop distributing gas to,

(a) the person who is responsible for the overdue amount; and

(b) any other person who resides at the property who meets the criteria prescribed by regulation. 2010, c. 8, s. 38 (4).

Notice, means

(7) The notice of the proposal to stop the distribution of gas shall be provided,

(a) by personal service, prepaid mail or posting the notice in a conspicuous place on the property where the gas is distributed; or

(b) by such other means or in such manner as is prescribed by regulation. 2010, c. 8, s. 38 (4).

Notice, information and manner of presentation

(8) The notice of the proposal to stop the distribution of gas shall contain such information as may be prescribed by regulation and the information shall be presented in such manner as may be prescribed by regulation. 2010, c. 8, s. 38 (4).

Recovery of any amount

(9) A gas distributor may recover all amounts payable despite stopping the distribution of gas. 2010, c. 8, s. 38 (4).

Exception

(10) A gas distributor shall not stop the distribution of gas to a property where it has received by the time prescribed by regulation such information as may be prescribed by regulation about the consumer or member of a class of consumers prescribed by regulation who resides at the property under such circumstances as may be prescribed by regulation,

(a) where the consumer does such things, or takes such steps or actions as may be prescribed by the regulations or provides such information as may be prescribed by the regulations to the gas distributor, the Board or such other entity as may be prescribed by regulation; or

(b) during any period prescribed by the regulations. 2010, c. 8, s. 38 (4).

Same

(11) For the purposes of subsection (10), where a regulation requires that a thing be done, a step be taken or information be provided by a certain date, a gas distributor shall not stop the distribution of gas to the property before the time prescribed by regulation has elapsed. 2010, c. 8, s. 38 (4).

Same

(12) Subsections (10) and (11) apply despite the *Public Utilities Act*. 2010, c. 8, s. 38 (4).

Same, different steps

(13) For the purposes of subsection (10), a prescribed consumer or a member of a prescribed class of consumers may be required to take different prescribed steps during the different prescribed periods provided for under that subsection. 2010, c. 8, s. 38 (4).

Restoration of gas

(14) If a gas distributor stops distributing gas to a property in contravention of this section, the gas distributor shall, as soon as possible,

(a) restore, without charge, the distribution of gas to the property; and

(b) compensate any person who suffered a loss as a result of stopping the distribution of gas. 2010, c. 8, s. 38 (4).

See: 2010, c. 8, ss. 38 (4), 40.

Change in ownership or control of systems

Disposal

43. (1) No gas transmitter, gas distributor or storage company, without first obtaining from the Board an order granting leave, shall,

(a) sell, lease or otherwise dispose of its gas transmission, gas distribution or gas storage system as an entirety or substantially as an entirety;

(b) sell, lease or otherwise dispose of that part of a system described in paragraph (a) that is necessary in serving the public; or

(c) amalgamate with any other corporation. 1998, c. 15, Sched. B, s. 43 (1).

Same

(1.1) Subsection (1) does not apply with respect to a disposition of securities of a gas transmitter, gas distributor or storage company, or of a corporation that owns securities in a gas transmitter, gas distributor or storage company. 2003, c. 3, s. 33.

Acquisition of share control

(2) No person, without first obtaining an order from the Board granting leave, shall,

(a) acquire such number of voting securities of a gas transmitter, gas distributor or storage company that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company; or

(b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a gas transmitter, gas distributor or storage company if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, s. 43 (2).

Same

(2.1) Subsection (2) does not apply to,

(a) an underwriter (within the meaning of the *Securities Act*) who holds the voting securities solely for the purpose of distributing them to the public;

(b) any person or entity who is acting in relation to the voting securities solely in the capacity of an intermediary in the payment of funds or the delivery of securities or both in connection with trades in securities and who provides centralized facilities for the clearing of trades in securities; or

(c) any person or entity who holds the voting securities by way of security only. 2003, c. 3, s. 33.

Significant asset

(3) For the purpose of subsection (2),

(a) an asset is a significant asset if its value is 20 per cent or more of the aggregate book value of the total assets of a person, determined on a consolidated basis in accordance with generally accepted accounting principles; and

(b) "control", with respect to a corporation, has the same meaning as in the *Business Corporations Act*. 1998, c. 15, Sched. B, s. 43 (3).

Valuation of voting securities

(4) For the purpose of determining whether voting securities constitute a significant asset, the value of the voting securities shall be deemed to be,

(a) the market value of the securities if more than 20 per cent of the voting securities are publicly traded; and

(b) 115 per cent of the book value of the voting securities, as determined by the equity method of accounting, in all other cases. 1998, c. 15, Sched. B, s. 43 (4).

Mortgages

(5) This section does not apply to a mortgage or charge to secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness. 1998, c. 15, Sched. B, s. 43 (5).

Leave

(6) An application for leave under this section shall be made to the Board, which shall grant or refuse leave. 1998, c. 15, Sched. B, s. 43 (6).

Void agreement

(7) An amalgamation agreement between the corporations that propose to amalgamate is void if the Board refuses to grant leave under this section, even if the amalgamation agreement has been adopted in accordance with subsection 176 (4) of the *Business Corporations Act*. 1998, c. 15, Sched. B, s. 43 (7).

Void certificate

(8) A certificate of amalgamation endorsed by the director appointed under section 278 of the *Business Corporations Act* is void if it is endorsed before leave of the Board for the amalgamation is granted. 1998, c. 15, Sched. B, s. 43 (8).

Rules

44. (1) The Board may make rules,

(a) governing the conduct of a gas transmitter, gas distributor or storage company as such conduct relates to its affiliates;

(b) governing the conduct of a gas distributor as such conduct relates to any person,

(i) selling or offering to sell gas to a consumer,

(ii) acting as agent or broker for a seller of gas to a consumer, or

(iii) acting or offering to act as the agent or broker of a consumer in the purchase of gas;

(b.1) subject to subsections 42 (5) to (14), governing the conduct of a gas distributor as the conduct relates to,

(i) stopping the distribution of gas to a property, including the manner in which and the time within which the distribution stops or is to stop,

(ii) the manner, timing and form in which the notice under subsection 42 (6) is to be provided to the person, and

(iii) the information to be included in the notice to the person;

(b.2) subject to the regulations, governing the manner and circumstances in which security is to be provided, including where security is to be provided or not to be provided by a gas consumer to a gas distributor and,

(i) the interest rate to be applied to amounts held on deposit and payable by the gas distributor to the consumer for the amounts,

(ii) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,

(iii) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the gas distributor to the consumer, and

(iv) such other matters as the Board may determine in respect of security;

(b.3) relating to any matter in respect of invoices issued in respect of gas to consumers, including meeting such requirements as may be provided for by the Board or being in a form approved by the Board;

(c) governing the conduct of persons holding a licence issued under Part IV;

(c.1) relating to any matter, prescribed by regulation, in respect of gas marketers in relation to gas marketing, subject to any regulations made under this Act or under the *Energy Consumer Protection Act, 2010*;

(d) establishing conditions of access to transmission, distribution and storage services provided by a gas transmitter, gas distributor or storage company;

(e) establishing classes of gas transmitters, gas distributors and storage companies;

(f) requiring and providing for the making of returns, statements or reports by any class of gas transmitters, gas distributors or storage companies relating to the transmission, distribution, storage or sale of gas, in such form and containing such matters and verified in such manner as the rule may provide;

(g) requiring and providing for an affiliate of a gas transmitter, gas distributor or storage company to make returns, statements or reports relating to the transmission, distribution, storage or sale of gas by the gas transmitter, gas distributor or storage company of which it is the affiliate, in such form and containing such matters and verified in such manner as the rule may provide;

(h) establishing a uniform system of accounts applicable to any class of gas transmitters, gas distributors or storage companies;

(i) respecting any other matter prescribed by regulation. 1998, c. 15, Sched. B, s. 44 (1); 2010, c. 8, s. 38 (5).

Quorum

(1.1) For the purposes of this section and section 45, two members of the Board constitute a quorum. 2003, c. 3, s. 34 (1).

Approval, etc., of Board

(2) A rule may require an approval, consent or determination of the Board, with or without a hearing, for any of the matters provided for in the rule. 2003, c. 3, s. 34 (2).

Incorporation by reference

(3) A rule authorized by this section may incorporate by reference, in whole or in part, any standard, procedure or guideline and may require compliance with any standard, procedure or guideline adopted. 1998, c. 15, Sched. B, s. 44 (3).

Scope

(4) A rule may be general or particular in its application and may be limited as to time or place or both. 1998, c. 15, Sched. B, s. 44 (4).

Exemption

(5) A rule may authorize the Board to grant an exemption to it. 2000, c. 26, Sched. D, s. 2 (3).

Same

(6) An exemption or a removal of an exemption,

(a) may be granted or made in whole or in part; and

(b) may be granted or made subject to conditions or restrictions. 2000, c. 26, Sched. D, s. 2 (3).

Non-application

(7) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the rules made by the Board. 1998, c. 15, Sched. B, s. 44 (7); 2006, c. 21, Sched. F, s. 136 (1).

Proposed rules, notice and comment

45. (1) The Board shall ensure that notice of every rule that it proposes to make under section 44 is given in such manner and to such persons as the Board may determine. 1998, c. 15, Sched. B, s. 45 (1); 2003, c. 3, s. 35 (1).

Content of notice

(2) The notice must include,

(a) the proposed rule or a summary of the proposed rule;

(b) a concise statement of the purpose of the proposed rule;

(c) an invitation to make written representations with respect to the proposed rule;

(d) the time limit for making written representations;

(e) if a summary is provided, information about how the entire text of the proposed rule may be obtained; and

(f) a description of the anticipated costs and benefits of the proposed rule. 1998, c. 15, Sched. B, s. 45 (2).

Opportunity for comment

(3) Upon giving notice under subsection (1), the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed rule within such reasonable period as the Board considers appropriate. 1998, c. 15, Sched. B, s. 45 (3).

Exceptions to notice requirement

(4) Notice under subsection (1) is not required if what is proposed is an amendment that does not materially change an existing rule. 1998, c. 15, Sched. B, s. 45 (4).

Notice of changes

(5) If, after considering the submissions, the Board proposes material changes to the proposed rule, the Board shall ensure notice of the proposed changes is given in such manner and to such persons as the Board may determine. 1998, c. 15, Sched. B, s. 45 (5); 2003, c. 3, s. 35 (2).

Content of notice

(6) The notice must include,

(a) the proposed rule with the changes incorporated or a summary of the proposed changes;

(b) a concise statement of the purpose of the changes;

(c) an invitation to make written representations with respect to the proposed rule;

(d) the time limit for making written representations;

(e) if a summary is provided, information about how the entire text of the proposed rule may be obtained; and

(f) a description of the anticipated costs and benefits of the proposed rule. 1998, c. 15, Sched. B, s. 45 (6).

Representations re: changes

(7) Upon giving notice of changes, the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the Board considers appropriate. 1998, c. 15, Sched. B, s. 45 (7).

Making the rule

(8) If notice under this section is required, the Board may make the rule only at the end of this process and after considering all representations made as a result of that process. 1998, c. 15, Sched. B, s. 45 (8).

Public inspection

(9) The Board must make the proposed rule and the written representations made under this section available for public inspection during normal business hours at the offices of the Board. 1998, c. 15, Sched. B, s. 45 (9).

Consultation

(10) If the Board proposes to make a rule under clause 44 (1) (a), notice shall not be given under subsection (1) until after the Board has consulted with gas transmitters, gas distributors or storage companies, as appropriate. 1998, c. 15, Sched. B, s. 45 (10).

Amendment

(11) In this section, a rule includes an amendment to a rule and a revocation of a rule. 1998, c. 15, Sched. B, s. 45 (11).

Rules, effective date and gazette publication

46. (1) A rule comes into force on the day specified in the rule. 1998, c. 15, Sched. B, s. 46 (1).

Publication

(2) The Board shall publish every rule that comes into force in *The Ontario Gazette* as soon after the rule is made as practicable. 1998, c. 15, Sched. B, s. 46 (2).

Effect of non-publication

(3) A rule that is not published is not effective against a person who has not had actual notice of it. 1998, c. 15, Sched. B, s. 46 (3).

Effect of publication

(4) Publication of a rule in *The Ontario Gazette*,

(a) is, in the absence of evidence to the contrary, proof of its text and of its making; and

(b) shall be deemed to be notice of its contents to every person subject to it or affected by it. 1998, c. 15, Sched. B, s. 46 (4).

Judicial notice

(5) If a rule is published in *The Ontario Gazette*, judicial notice shall be taken of it, of its content and of its publication. 1998, c. 15, Sched. B, s. 46 (5).

PART IV
GAS MARKETING

Definitions, Part IV

47. In this Part,

"gas marketer" means a person who,

(a) sells or offers to sell gas to a low-volume consumer,

(b) acts as the agent or broker for a seller of gas to a low-volume consumer, or

(c) acts or offers to act as the agent or broker of a low-volume consumer in the purchase of gas,

and "gas marketing" has a corresponding meaning; ("agent de commercialisation de gaz", "commercialisation de gaz")

"low-volume consumer" means a person who annually uses less than the amount of gas prescribed by regulation. ("petit consommateur") 1998, c. 15, Sched. B, s. 47.

Requirement to hold licence

48. (1) No person shall carry on business as a gas marketer unless the person holds a gas marketer's licence. 1998, c. 15, Sched. B, s. 48 (1).

Restriction on name use

(2) A gas marketer shall not carry on business in a name other than the name in which it is licensed unless authorized to do so in the licence. 1998, c. 15, Sched. B, s. 48 (2).

Exclusion

(3) This section does not apply to,

(a) a gas distributor acting in accordance with an order of the Board; or

(b) a gas distributor to whom section 36 does not apply pursuant to an exemption set out in the regulations. 2003, c. 3, s. 36.

Where not in compliance

49. A gas marketing contract between a low-volume consumer and a person who is not in compliance with section 48 may not be enforced against that consumer. 1998, c. 15, Sched. B, s. 49.

Application for licence

50. (1) A person may apply to the Board for the issuance or renewal of a gas marketing licence. 2003, c. 3, s. 37.

Regulations

(2) The Lieutenant Governor in Council may make regulations prescribing requirements for a gas marketing licence which, if not met, will result in the refusal to issue or renew a licence. 2003, c. 3, s. 37.

Licence conditions and renewals

Licence conditions

51. (1) A licence under this Part may contain such conditions as are appropriate having regard to the objectives of the Board. 2010, c. 8, s. 38 (6).

Licence renewals

(2) A licence under this Part shall be renewed at such times as may be prescribed by regulation. 2010, c. 8, s. 38 (6).

Amendment of licence

52. The Board may, on the application of any person, amend a licence if it considers the amendment to be,

(a) necessary to implement a directive issued under section 27, 27.1 or 28.7; or

(b) in the public interest, having regard to the objectives of the Board. 2003, c. 3, s. 37; 2010, c. 8, s. 38 (7).

Cancellation on request

53. The Board may cancel a licence on the request in writing of the licence holder. 2003, c. 3, s. 38.

54. REPEALED: 2003, c. 3, s. 39.

55. REPEALED: 2003, c. 3, s. 39.

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;

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

(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; 2010, c. 8, s. 38 (8).

Where not in compliance

58. A contract between a member of a prescribed class of consumers and a person who is not in compliance with section 57 may not be enforced against that consumer. 2010, c. 8, s. 38 (9).

Interim licences

Emergency

59. (1) Despite this Act, the Board may issue an interim licence authorizing a person to undertake any of the activities described in section 57 if the Board considers it necessary to do so to ensure the reliable supply of electricity to consumers. 1998, c. 15, Sched. B, s. 59 (1).

Powers of Board

(2) If the Board has determined that a distributor has failed or is likely to fail to meet its obligations under section 29 of the *Electricity Act, 1998*, it may,

(a) require the licensee, as a condition of an interim licence, to take possession and control of the business of the distributor;

(b) order the distributor to surrender possession and control of its business to the person licensed under subsection (1); and

(c) without a hearing, amend or suspend the licence of a distributor. 1998, c. 15, Sched. B, s. 59 (2); 2003, c. 3, s. 42 (1).

Conduct under cl. (2) (a)

(3) A person who is required under clause (2) (a) to take possession and control of the business of a distributor may, subject to the conditions of the interim licence, carry on, manage and conduct the operations of the business in the name of the distributor, including,

(a) preserving, maintaining and adding to the property of the business;

(b) receiving the income and revenue of the business;

(c) issuing cheques from, withdrawing money from and otherwise dealing with the accounts of the business;

(d) retaining or dismissing employees, consultants, counsel and other assistance for the business;

(e) directing the employees of the business; and

(f) conducting, settling and commencing litigation relating to the business. 2003, c. 3, s. 42 (2).

Liability

(3.1) A person who is required under clause (2) (a) to take possession and control of the business of a distributor is not liable for anything that results from taking possession and control of the business or otherwise exercising or performing the person's powers and duties under this Act, the interim licence or any order of the Board, unless liability arises from the person's negligence or wilful misconduct. 2003, c. 3, s. 42 (2).

Disposal of assets

(4) A person described in subsection (3) may dispose of such assets as are ordinarily disposed of in the normal course of carrying on the business of a distributor. 1998, c. 15, Sched. B, s. 59 (4).

No notice

(5) The Board may act under this section without notice and without a hearing. 1998, c. 15, Sched. B, s. 59 (5).

Review

(6) The Board shall, upon the request of a distributor against whom an order is made under clause (2) (b), hold a hearing to review the order. 1998, c. 15, Sched. B, s. 59 (6).

Order not stayed

(7) A request for a hearing does not stay the order made under clause (2) (b). 1998, c. 15, Sched. B, s. 59 (7).

Action on review

(8) After the hearing, the Board may confirm or amend its order and may extend the order. 1998, c. 15, Sched. B, s. 59 (8).

Term of licence

(9) An order made or licence issued under this section expires three months after it is made or issued unless the Board orders that it be extended. 1998, c. 15, Sched. B, s. 59 (9).

Retain ownership

(10) Despite subsection (2) or (3), and subject to subsection (4) a distributor to whom an order is issued under clause (2) (b) retains ownership of any assets of the business that the distributor owned before the order was issued, subject to any encumbrances. 1998, c. 15, Sched. B, s. 59 (10).

No compensation

(11) A distributor to whom an order is issued under clause (2) (b) is not entitled to any compensation from the Crown, the Board or any person for being required to surrender possession and control of its business. 1998, c. 15, Sched. B, s. 59 (11).

Application for licence

60. (1) A person may apply to the Board for the issuance or renewal of a licence authorizing one or more of the activities referred to in section 57 as specified in the application. 1998, c. 15, Sched. B, s. 60 (1); 2003, c. 3, s. 43 (1).

(2) REPEALED: 2003, c. 3, s. 43 (2).

61. REPEALED: 2003, c. 3, s. 44.

62. REPEALED: 2003, c. 3, s. 44.

63. REPEALED: 2003, c. 3, s. 44.

64. REPEALED: 2003, c. 3, s. 44.

65. REPEALED: 2003, c. 3, s. 44.

Mutual access, electricity generated outside Ontario

66. If an application for a licence relates to electricity generated from facilities located in a jurisdiction outside of Ontario, the Board may, in determining whether or not to issue a licence, have regard to whether that jurisdiction allows for equivalent access to its electricity markets for electricity generated from facilities located in Ontario. 1998, c. 15, Sched. B, s. 66; 2003, c. 3, s. 45.

67. REPEALED: 2003, c. 3, s. 46.

68. REPEALED: 2003, c. 3, s. 46.

69. REPEALED: 2003, c. 3, s. 46.

Licence conditions

70. (1) A licence under this Part may prescribe the conditions under which a person may engage in an activity set out in section 57 and a licence may also contain such other conditions as are appropriate having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 1998, c. 15, Sched. B, s. 70 (1).

Approvals, etc., with or without holding hearing

(1.1) The Board may, with or without a hearing, grant an approval, consent or make a determination that may be required for any of the matters provided for in a licensee's licence. 2009, c. 12, Sched. D, s. 10.

Examples of conditions

(2) The conditions of a licence may include provisions,

(a) specifying the period of time during which the licence will be in effect;

(b) requiring the licensee to provide, in the manner and form determined by the Board, such information as the Board may require;

(c) requiring the licensee to enter into agreements with other persons on specified terms (including terms for a specified duration) approved by the Board relating to its trading or operations or for the connection to or use of any lines or plant owned or operated by the licensee or the other party to the agreement;

(d) governing the conduct of the licensee, including the conduct of,

(i) a transmitter or distributor as that conduct relates to its affiliates,

(ii) a distributor as that conduct relates to a retailer,

(ii.1) a distributor or suite meter provider as such conduct relates to,

(A) the disconnection of the supply of electricity to a consumer, including the manner in which and the time within which the disconnection takes place or is to take place,

(B) the manner, timing and form in which the notice under subsection 31 (2) of the *Electricity Act, 1998* is to be provided to the consumer, and

(C) subject to the regulations, the manner and circumstances in which security is to be provided or not to be provided by a consumer to a distributor or suite meter provider, including,

(1) the interest rate to be applied to amounts held on deposit and payable by the distributor or suite meter provider to the consumer for the amounts,

(2) the manner and time or times by which the amounts held on deposit may or must be paid or set-off against amounts otherwise due or payable by the consumer,

(3) the circumstances in which security need not be provided or in which specific arrangements in respect of security may or must be provided by the distributor or suite meter provider to the consumer, and

(4) such other matters as the Board may determine in respect of security deposits,

(iii) a retailer, and

(iv) a generator, retailer or person licensed to engage in an activity described in clause 57 (f) or an affiliate of that person as that conduct relates to the abuse or possible abuse of market power;

(d.1) governing conditions relating to any matter prescribed by regulation in respect of retailers of electricity in relation to the retailing of electricity, subject to any regulations made under this Act;

(e) specifying methods or techniques to be applied in determining the licensee's rates;

(f) requiring the licensee to maintain specified accounting records, prepare accounts according to specified principles and maintain organizational units or separate accounts for separate businesses in order to prohibit subsidies between separate businesses;

(g) specifying performance standards, targets and criteria;

(h) specifying connection or retailing obligations to enable reasonable demands for electricity to be met;

(i) specifying information reporting requirements relating to the source of electricity and emissions caused by the generation of electricity;

(j) requiring the licensee to expand or reinforce its transmission or distribution system in accordance with market rules in such a manner as the IESO or the Board may determine;

(k) requiring the licensee to enter into an agreement with the IESO that gives the IESO the authority to direct operations of the licensee's transmission system;

(l) requiring the licensee to implement transmission requirements identified in an integrated power system plan approved under Part II.2 of the *Electricity Act, 1998*;

(m) requiring licensees, where a directive has been issued under section 28.2, to implement such steps or such processes as the Board or the directive requires in order to address risks or liabilities associated with customer billing and payment cycles in respect of the cost of electricity at the retail and at the wholesale levels and risks or liabilities associated with non-payment or default by a consumer or retailer. 1998, c. 15, Sched. B, s. 70 (2); 2003, c. 3, s. 47 (1); 2004, c. 23, Sched. B, s. 11 (1-3); 2010, c. 8, s. 38 (10, 11).

Deemed conditions of licences, transmitters and distributors

(2.1) Every licence issued to a transmitter or distributor shall be deemed to contain the following conditions:

1. The licensee is required to provide, in accordance with such rules as may be prescribed by regulation and in the manner mandated by the market rules or by the Board, priority connection access to its transmission system or distribution system for renewable energy generation facilities that meet the requirements prescribed by regulation made under subsection 26 (1.1) of the *Electricity Act, 1998*.
2. The licensee is required to prepare plans, in the manner and at the times mandated by the Board or as prescribed by regulation and to file them with the Board for approval for,
    i. the expansion or reinforcement of the licensee's transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and
    ii. the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system.
3. The licensee is required, in accordance with a plan referred to in paragraph 2 that has been approved by the Board or in such other manner and at such other times as mandated by the Board or prescribed by regulation,
    i. to expand or reinforce its transmission system or distribution system to accommodate the connection of renewable energy generation facilities, and
    ii. to make investments for the development and implementation of the smart grid in relation to the licensee's transmission system or distribution system. 2009, c. 12, Sched. D, s. 10.

Deemed condition of licences, unit sub-meter provider

(2.2) Every licence issued to a unit sub-meter provider is deemed to contain the condition that the unit sub-meter provider is required to comply with the *Ontario Clean Energy Benefit Act, 2010* and the regulations made under it. 2010, c. 26, Sched. 13, s. 17 (2).

Where no agreement

(3) If the parties to an agreement under clause (2) (k) cannot agree on a proposed amendment to the agreement, the parties may jointly apply to the Board for a resolution of the matter. 1998, c. 15, Sched. B, s. 70 (3).

Market rules

(4) Every licence shall be deemed to contain a condition that the licensee comply with the market rules that apply to that licensee. 1998, c. 15, Sched. B, s. 70 (4).

Abuse of market power

(5) Without limiting the generality of subsection (1), a licence to engage in an activity described in clause 57 (c), (d) or (f) may contain conditions to address the abuse or possible abuse of market power, including conditions,

(a) establishing minimum and maximum prices or a range of prices at which electricity may be offered for sale or sold through the IESO-administered markets or directly to another person or class of persons;

(b) restricting the duration of contracts between licensees and any other person; and

(c) restricting significant investment in or acquisition of generation facilities located in Ontario. 1998, c. 15, Sched. B, s. 70 (5); 2004, c. 23, Sched. B, s. 11 (4).

Non-exclusive

(6) Unless it provides otherwise, a licence under this Part shall not hinder or restrict the grant of a licence to another person within the same area and the licensee shall not claim any right of exclusivity. 1998, c. 15, Sched. B, s. 70 (6).

Distributors: connection of generation facilities

(6.1) The licence issued to a distributor shall contain conditions governing the connection of generation facilities to the distribution system, including the maximum cumulative generating capacity from generators to whom the regulations made under clause 88 (1) (g.1) apply that the distributor must allow to be connected to the distribution system. 2002, c. 23, s. 4 (8).

Requirement to provide information

(7) Every licence shall be deemed to contain a condition that the licensee is required to provide such reasonable information to the IESO or the OPA as either of them may require, in the manner and form specified by whichever of them makes the request for the information. 2004, c. 23, Sched. B, s. 11 (5).

Conditions of OPA licence

(8) The Minister may issue, and the Board shall implement, directives that have been approved by the Lieutenant Governor in Council respecting conditions to be included by the Board in a licence issued to the OPA. 2004, c. 23, Sched. B, s. 11 (5).

Affiliates

(9) The licence of a distributor shall specify whether the distributor will comply with section 29 of the *Electricity Act, 1998*,

(a) directly;

(b) through an affiliate;

(c) through another person with whom the distributor or an affiliate of the distributor has a contract; or

(d) through a combination of methods described in clauses (a), (b) and (c), as specified. 1998, c. 15, Sched. B, s. 70 (9); 2002, c. 1, Sched. B, s. 7.

Exception

(10) Despite clause (9) (a) and any licence, a distributor shall not comply with section 29 of the *Electricity Act, 1998* directly after the date prescribed by regulation. 1998, c. 15, Sched. B, s. 70 (10).

Service area of distributor

(11) The licence of a distributor shall specify the area in which the distributor is authorized to distribute electricity. 1998, c. 15, Sched. B, s. 70 (11).

Non-discriminatory access

(12) If a transmitter or distributor is exempt from the requirement to provide non-discriminatory access to its transmission or distribution system in Ontario by regulation made under the *Electricity Act, 1998*, a licence under this Part shall not include a condition requiring the provision of non-discriminatory access unless the licensee has consented to the condition. 1998, c. 15, Sched. B, s. 70 (12).

Limitation

(13) A licence under this Part shall not require a person to dispose of assets or to undertake a significant corporate reorganization. 1998, c. 15, Sched. B, s. 70 (13).

Exclusion

(14) Despite subsection (13), a licence under this Part may require a distributor to establish an affiliate through which it shall comply with subsection (9) or section 73. 1998, c. 15, Sched. B, s. 70 (14).

Scope

(15) This section applies to the exercise of any power under this Act or the *Electricity Act, 1998* in relation to a licence referred to in section 57. 1998, c. 15, Sched. B, s. 70 (15).

Codes that may be incorporated as licence conditions

70.1 (1) The Board may issue codes that, with such modifications or exemptions as may be specified by the Board under section 70, may be incorporated by reference as conditions of a licence under that section. 2003, c. 3, s. 48.

Quorum

(2) For the purposes of this section and section 70.2, two members of the Board constitute a quorum. 2003, c. 3, s. 48.

Approval, etc., of Board

(3) A code issued under this section may provide that an approval, consent or determination of the Board is required, with or without a hearing, for any of the matters provided for in the code. 2003, c. 3, s. 48.

Incorporation of standards, etc.

(4) A code issued under this section may incorporate by reference, in whole or in part, any standard, procedure or guideline. 2003, c. 3, s. 48.

Scope

(5) A code may be general or particular in its application and may be limited as to time or place or both. 2003, c. 3, s. 48.

***Legislation Act, 2006*, Part III**

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a code issued under this section. 2003, c. 3, s. 48; 2006, c. 21, Sched. F, s. 136 (1).

Transition

(7) The following documents issued by the Board, as they read immediately before this section came into force, shall be deemed to be codes issued under this section and the Board may change or amend the codes in accordance with this section and sections 70.2 and 70.3:

1. The Affiliate Relationships Code for Electricity Transmitters and Distributors.
2. The Distribution System Code.
3. The Electricity Retailer Code of Conduct.
4. The Retail Settlement Code.
5. The Transmission System Code.
6. Such other documents as are prescribed by the regulations. 2003, c. 3, s. 48.

Proposed codes, notice and comment

70.2 (1) The Board shall ensure that notice of every code that it proposes to issue under section 70.1 is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

(2) The notice must include,

(a) the proposed code or a summary of the proposed code;

(b) a concise statement of the purpose of the proposed code;

(c) an invitation to make written representations with respect to the proposed code;

(d) the time limit for making written representations;

(e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and

(f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Opportunity for comment

(3) On giving notice under subsection (1), the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the proposed code within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Exceptions to notice requirement

(4) Notice under subsection (1) is not required if what is proposed is an amendment that does not materially change an existing code. 2003, c. 3, s. 48.

Notice of changes

(5) If, after considering the submissions, the Board proposes material changes to the proposed code, the Board shall ensure notice of the proposed changes is given in such manner and to such persons as the Board may determine. 2003, c. 3, s. 48.

Content of notice

(6) The notice must include,

(a) the proposed code with the changes incorporated or a summary of the proposed changes;

(b) a concise statement of the purpose of the changes;

(c) an invitation to make written representations with respect to the proposed code;

(d) the time limit for making written representations;

(e) if a summary is provided, information about how the entire text of the proposed code may be obtained; and

(f) a description of the anticipated costs and benefits of the proposed code. 2003, c. 3, s. 48.

Representations re: changes

(7) On giving notice of changes, the Board shall give a reasonable opportunity to interested persons to make written representations with respect to the changes within such reasonable period as the Board considers appropriate. 2003, c. 3, s. 48.

Issuing the code

(8) If notice under this section is required, the Board may issue the code only at the end of this process and after considering all representations made as a result of that process. 2003, c. 3, s. 48.

Public inspection

(9) The Board must make the proposed code and the written representations made under this section available for public inspection during normal business hours at the offices of the Board. 2003, c. 3, s. 48.

Amendment of code

(10) In this section, a code includes an amendment to a code and a revocation of a code. 2003, c. 3, s. 48.

Effective date and gazette publication

70.3 (1) A code issued under section 70.1 comes into force on the day specified in the code. 2003, c. 3, s. 48.

Publication

(2) The Board shall publish every code that comes into force in *The Ontario Gazette* as soon after the code is issued as practicable. 2003, c. 3, s. 48.

Effect of non-publication

(3) A code that is not published is not effective against a person who has not had actual notice of it. 2003, c. 3, s. 48.

Effect of publication

(4) Publication of a code in *The Ontario Gazette*,

(a) is, in the absence of evidence to the contrary, proof of its text and of its issuance; and

(b) shall be deemed to be notice of its contents to every person subject to it or affected by it. 2003, c. 3, s. 48.

Judicial notice

(5) If a code is published in *The Ontario Gazette*, judicial notice shall be taken of it, of its content and of its publication. 2003, c. 3, s. 48.

Restriction on business activity

71. (1) Subject to subsection 70 (9) and subsection (2) of this section, a transmitter or distributor shall not, except through one or more affiliates, carry on any business activity other than transmitting or distributing electricity. 2004, c. 23, Sched. B, s. 12.

Exception

(2) Subject to section 80 and such rules as may be prescribed by the regulations, a transmitter or distributor may provide services in accordance with section 29.1 of the *Electricity Act, 1998* that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to,

(a) the promotion of electricity conservation and the efficient use of electricity;

(b) electricity load management; or

(c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources. 2004, c. 23, Sched. B, s. 12.

Exception

(3) Despite subsection (1), a distributor may own and operate,

(a) a renewable energy generation facility that does not exceed 10 megawatts or such other capacity as may be prescribed by regulation and that meets any criteria that may be prescribed by the regulations;

(b) a generation facility that uses technology that produces power and thermal energy from a single source and that meets any criteria that may be prescribed by the regulations; or

(c) a facility that is an energy storage facility and that meets any criteria that may be prescribed by the regulations. 2009, c. 12, Sched. D, s. 11; 2011, c. 1, Sched. 4, s. 1.

Separate accounts

72. Every distributor shall keep its financial records associated with distributing electricity separate from its financial records associated with other activities. 1998, c. 15, Sched. B, s. 72.

Municipally-owned distributors

73. (1) If one or more municipal corporations own, directly or indirectly, voting securities carrying more than 50 per cent of the voting rights attached to all voting securities of a corporation that is a distributor, the distributor's affiliates shall not carry on any business activity other than the following:

1. Transmitting or distributing electricity.
2. Owning or operating a generation facility that was transferred to the distributor pursuant to Part XI of the *Electricity Act, 1998* or for which the approval of the Board was obtained under section 82 or for which the Board did not issue a notice of review in accordance with section 80.
3. Retailing electricity.
4. Distributing or retailing gas or any other energy product which is carried through pipes or wires to the user.
5. Business activities that develop or enhance the ability of the distributor or any of its affiliates to carry on any of the activities described in paragraph 1, 3 or 4.
6. Business activities the principal purpose of which is to use more effectively the assets of the distributor or an affiliate of the distributor, including providing meter installation and reading services, providing billing services and carrying on activities authorized under section 42 of the *Electricity Act, 1998*.
7. Managing or operating, on behalf of a municipal corporation which owns shares in the distributor, the provision of a public utility as defined in section 1 of the *Public Utilities Act* or sewage services.
8. Renting or selling hot water heaters.
9. Providing services related to the promotion of energy conservation, energy efficiency, load management or the use of cleaner energy sources, including alternative and renewable energy sources. 1998, c. 15, Sched. B, s. 73 (1); 2002, c. 23, s. 4 (9).

Limitation

(2) In acting under paragraph 7 of subsection (1), the distributor's affiliate shall not own or lease any works, pipes or other machinery or equipment used in the manufacture, processing or distribution of a public utility or in the provision of sewage services. 1998, c. 15, Sched. B, s. 73 (2).

Municipal corporation

(3) Subsection (1) does not restrict the activities of a municipal corporation. 1998, c. 15, Sched. B, s. 73 (3).

Amendment of licence

74. (1) The Board may, on the application of any person, amend a licence if it considers the amendment to be,

(a) necessary to implement a directive issued under this Act; or

(b) in the public interest, having regard to the objectives of the Board and the purposes of the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 13.

Further power to amend

(2) In addition to its power to amend a licence under subsection (1), the Board may amend a licence under section 38 of the *Electricity Act, 1998*. 2004, c. 23, Sched. B, s. 13.

75. REPEALED: 2003, c. 3, s. 49.

76. REPEALED: 2003, c. 3, s. 50.

Suspension or revocation, Board consideration

77. (1) REPEALED: 2003, c. 3, s. 51 (1).

(2) REPEALED: 2003, c. 3, s. 51 (1).

(3) REPEALED: 2003, c. 3, s. 51 (1).

(4) REPEALED: 2003, c. 3, s. 51 (1).

Cancellation of licence

(5) The Board may cancel a licence upon the request in writing of the licence holder. 1998, c. 15, Sched. B, s. 77 (5); 2003, c. 3, s. 51 (2).

(6) REPEALED: 2000, c. 26, Sched. D, s. 2 (6).

Orders by Board, electricity rates

Order re: transmission of electricity

78. (1) No transmitter shall charge for the transmission of electricity except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re: distribution of electricity

(2) No distributor shall charge for the distribution of electricity or for meeting its obligations under section 29 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2000, c. 26, Sched. D, s. 2 (7).

Order re the Smart Metering Entity

(2.1) The Smart Metering Entity shall not charge for meeting its obligations under Part IV.2 of the *Electricity Act, 1998* except in accordance with an order of the Board, which is not bound by the terms of any contract. 2006, c. 3, Sched. C, s. 5 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Order re unit smart meter provider

(2.2) No unit smart meter provider shall charge for unit smart metering except in accordance with an order of the Board, which is not bound by the terms of any contract. 2010, c. 8, s. 38 (12).

See: 2010, c. 8, ss. 38 (12), 40.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Order re unit sub-meter provider

(2.3) No unit sub-meter provider shall charge for unit sub-metering except in accordance with an order of the Board, which is not bound by the terms of any contract. 2010, c. 8, s. 38 (13).

See: 2010, c. 8, ss. 38 (13), 40.

Rates

(3) The Board may make orders approving or fixing just and reasonable rates for the transmitting or distributing of electricity or such other activity as may be prescribed and for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*. 2009, c. 12, Sched. D, s. 12 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (3) is amended by striking out "electricity or such other activity" and substituting "electricity, unit sub-metering or unit smart metering or such other activity". See: 2010, c. 8, ss. 38 (14), 40.

Note: On a day to be named by proclamation of the Lieutenant Governor, section 78 is amended by adding the following subsection:

Rates, unit sub-metering and unit smart-metering

(3.0.0.1) The Board shall, in accordance with rules prescribed by the regulations, make orders approving or fixing separate rates for unit sub-metering and for unit smart metering,

(a) for classes of consumers, as may be prescribed by regulation; and

(b) for different circumstances, as may be prescribed by regulation. 2010, c. 8, s. 38 (15).

See: 2010, c. 8, ss. 38 (15), 40.

Rates

(3.0.1) The Board may make orders approving or fixing just and reasonable rates for the Smart Metering Entity in order for it to meet its obligations under this Act or under Part IV.2 of the *Electricity Act, 1998*. 2006, c. 3, Sched. C, s. 5 (1).

Orders re deferral or variance accounts

(3.0.2) The Board may make orders permitting the Smart Metering Entity or distributors to establish one or more deferral or variance accounts related to costs associated with the smart metering initiative, in the circumstances prescribed in the regulations. 2006, c. 3, Sched. C, s. 5 (1).

Orders re recovery of smart metering initiative costs

(3.0.3) The Board may make orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative, in the situations or circumstances prescribed by regulation and the orders may require them to meet such conditions or requirements as may be prescribed, including providing for the time over which costs may be recovered. 2006, c. 3, Sched. C, s. 5 (1).

Orders re deferral or variance accounts, s. 27.2

(3.0.4) The Board may make orders permitting the OPA, distributors or other licensees to establish one or more deferral or variance accounts related to costs associated with complying with a directive issued under section 27.2. 2009, c. 12, Sched. D, s. 12 (2).

Methods re incentives or recovery of costs

(3.0.5) The Board may, in approving or fixing just and reasonable rates or in exercising the power set out in clause 70 (2) (e), adopt methods that provide,

(a) incentives to a transmitter or a distributor in relation to the siting, design and construction of an expansion, reinforcement or other upgrade to the transmitter's transmission system or the distributor's distribution system; or

(b) for the recovery of costs incurred or to be incurred by a transmitter or distributor in relation to the activities referred to in clause (a). 2009, c. 12, Sched. D, s. 12 (2).

Annual rate plan and separate rates for situations prescribed by regulation

(3.1) The Board shall, in accordance with rules prescribed by the regulations, approve or fix separate rates for the retailing of electricity,

(a) to such different classes of consumers as may be prescribed by the regulations; and

(b) for such different situations as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Same

(3.2) The first rates approved or fixed by the Board under subsection (3.1) shall remain in effect for not less than 12 months and the Board shall approve or fix separate rates under subsection (3.1) after that time for periods of not more than 12 months each or for such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1).

Rates to reflect cost of electricity

(3.3) In approving or fixing rates under subsection (3.1),

(a) the Board shall forecast the cost of electricity to be consumed by the consumers to whom the rates apply, taking into consideration the adjustments required under section 25.33 of the *Electricity Act, 1998* and shall ensure that the rates reflect these costs; and

(b) the Board shall take into account balances in the OPA's variance accounts established under section 25.33 of the *Electricity Act, 1998* and shall make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 14 (1).

Forecasting cost of electricity

(3.4) In forecasting the cost of electricity for the purposes of subsection (3.3), the Board shall have regard to such matters as may be prescribed by the regulations. 2004, c. 23, Sched. B, s. 14 (1).

Imposition of conditions on consumer who enters into retail contract

(3.5) A consumer who enters into or renews a retail contract for electricity after the day he or she becomes subject to a rate approved or fixed under subsection (3.1) is subject to such conditions as may be determined by the Board. 2004, c. 23, Sched. B, 14 (1).

Rates

(4) The Board may make an order under subsection (3) with respect to the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998* even if the distributor is meeting its obligations through an affiliate or through another person with whom the distributor or an affiliate of the distributor has a contract. 1998, c. 15, Sched. B, s. 78 (4).

(5) REPEALED: 2004, c. 23, Sched. B, s. 14 (2).

Same, obligations under s. 29 of *Electricity Act, 1998*

(5.0.1) In approving or fixing just and reasonable rates for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*, the Board shall comply with the regulations made under clause 88 (1) (g.5). 2003, c. 8, s. 1.

Same, Hydro One Inc. and subsidiaries

(5.1) In approving or fixing just and reasonable rates for Hydro One Inc. or a subsidiary of Hydro One Inc., the Board shall apply a method or technique prescribed by regulation for the calculation and treatment of transfers made by Hydro One Inc. or its subsidiary, as the case may be, that are authorized by section 50.1 of the *Electricity Act, 1998*. 2002, c. 1, Sched. B, s. 8; 2003, c. 3, s. 52 (2).

Same, statutory right to use corridor land

(5.2) In approving or fixing just and reasonable rates for a transmitter who has a statutory right to use corridor land (as defined in section 114.1 of the *Electricity Act, 1998*), the Board shall apply a method or technique prescribed by regulation for the treatment of the statutory right. 2002, c. 1, Sched. B, s. 8; 2003, c. 3, s. 52 (3).

Conditions, etc.

(6) An order under this section may include conditions, classifications or practices, including rules respecting the calculation of rates, applicable,

(a) to the Smart Metering Entity in respect of meeting its obligations;

(b) to an activity prescribed for the purposes of subsection (3); and

(c) to the transmission, distribution or retailing of electricity. 2009, c. 12, Sched. D, s. 12 (3).

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed and the following substituted:

(c) to the transmission, distribution or retailing of electricity or unit sub-metering or unit smart metering.

See: 2010, c. 8, ss. 38 (16), 40.

Deferral or variance accounts

(6.1) If a distributor has a deferral or variance account that relates to the commodity of electricity, the Board shall, at least once every three months, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).

Same

(6.2) If a distributor has a deferral or variance account that does not relate to the commodity of electricity, the Board shall, at least once every 12 months, or such shorter period as is prescribed by the regulations, make an order under this section that determines whether and how amounts recorded in the account shall be reflected in rates. 2003, c. 3, s. 52 (4).

Same

(6.3) An order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates shall be made in accordance with the regulations. 2003, c. 3, s. 52 (4).

Same

(6.4) If an order that determines whether and how amounts recorded in a deferral or variance account shall be reflected in rates is made after the time required by subsection (6.1) or (6.2) and the delay is due in whole or in part to the conduct of a distributor, the Board may reduce the amount that is reflected in rates. 2003, c. 3, s. 52 (4).

Same

(6.5) If an amount recorded in a deferral or variance account of a distributor is reflected in rates, the Board shall consider the appropriate number of billing periods over which the amount shall be divided in order to mitigate the impact on consumers. 2003, c. 3, s. 52 (4).

Same

(6.6) Subsections (6.1), (6.2) and (6.4) do not apply unless section 79.6 has been repealed under section 79.11. 2003, c. 3, s. 52 (4).

Fixing other rates

(7) Upon an application for an order approving or fixing rates, the Board may, if it is not satisfied that the rates applied for are just and reasonable, fix such other rates as it finds to be just and reasonable. 1998, c. 15, Sched. B, s. 78 (7).

Burden of proof

(8) Subject to subsection (9), in an application made under this section, the burden of proof is on the applicant. 1998, c. 15, Sched. B, s. 78 (8).

Order

(9) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates that the Board may approve or fix under this section are just and reasonable, the Board shall make an order under subsection (3) and the burden of establishing that the rates are just and reasonable is on the transmitter or distributor, as the case may be. 1998, c. 15, Sched. B, s. 78 (9).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (9) is repealed and the following substituted:

Order

(9) If the Board of its own motion, or upon the request of the Minister, commences a proceeding to determine whether any of the rates that the Board may approve or fix under this section are just and reasonable, the Board shall make an order under subsection (3) and the burden of establishing that the rates are just and reasonable is on the transmitter, distributor or unit sub-meter provider, as the case may be. 2010, c. 8, s. 38 (17).

See: 2010, c. 8, ss. 38 (17), 40.

Payments to prescribed generator

78.1 (1) The IESO shall make payments to a generator prescribed by the regulations, or to the OPA on behalf of a generator prescribed by the regulations, with respect to output that is generated by a unit at a generation facility prescribed by the regulations. 2004, c. 23, Sched. B, s. 15.

Payment amount

(2) Each payment referred to in subsection (1) shall be the amount determined,

(a) in accordance with the regulations to the extent the payment relates to a period that is on or after the day this section comes into force and before the later of,

  (i) the day prescribed for the purposes of this subsection, and

  (ii) the effective date of the Board's first order in respect of the generator; and

(b) in accordance with the order of the Board then in effect to the extent the payment relates to a period that is on or after the later of,

  (i) the day prescribed for the purposes of this subsection, and

  (ii) the effective date of the Board's first order under this section in respect of the generator. 2004, c. 23, Sched. B, s. 15.

OPA may act as settlement agent

(3) The OPA may act as a settlement agent to settle amounts payable to a generator under this section. 2004, c. 23, Sched. B, s. 15.

Board orders

(4) The Board shall make an order under this section in accordance with the rules prescribed by the regulations and may include in the order conditions, classifications or practices, including rules respecting the calculation of the amount of the payment. 2004, c. 23, Sched. B, s. 15.

Fixing other prices

(5) The Board may fix such other payment amounts as it finds to be just and reasonable,

(a) on an application for an order under this section, if the Board is not satisfied that the amount applied for is just and reasonable; or

(b) at any other time, if the Board is not satisfied that the current payment amount is just and reasonable. 2004, c. 23, Sched. B, s. 15.

Burden of proof

(6) Subject to subsection (7), the burden of proof is on the applicant in an application made under this section. 2004, c. 23, Sched. B, s. 15.

Order

(7) If the Board on its own motion or at the request of the Minister commences a proceeding to determine whether an amount that the Board may approve or fix under this section is just and reasonable,

(a) the burden of establishing that the amount is just and reasonable is on the generator; and

(b) the Board shall make an order approving or fixing an amount that is just and reasonable. 2004, c. 23, Sched. B, s. 15.

Application

(8) Subsections (4), (5) and (7) apply only on and after the day prescribed by the regulations for the purposes of subsection (2). 2004, c. 23, Sched. B, s. 15.

Payments to the Financial Corporation

78.2 (1) The IESO shall make payments to the Financial Corporation with respect to the Financial Corporation's contracts with generators relating to output generated at generation facilities prescribed by the regulations and the provision of ancillary services at those generation facilities. 2004, c. 23, Sched. B, s. 16.

Payment amounts

(2) The payments to the Financial Corporation in respect of a contract referred to in subsection (1) shall equal the amounts required to reimburse the Financial Corporation for its indirect costs, as determined under the regulations, and its direct costs under the contract. 2004, c. 23, Sched. B, s. 16.

OPA may act as settlement agent

(3) The OPA may act as a settlement agent to settle amounts payable to the Financial Corporation under this section. 2004, c. 23, Sched. B, s. 16.

Payments to the OPA for output under procurement contracts

78.3 (1) The IESO shall make payments to the OPA with respect to output generated by units at generation facilities and ancillary services in respect of which the OPA has entered into procurement contracts under Part II.2 of the *Electricity Act, 1998* that are prescribed by the regulations or that satisfy the rules prescribed by the regulations. 2004, c. 23, Sched. B, s. 17.

Payment amounts

(2) The payments under subsection (1) to the OPA shall equal the amounts payable by the OPA under the procurement contracts referred to in that subsection. 2004, c. 23, Sched. B, s. 17.

Payment to the OPA under procurement contracts

78.4 (1) The IESO shall make payments to the OPA with respect to amounts paid or payable by the OPA to an entity with whom the OPA has entered into a procurement contract under Part II.2 of the *Electricity Act, 1998* that is prescribed by the regulations or that satisfies the rules prescribed by the regulations. 2004, c. 23, Sched. B, s. 18.

Payment amounts

(2) The payments under subsection (1) to the OPA shall be the amounts payable by the OPA under the procurement contracts referred to in that subsection. 2004, c. 23, Sched. B, s. 18.

Payments to distributors or the OPA under conservation and demand management programs

78.5 (1) The IESO shall make payments to a distributor or to the OPA on behalf of other persons prescribed by the regulations with respect to amounts approved by the Board for conservation and demand management programs approved by the Board pursuant to a directive issued under section 27.2. 2009, c. 12, Sched. D, s. 13.

Amount and timing of payment

(2) The amount and timing of each payment referred to in subsection (1) shall be determined by the Board in accordance with such rules, methods and criteria as may be prescribed by the regulations or mandated by a code issued by the Board or an order of the Board. 2009, c. 12, Sched. D, s. 13.

Regulations review

(3) A regulation made under subsection (2) may require the Board to undertake its review of the amounts referred to in this section at the time or times prescribed by the regulation. 2009, c. 12, Sched. D, s. 13.

OPA may act as settlement agent

(4) The OPA may act as a settlement agent to settle amounts payable to a distributor under this section. 2009, c. 12, Sched. D, s. 13.

Conflict with market rules

78.6 In the event of a conflict, sections 78.1 to 78.5 prevail over the market rules to the extent of the conflict. 2009, c. 12, Sched. D, s. 13.

Rural or remote consumers

79. (1) The Board, in approving just and reasonable rates for a distributor who delivers electricity to rural or remote consumers, shall provide rate protection for those consumers or prescribed classes of those consumers by reducing the rates that would otherwise apply in accordance with the prescribed rules. 1998, c. 15, Sched. B, s. 79 (1).

Special case

(2) In setting rates under subsection (1), the Board shall ensure that the class of rural or remote consumers receiving assistance under section 108 of the *Power Corporation Act* on the day before this section comes into force shall receive rate protection while they continue to,

(a) occupy the same rural residential premises, as defined in section 108 of the *Power Corporation Act*, as they were occupying on that day; and

(b) live in a part of Ontario designated by regulation as a rural or remote area. 1998, c. 15, Sched. B, s. 79 (2).

Compensation

(3) A distributor is entitled to be compensated for lost revenue resulting from the rate reduction provided under subsection (1). 1998, c. 15, Sched. B, s. 79 (3).

Liability for compensation

(4) All consumers are required to contribute towards the amount of any compensation required under subsection (3) in accordance with the regulations. 1998, c. 15, Sched. B, s. 79 (4).

Regulations

(5) The Lieutenant Governor in Council may make regulations,

(a) prescribing the consumers or classes of consumers eligible for rate protection under this section in addition to those described under subsection (2);

(b) designating areas in Ontario as rural or remote areas;

(c) prescribing rules for the calculation of the amount of the rate reduction;

(d) prescribing maximum amounts of the total annual value of rate protection that may be provided under this section;

(e) prescribing rules respecting the amounts that must be collected to compensate distributors, including rules,

(i) respecting the calculation of those amounts,

(ii) establishing the time and manner of collection,

(iii) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(iv) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(v) respecting the distribution of the amounts collected;

(f) respecting the use of money collected in excess of the amount required to compensate distributors;

(g) prescribing the powers and duties of the Board in relation to the calculation of amounts to be collected and the time and manner of collection and distribution;

(h) respecting any other matter that the Lieutenant Governor in Council considers necessary in relation to the rate protection. 1998, c. 15, Sched. B, s. 79 (5).

General or particular

(6) A regulation under this section may be general or particular in application and may prescribe different rules for different persons or classes of persons. 1998, c. 15, Sched. B, s. 79 (6).

Cost recovery, connecting generation facilities

79.1 (1) The Board, in approving just and reasonable rates for a distributor that incurs costs to make an eligible investment for the purpose of connecting or enabling the connection of a qualifying generation facility to its distribution system, shall provide rate protection for prescribed consumers or classes of consumers in the distributor's service area by reducing the rates that would otherwise apply in accordance with the prescribed rules. 2009, c. 12, Sched. D, s. 14.

Distributor entitled to compensation re lost revenue

(2) A distributor is entitled to be compensated for lost revenue resulting from the rate reduction provided under subsection (1) that is associated with costs that have been approved by the Board and incurred by the distributor to make an eligible investment referred to in subsection (1). 2009, c. 12, Sched. D, s. 14.

Consumers' contributions

(3) All consumers are required to contribute towards the amount of any compensation required under subsection (2) in accordance with the regulations. 2009, c. 12, Sched. D, s. 14.

Regulations

(4) The Lieutenant Governor in Council may make regulations,

(a) prescribing consumers or classes of consumers eligible for rate protection under this section;

(b) prescribing criteria to be met by a qualifying generation facility;

(c) prescribing the criteria to be satisfied for an investment to be an eligible investment;

(d) prescribing rules for the calculation of the amount of the rate reduction;

(e) prescribing maximum amounts of the total annual value of rate protection that may be provided under this section;

(f) prescribing rules respecting the amounts that must be collected to compensate distributors, including rules,

(i) respecting the calculation of those amounts,

(ii) establishing the time and manner of collection,

(iii) requiring the amounts to be paid in instalments and requiring the payment of interest or penalties on late payments,

(iv) prescribing methods of ensuring that the amounts required cannot be bypassed, and

(v) respecting the distribution of the amounts collected;

(g) prescribing the powers and duties of the Board in relation to the calculation of amounts to be collected and the time and manner of collection and distribution;

(h) respecting any other matter that the Lieutenant Governor in Council considers necessary for the purposes of this section. 2009, c. 12, Sched. D, s. 14.

Definitions

(5) In this section,

"eligible investment" means an investment in the construction, expansion or reinforcement of a distribution line, transformer, plant or equipment used for conveying electricity at voltages of 50 kilovolts or less that meets the criteria prescribed by regulation; ("investissement admissible")

"qualifying generation facility" means a generation facility that meets the criteria prescribed by regulation. ("installation de production admissible") 2009, c. 12, Sched. D, s. 14.

79.2 REPEALED: 1998, c. 15, Sched. B, s. 79.2 (5).

79.3 - 79.10 REPEALED: 1998, c. 15, Sched. B, s. 79.11.

79.11 SPENT: 2003, c. 8, s. 10; 2004, c. 23, Sched. B, s. 24.

79.12 - 79.15 REPEALED: 1998, c. 15, Sched. B, s. 79.11.

Commodity price for electricity: low volume consumers, etc.

79.16 (1) Despite any order under section 78 and, subject to subsection (7), despite any agreement to the contrary entered into or renewed on or before December 9, 2002, the rates for electricity payable by a consumer who is a member of a class of consumers prescribed by the regulations for the purposes of this section are,

(a) with respect to electricity used on or after the day this subsection comes into force and before the day prescribed by the regulations for the purposes of this subsection, the price determined in accordance with the regulations; and

(b) with respect to electricity used on or after the day prescribed by the regulations for the purposes of this subsection, the rates determined by the Board in accordance with the regulations. 2004, c. 23, Sched. B, s. 25.

Same

(2) The Board shall not make any rate determinations for the purposes of clause (1) (b) unless a regulation has been made under clause 88 (1) (z.8). 2004, c. 23, Sched. B, s. 25.

Adjustment to eliminate variances

(3) In determining rates under clause (1) (b), the Board shall take into account balances in variance accounts established under section 25.33 of the *Electricity Act, 1998* and make adjustments with a view to eliminating those balances within 12 months or such shorter time periods as the Minister may direct. 2004, c. 23, Sched. B, s. 25.

Exception: consumers who file statement

(4) Subsection (1) does not apply to a consumer if,

(a) the consumer indicates in a written statement that the consumer does not wish to have subsection (1) apply and the consumer files the written statement with,

(i) the distributor with whom the consumer has an account, if the consumer is not a market participant, or

(ii) the IESO, if the consumer is a market participant; and

(b) at the time the statement is filed under clause (a), a regulation prescribing criteria for the purpose of this clause is in force and those criteria are met. 2004, c. 23, Sched. B, s. 25.

Application of subs. (1)

(5) Subsection (1) does not apply to a consumer to whom electricity is distributed through a distribution system that is not connected to the IESO-controlled grid. 2004, c. 23, Sched. B, s. 25.

Exception: service transaction request, contract entered into after December 9, 2002

(6) If a consumer enters into or renews a contract after December 9, 2002 with respect to which a service transaction request as defined in the Retail Settlement Code is or has been implemented to enable the consumer to purchase electricity from a competitive retailer as defined in the Retail Settlement Code, subsection (1) does not apply to the consumer during the term of the contract. 2004, c. 23, Sched. B, s. 25.

Contracts entered into after December 9, 2002

(7) Subject to subsection (6), the commodity price for electricity payable by a consumer under subsection (1) is subject to any contract the consumer renews or enters into after December 9, 2002. 2004, c. 23, Sched. B, s. 25.

Same

(8) A consumer who enters into or renews a retail contract for electricity after the date prescribed for the purposes of subsection (1) or becomes subject to a rate approved or fixed by the Board under this section is subject to such conditions as may be determined by the Board. 2004, c. 23, Sched. B, s. 25.

Repeal

(9) This section is repealed on a day to be named by proclamation of the Lieutenant Governor. 2004, c. 23, Sched. B, s. 25.

Form of invoice for prescribed classes of consumers

79.17 (1) The Minister may require that invoices issued in respect of electricity to consumers who are members of a class of consumers prescribed by the regulations be in a form approved by the Minister. 2004, c. 23, Sched. B, s. 26.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is repealed and the following substituted:

Form of invoice for prescribed classes of consumers

(1) The Minister may require that invoices issued in respect of electricity to consumers who are members of a class of consumers prescribed by the regulations meet requirements to be prescribed by the regulations or be in a form approved by the Minister. 2010, c. 8, s. 38 (18).

See: 2010, c. 8, ss. 38 (18), 40.

Different forms

(2) The Minister may approve different forms of invoices and may specify the circumstances in which each form shall be used. 2004, c. 23, Sched. B, s. 26.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is repealed and the following substituted:

Different forms

(2) The regulations may prescribe or the Minister may approve different requirements for invoices and may prescribe or specify the circumstances in which each requirement shall apply or be used and the Minister may approve different forms of invoices and the circumstances under which the forms are to be used. 2010, c. 8, s. 38 (18).

See: 2010, c. 8, ss. 38 (18), 40.

Errors

(3) No defect, error or omission in the form or substance of an invoice issued in respect of electricity to a consumer referred to in subsection (1) invalidates any proceeding for the recovery of the amount payable under the invoice. 2004, c. 23, Sched. B, s. 26.

Prohibition, generation by transmitters or distributors

80. No transmitter or distributor or affiliate of a transmitter or distributor shall acquire an interest in a generation facility in Ontario, construct a generation facility in Ontario or purchase shares of a corporation that owns a generation facility in Ontario unless it has first given notice of its proposal to do so to the Board and the Board,

(a) has not issued a notice of review of the proposal within 60 days of the filing of the notice; or

(b) has approved the proposal under section 82. 1998, c. 15, Sched. B, s. 80.

Prohibition, transmission or distribution by generators

81. No generator or affiliate of a generator shall acquire an interest in a transmission or distribution system in Ontario, construct a transmission or distribution system in Ontario or purchase shares of a corporation that owns a transmission or distribution system in Ontario unless it has first given notice of its proposal to do so to the Board and the Board,

(a) has not issued a notice of review of the proposal within 60 days of the filing of the notice; or

(b) has approved the proposal under section 82. 1998, c. 15, Sched. B, s. 81.

Review of acquisition

82. (1) If the Board has issued a notice of review under section 80 or 81, it shall expeditiously proceed to review the proposal. 1998, c. 15, Sched. B, s. 82 (1).

Order

(2) The Board shall make an order approving a proposal described in section 80 if it determines that,

(a) the impact of the proposal would not adversely affect the development and maintenance of a competitive market; or

(b) the proposal is required to maintain the reliability of the transmission or distribution system of the relevant transmitter or distributor. 1998, c. 15, Sched. B, s. 82 (2).

Same

(3) The Board shall make an order approving a proposal described in section 81 if it determines that the impact of the proposal would not adversely affect the development and maintenance of a competitive market. 1998, c. 15, Sched. B, s. 82 (3).

Condition for making order

(4) Unless the Board makes the determination described in subsection (2) or (3), it shall not make an order approving a proposal described in section 80 or 81, respectively. 1998, c. 15, Sched. B, s. 82 (4).

Standards, targets and criteria

83. (1) The Board may establish standards, targets and criteria for evaluation of performance by generators to whom section 78.1 applies, transmitters, distributors and retailers. 1998, c. 15, Sched. B, s. 83 (1); 2004, c. 23, Sched. B, s. 27 (1).

Regard for standards, targets

(2) The Board may have regard to the standards, targets and criteria referred to in subsection (1) in exercising its powers and performing its duties under this or any other Act in relation to generators to whom section 78.1 applies, transmitters, distributors and retailers, including establishing the conditions of a licence. 1998, c. 15, Sched. B, s. 83 (2); 2004, c. 23, Sched. B, s. 27 (2).

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.

Change in ownership or control of systems

86. (1) No transmitter or distributor, without first obtaining from the Board an order granting leave, shall,

(a) sell, lease or otherwise dispose of its transmission or distribution system as an entirety or substantially as an entirety;

(b) sell, lease or otherwise dispose of that part of its transmission or distribution system that is necessary in serving the public; or

(c) amalgamate with any other corporation. 2003, c. 3, s. 55 (1).

Same

(1.1) Subsection (1) does not apply with respect to a disposition of securities of a transmitter or distributor or of a corporation that owns securities in a transmitter or distributor. 2002, c. 1, Sched. B, s. 9 (1).

Acquisition of share control

(2) No person, without first obtaining an order from the Board granting leave, shall,

(a) acquire such number of voting securities of a transmitter or distributor that together with voting securities already held by such person and one or more affiliates or associates of that person, will in the aggregate exceed 20 per cent of the voting securities of the transmitter or distributor; or

(b) acquire control of any corporation that holds, directly or indirectly, more than 20 per cent of the voting securities of a transmitter or distributor if such voting securities constitute a significant asset of that corporation. 1998, c. 15, Sched. B, s. 86 (2).

Same

(2.1) Subsection (2) does not apply to,

(a) the Crown in right of Ontario;

(b) an underwriter (within the meaning of the *Securities Act*) who holds the voting securities solely for the purpose of distributing them to the public;

(c) any person or entity who is acting in relation to the voting securities solely in the capacity of an intermediary in the payment of funds or the delivery of securities or both in connection with trades in securities and who provides centralized facilities for the clearing of trades in securities; or

(d) any person or entity who holds the voting securities by way of security only. 2002, c. 1, Sched. B, s. 9 (2).

Significant asset

(3) For the purposes of subsection (2),

(a) an asset is a significant asset if its value is 20 per cent or more of the aggregate book value of the total assets of a person, determined on a consolidated basis in accordance with generally accepted accounting principles; and

(b) "control", with respect to a corporation, has the same meaning as in the *Business Corporations Act*. 1998, c. 15, Sched. B, s. 86 (3).

Valuation of voting securities

(4) For the purpose of determining whether voting securities constitute a significant asset, the value of the voting securities shall be deemed to be,

(a) the market value of the securities if more than 20 per cent of the voting securities are publicly traded; and

(b) 115 per cent of the book value of the voting securities, as determined by the equity method of accounting, in all other cases. 1998, c. 15, Sched. B, s. 86 (4).

Mortgages

(5) This section does not apply to a mortgage or charge to secure any loan or indebtedness or to secure any bond, debenture or other evidence of indebtedness. 1998, c. 15, Sched. B, s. 86 (5).

Transactions under *Electricity Act, 1998*

(5.1) This section does not apply with respect to a transaction described in section 50.1 or 50.2 of the *Electricity Act, 1998*. 2002, c. 1, Sched. B, s. 9 (2).

Leave

(6) An application for leave under this section shall be made to the Board, which shall grant or refuse leave. 1998, c. 15, Sched. B, s. 86 (6).

Void agreement

(6.1) An amalgamation agreement between the corporations that propose to amalgamate is void if the Board refuses to grant leave under this section, even if the amalgamation agreement has been adopted in accordance with subsection 176 (4) of the *Business Corporations Act*. 2003, c. 3, s. 55 (2).

Void certificate

(6.2) A certificate of amalgamation endorsed by the director appointed under section 278 of the *Business Corporations Act* is void if it is endorsed before leave of the Board for the amalgamation is granted. 2003, c. 3, s. 55 (2).

Sale of assets of OEFC to or by Hydro One Inc., etc.

(7) Despite subsection (1) and any order of the Board, the sale, lease, conveyance, transfer, assignment, assumption or other disposition of any of the assets, rights, liabilities or obligations of the Ontario Electricity Financial Corporation to or by Hydro One Inc. or a subsidiary of Hydro One Inc. after March 31, 1999, including any such sale, lease, conveyance, transfer, assignment, assumption or other disposition completed before this subsection came into force, does not require an order from the Board granting leave. 2002, c. 23, s. 4 (13).

Board to monitor markets

87. (1) The Board shall monitor markets in the electricity sector and may report to the Minister on the efficiency, fairness, transparency and competitiveness of those markets. 1998, c. 15, Sched. B, s. 87 (1).

Board to advise Minister

(2) The Board shall advise the Minister with respect to any of the following matters if requested by the Minister to do so or if the Board considers it advisable to do so:

1. Any abuse or potential abuse of market power in the electricity sector.
2. The circumstances giving rise to or that is capable of giving rise to unintended outcomes or effects that operate contrary to the interests of competition. 2004, c. 23, Sched. B, s. 28.

Regulations, electricity licences

88. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing requirements for a licence which allows for the retailing of electricity to residential or small business consumers, as defined in the regulations, which, if not met, will result in the refusal to issue or renew a licence;

(a.0.1) prescribing the time or times at which a licence is to be renewed for the purposes of subsection 51 (2);

(a.0.2) prescribing classes of consumers for the purposes of section 58;

(a.1) providing for the establishment, administration and operation of a tracking system to associate electricity with the processes and fuel types used by generation facilities and with the types and quantities of contaminants emitted by generation facilities, including,

(i) designating the administrator of the tracking system and prescribing the administrator's powers and duties,

(ii) designating a person or body to audit the tracking system and the information used by the tracking system and prescribing the auditor's powers and duties, including powers to enter business premises and inspect documents and records,

(iii) requiring persons prescribed by the regulations to submit information prescribed by the regulations or by the administrator or auditor of the tracking system to the administrator or auditor in a form and at times specified by the regulations or by the administrator or auditor,

(iv) protecting the administrator of the tracking system from liability arising from incorrect information provided by other persons,

(v) requiring the administrator or auditor of the tracking system or the Minister to make determinations for the purposes of the tracking system,

(vi) requiring information from the tracking system to be made available to the public,

(vii) requiring persons prescribed by the regulations to provide other persons prescribed by the regulations with information from the tracking system in a form and at times specified by the regulations or by the administrator or auditor of the tracking system,

(viii) authorizing and governing the issuance of certificates related to determinations made for the purposes of the tracking system, and

(ix) authorizing the administrator of the tracking system, subject to the approval of the Board, to establish and charge fees in connection with the tracking system, and governing the establishment and charging of those fees;

(b) requiring retailers or generators or persons engaged in an activity described in clause 57 (f) to make timely disclosure to the Minister of the Environment, or the IESO in the manner and at the times prescribed, of the nature and quantity of the prescribed contaminants emitted by the generation facility from which the electricity being sold or offered for sale is produced or deemed to be produced, the nature of the fuel and the process of generation used at the facility;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) is repealed by the Statutes of Ontario, 2002, chapter 1, Schedule B, subsection 10 (3). See: 2002, c. 1, Sched. B, ss. 10 (3), 19 (2).

(c) authorizing the Minister of the Environment to determine from which generation facility or facilities electricity is deemed to be produced in accordance with such rules as may be prescribed in the regulation;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (c) is repealed by the Statutes of Ontario, 2002, chapter 1, Schedule B, subsection 10 (5). See: 2002, c. 1, Sched. B, ss. 10 (5), 19 (2).

(d) requiring retailers or generators or persons engaged in an activity described in clause 57 (f) to file with the Board, in such form and at such times as the Board may determine, evidence that the generation facility from which the electricity is produced or is deemed to be produced meets standards for emission of prescribed contaminants from a source or class of sources set out under the *Environmental Protection Act*;

(e) respecting the manner in which reductions, credits or allowances acquired by a retailer, generator or a person engaged in an activity described in clause 57 (f) under the *Environmental Protection Act* may be used in determining whether there has been compliance with the standards referred to in clause (d);

(f) requiring retailers to make timely disclosure to consumers, in the manner and at the times prescribed, of the nature and quantity of the prescribed contaminants emitted by the generation facility from which the electricity being sold or offered for sale is produced or is deemed to be produced, the nature of the fuel and the process of generation used at the facility and such other information as is prescribed;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (f) is repealed by the Statutes of Ontario, 2002, chapter 1, Schedule B, subsection 10 (6). See: 2002, c. 1, Sched. B, ss. 10 (6), 19 (2).

(g) delegating to a body the power to establish the manner and time requirements described in clause (f) and requiring retailers to disclose the information described in that clause in that manner and within those time periods;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (g) is repealed by the Statutes of Ontario, 2002, chapter 1, Schedule B, subsection 10 (6). See: 2002, c. 1, Sched. B, ss. 10 (6), 19 (2).

(g.1) requiring a distributor, in the circumstances and in the manner prescribed by the regulations, to subtract the amount of electricity conveyed into the distribution system by a generator from the amount consumed from the system by the generator, for billing purposes, if the generator generates electricity primarily for the generator's own use;

(g.2) for the purposes of clause 70 (2) (d.1), prescribing matters which may be included as a licence condition in a licence of a retailer of electricity in relation to the retailing of electricity;

(g.3) REPEALED: 2004, c. 23, Sched. B, s. 29 (3).

(g.3.1) prescribing rules for the purposes of subsection 71 (2);

(g.3.2) governing,

(i) the capacity of a renewable energy generation facility referred to in clause 71 (3) (a) and criteria for a renewable energy generation facility for the purposes of clause 71 (3) (a),

(ii) criteria for a generation facility that uses technology that produces power and thermal energy from a single source for the purposes of clause 71 (3) (b), and

(iii) criteria for an energy storage facility for the purposes of clause 71 (3) (c);

(g.4) prescribing different situations for which separate rates must be approved or fixed under section 78, with those situations being defined with reference to amounts of electricity used and times when electricity is used;

(g.5) governing the approving or fixing under section 78 of just and reasonable rates for the retailing of electricity in order to meet a distributor's obligations under section 29 of the *Electricity Act, 1998*, including prescribing methods of and procedures for approving or fixing rates, including requiring persons licensed under this Part to participate in those methods and procedures and to enter into contracts or other arrangements as part of those methods and procedures;

(g.6) prescribing different classes of consumers for the purposes of section 78 and the date or method of determining the date on which rates approved or fixed for a class of consumers take effect;

(g.6.0.1) prescribing circumstances under which a transmitter or distributor shall bear the costs of construction, expansion or reinforcement associated with the connection of a renewable energy generation facility to the transmitter's transmission system or the distributor's distribution system;

(g.6.0.2) for the purposes of subsection 78 (3.0.0.1), prescribing rules in relation to the fixing of just and reasonable rates for unit sub-metering that the Board must follow, prescribing classes of consumers for the purposes of clause 78 (3.0.0.1) (a) and prescribing circumstances for the purposes of clause 78 (3.0.0.1) (b);

(g.6.1) prescribing the circumstances in which the Board may make orders permitting the Smart Metering Entity or distributors to establish deferral or variance accounts for the purposes of subsection 78 (3.0.2);

(g.6.2) in respect of orders relating to the ability of the Smart Metering Entity, distributors, retailers and other persons to recover costs associated with the smart metering initiative for the purposes of subsection 78 (3.0.3);

(g.7) governing the approving or fixing under subsection 78 (3.1) of rates for the retailing of electricity, including,

(i) prescribing rules for the purposes of subsection 78 (3.1), and

(ii) prescribing matters for the purposes of subsection 78 (3.4) to be taken into consideration in forecasting the cost of electricity and the methods of and procedures for forecasting the cost of electricity, including the treatment of any outstanding balances in variance accounts held by the OPA;

(g.8) prescribing conditions for the purposes of subsection 78 (3.5);

(h) prescribing, for the purposes of subsection 78 (5.1), methods and techniques for the calculation and treatment of transfers made by Hydro One Inc. or its subsidiary, as the case may be, that are authorized by section 50.1 of the *Electricity Act, 1998*;

(i) prescribing, for the purposes of subsection 78 (5.2), methods and techniques for the treatment of the statutory right to use corridor land;

(i.1) prescribing generators and generation facilities and units for the purposes of section 78.1;

(i.2) prescribing generators or generation facilities and units at generation facilities whose generators may apply to the Board for an order that section 78.1 applies to the facility or unit and rules governing the procedure for applying, the criteria to be satisfied and any terms and limitations that must or may be included in the order;

(i.3) governing circumstances in which payments shall not be made under section 78.1;

(i.4) prescribing a date for the purposes of subsection 78.1 (2);

(i.5) prescribing payment amounts or methods for determining payment amounts for the purposes of clause 78.1 (2) (a) including prescribing separate prices or methods for different situations, including situations defined with respect to energy sources, time of generation and amounts of electricity generated;

(i.6) governing the determination of payment amounts by the Board under section 78.1, including rules prescribing,

(i) methods of and procedures for determining payment amounts,

(ii) financial factors which the Board may take into consideration in determining payment amounts, and

(iii) different payment amounts or different methods of and procedures for determining payment amounts for different situations, including situations defined with respect to energy sources, time of generation and amounts of electricity generated;

(i.7) authorizing or requiring generators to establish one or more variance or deferral accounts in connection with section 78.1;

(i.8) prescribing generation facilities for the purposes of section 78.2;

(i.9) prescribing rules for determining the amount of the Financial Corporation's indirect costs in respect of a contract for the purposes of section 78.2;

(i.10) prescribing procurement contracts or rules relating to procurement contracts for the purposes of section 78.3;

(i.11) prescribing procurement contracts or rules relating to procurement contracts for the purposes of section 78.4;

(j) governing all matters relating to payment amounts under section 78.5;

(k)-(o) REPEALED: 1998, c. 15, Sched. B, s. 79.1 (24).

(p)-(q) REPEALED: 1998, c. 15, Sched. B, s. 79.2 (5).

(r) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(r.1) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(r.2) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(s)-(y) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(z) REPEALED: 2004, c. 23, Sched. B, s. 29 (9).

(z.1) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(z.2) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(z.3) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(z.4) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(z.5) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

(z.6) prescribing classes of consumers for the purposes of section 79.16;

(z.7) prescribing prices or methods for determining prices for the purpose of clause 79.16 (1) (a), including prescribing separate prices or methods for different situations, including situations defined with respect to types of consumers and amounts of electricity used;

(z.8) governing the determination of rates by the Board under clause 79.16 (1) (b), including,

(i) prescribing methods of and procedures for determining rates, including requiring persons licensed under this Part to participate in those methods and procedures and to enter into contracts or other arrangements as part of those methods and procedures, and

(ii) prescribing different situations for which separate rates must be determined, including situations defined with respect to types of consumers, amounts of electricity used and times when electricity is used;

(z.9) prescribing a date for the purpose of subsection 79.16 (1);

(z.10) prescribing criteria for the purposes of clause 79.16 (4) (b);

(z.11) prescribing classes of consumers for the purposes of section 79.17 and information that must or may be included on invoices issued in respect of electricity to consumers in one or more of the prescribed classes;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (z.11) is repealed and the following substituted:

(z.11) for the purposes of section 79.17, prescribing,

(i) classes of consumers,

(ii) information that must or may be included on invoices issued in respect of electricity to consumers in one or more of the prescribed classes,

(iii) the requirements that the invoices must meet, and

(iv) the form of the invoice, including prescribing different requirements and forms for the purposes of that section;

See: 2010, c. 8, ss. 38 (20), 40.

(z.12) respecting the manner in which invoices issued in respect of electricity to consumers who are members of a class of consumers prescribed for the purposes of section 79.17 are to be provided to those consumers. 1998, c. 15, Sched. B, s. 88 (1) [see also ss. 79.1 (24), 79.2 (5), 79.11]; 2002, c. 1, Sched. B, s. 10; 2002, c. 23, s. 4 (14-17); 2003, c. 3, s. 56 (1, 2); 2003, c. 8, s. 11; 2004, c. 23, Sched. B, s. 29 (1-11); 2006, c. 3, Sched. C, s. 6; 2009, c. 12, Sched. D, s. 15; 2010, c. 8, s. 38 (19).

Retroactive

(2) A regulation made under clause (1) (i.5), (i.9) or (z.7) may apply in respect of an amount payable before the day the regulation is filed. 2004, c. 23, Sched. B, s. 29 (12).

Same

(2.0.1) A regulation made under clause (1) (i.8), (i.9), (i.10) or (i.11) may apply with respect to a period before it is filed. 2004, c. 23, Sched. B, s. 29 (12).

Conflict with market rules

(2.0.2) In the event of a conflict, a regulation made under clause (1) (i.5), (i.6), (i.9), (i.10) or (i.11) prevails over the market rules to the extent of the conflict. 2004, c. 23, Sched. B, s. 29 (12).

(2.1)-(2.3) REPEALED: 1998, c. 15, Sched. B, s. 79.11.

General or particular

(3) A regulation under this section may be general or particular in its application. 1998, c. 15, Sched. B, s. 88 (3).

Compensation of distributors, retailers, etc.

Purposes

88.0.1 (1) The purpose of this section is to make such financial arrangements as the Lieutenant Governor in Council or a person referred to in subsection (4) considers appropriate,

(a) to compensate distributors for payments made by them under section 79.1 and for reductions made to PPVA accounts or equal billing plan accounts under that section, other than reductions related to interest;

(b) to compensate retailers for payments made by them under section 79.1;

(c) to compensate the IESO for payments made by it under section 79.2;

(c.1) to provide for payments to consumers, if the Minister determines that, in respect of all periods to which clause 79.4 (1) (a) or 79.16 (1) (a) applied, the total of the amount received by the Financial Corporation in connection with this Act and the amount received by the OPA under section 25.33 of the *Electricity Act, 1998* exceeds the total of the amount expended by the Financial Corporation in connection with this Act and the amount expended by the OPA under section 25.33 of the *Electricity Act, 1998*;

(c.2) to compensate distributors, retailers, the IESO and the OPA for payments made by them pursuant to clause (c.1);

(d) to offset differences between the commodity price for electricity in contracts between retailers and consumers that were in effect on November 11, 2002 and the commodity price for electricity in the IESO-administered markets;

(e) to offset differences between the commodity price for electricity supplied by generators and the commodity price for electricity payable by consumers as a result of the operation of clause 79.4 (1) (a), section 79.5 and clause 79.16 (1) (a);

(e.1) to compensate the OPA for payments made by it under section 25.33 of the *Electricity Act, 1998* in respect of any period during which either clause 79.4 (1) (a) or 79.16 (1) (a) applies; and

(f) to make payments to the IESO in respect of liabilities or expenses it incurs after the coming into force of this section as a result of carrying out its objects under the *Electricity Act, 1998*. 2002, c. 23, s. 4 (19); 2003, c. 8, s. 12 (1); 2004, c. 23, Sched. B, s. 30 (1-7).

Regulations

(2) The Lieutenant Governor in Council may make regulations,

(a) requiring the Financial Corporation or a subsidiary of the Financial Corporation to make payments to distributors, retailers, the IESO or the OPA, requiring the OPA to make payments to distributors, retailers or the IESO and prescribing methods for determining the amounts payable;

(b) requiring distributors to make payments to retailers and prescribing methods for determining the amounts payable;

(c) requiring the IESO, the OPA or a distributor or retailer to make payments to the Financial Corporation or a subsidiary of the Financial Corporation and prescribing methods for determining the amounts payable;

(c.1) requiring distributors, retailers or the IESO to make payments to consumers to whom either clause 79.4 (1) (a) or 79.16 (1) (a) applied and prescribing rules for calculating the amount of the payments and for determining the classes of consumers who are entitled to receive payments;

(d) governing the payments required under clause (a), (b), (c) or (c.1), including methods of payment and the times within which payments must be made;

(e) governing the calculation of amounts payable by distributors and consumers to the IESO for the operation of the IESO-administered markets and the operation of the IESO-controlled grid;

(f) authorizing distributors to set off amounts against amounts they owe to the IESO or other distributors, and prescribing methods for determining the amounts that may be set off;

(g) governing the set-offs authorized under clause (f), including methods of set-off and the times within which amounts may be set off;

(h) for the purposes of this section, requiring distributors, retailers or consumers to provide information to the Financial Corporation or a subsidiary of the Financial Corporation, the IESO, the OPA or distributors, requiring the IESO to provide information to the Financial Corporation or a subsidiary of the Financial Corporation, the OPA or distributors and requiring the OPA to provide information to the Financial Corporation or a subsidiary of the Financial Corporation, the IESO or distributors;

(i) prescribing a day for the purposes of subsection (2.1). 2002, c. 23, s. 4 (19); 2003, c. 8, s. 12 (2-4); 2004, c. 23, Sched. B, s. 30 (8-14).

Application of regulations

(2.1) A regulation made under clause (2) (a), (b), (c), (c.1), (d), (e), (f), (g) or (h) applies only with respect to electricity generated or consumed before the day prescribed for the purposes of this subsection. 2004, c. 23, Sched. B, s. 30 (15).

General or particular

(3) A regulation under subsection (2) may be general or particular in its application. 2002, c. 23, s. 4 (19).

Subdelegation

(4) A regulation under subsection (2) may authorize a person to require, authorize, prescribe or otherwise determine any matter that may be required, authorized, prescribed or otherwise determined by the Lieutenant Governor in Council under subsection (2). 2002, c. 23, s. 4 (19).

Provision of information

(5) A person may do anything required by a regulation made under clause (2) (h) despite any agreement to the contrary, the person is not liable for doing the thing in contravention of any agreement to the contrary, and doing the thing shall be deemed not to constitute a breach, termination, repudiation or frustration of any contract. 2002, c. 23, s. 4 (19).

Conflict with market rules

(6) In the event of a conflict, a regulation made under clause (2) (c), (c.1), (d), (e), (f) or (g) prevails over the market rules to the extent of the conflict. 2002, c. 23, s. 4 (19); 2003, c. 8, s. 12 (5).

No assignment

(6.1) An assignment by a consumer to a retailer of the entitlement to any payment does not apply to a payment that is required by the regulations made under clause (2) (c.1), whether the assignment was made before or after this subsection comes into force. 2003, c. 8, s. 12 (6).

Purpose of payments

(6.2) Any payments that are required by the regulations made under clause (2) (c.1) are for the purpose of reimbursing consumers for part of the commodity price they paid for electricity. 2003, c. 8, s. 12 (6).

Investigations and inquiries

(7) Any person thereunto authorized by the Minister of Finance for any purpose related to the administration of this section or any regulation made under it may at all reasonable times enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business, and,

(a) audit or examine the books and records and any account, voucher, letter or other document that relates or may relate to the information that is or should be in the books or records;

(b) examine any property, process or matter, an examination of which may, in the person's opinion, assist in ascertaining the information that is or should be in the books or records; and

(c) require a distributor, retailer, the IESO or the OPA or a partner or the president, manager, secretary or any director, agent or representative thereof and any other person on the premises of a distributor, retailer, the IESO or the OPA to give him or her all reasonable assistance with the audit or examination and to answer all questions relating to the audit or examination, either orally or, if he or she so requires, in writing, on oath or by statutory declaration, and for that purpose require such person to attend at the premises or place with him or her. 2002, c. 23, s. 4 (19); 2004, c. 23, Sched. B, s. 30 (16).

Same

(8) The Minister of Finance may, for any purpose related to the administration of this section or the regulations made under it, by registered letter, or by a demand served personally or delivered by a courier service, within such reasonable time as is stipulated in the registered letter or demand, require from any person, partnership, syndicate, trust, corporation, or other business entity or from any partner, agent, member, director or officer thereof,

(a) any information required to be provided to any person by a regulation under clause (2) (h);

(b) production of books, letters, accounts, invoices, financial statements, computer programs or data files, or any other documents on paper or stored electronically;

(c) particulars of any amounts paid or payable to or by, or held on behalf of, a distributor, retailer, consumer, the IESO or the OPA; or

(d) a written statement, concerning any matter that may be relevant to the administration of this section or the regulations made under it. 2002, c. 23, s. 4 (19); 2004, c. 23, Sched. B, s. 30 (16).

Same

(9) The Minister of Finance may require that a written statement referred to in clause (8) (d) be made by way of affidavit or statutory declaration. 2002, c. 23, s. 4 (19).

Admission of evidence

(10) The Minister of Finance, or a person authorized by the Minister, may, for any purpose related to the administration of this section or the regulations made under it, reproduce from original data stored electronically any information previously submitted as required under this section or the regulations in any form by any person, and the electronically reproduced document shall be admissible in evidence and shall have the same probative force as the original document would have had if it had been proved in the ordinary way. 2002, c. 23, s. 4 (19).

Inquiry

(11) The Minister of Finance may, for any purpose related to the administration of this section or the regulations made under it, authorize any person, whether or not the person is an officer of the Ministry of Finance, to make such inquiry as the Minister of Finance considers necessary with reference to anything relating to the administration of this section or the regulations. 2002, c. 23, s. 4 (19).

Copies

(12) If a book, record or other document is examined or produced under this section, the person by whom it is examined or to whom it is produced or any officer of the Ministry of Finance may make, or cause to be made, one or more copies thereof, and a document purporting to be certified by the person to be a copy made pursuant to this section is admissible in evidence and has the same probative force as the original document would have if proved in the ordinary way. 2002, c. 23, s. 4 (19).

Compliance

(13) No person shall hinder or molest or interfere with any person doing anything that the person is authorized by this section to do or prevent or attempt to prevent any person doing any such thing. 2002, c. 23, s. 4 (19).

Same

(14) Despite any other law to the contrary, every person shall, unless the person is unable to do so, do everything he, she or it is required by this section to do. 2002, c. 23, s. 4 (19).

Administration of oaths

(15) Declarations or affidavits in connection with statements of information submitted pursuant to this section may be taken before any person having authority to administer an oath or before any person specially authorized for that purpose by the Lieutenant Governor in Council, but any person so specially authorized shall not charge any fee therefor. 2002, c. 23, s. 4 (19).

Application of *Public Inquiries Act, 2009*

(16) Section 33 of the *Public Inquiries Act, 2009* applies to an inquiry under subsection (11). 2009, c. 33, Sched. 6, s. 77.

No approval required for subsidiary

(17) A subsidiary of the Financial Corporation may be established for the purposes of this section without the approval of the Minister of Finance under subsection 72 (1) of the *Electricity Act, 1998*. 2002, c. 23, s. 4 (19).

Money paid to Financial Corporation

(18) Money paid to the Financial Corporation or a subsidiary of the Financial Corporation under this section is the property of the Financial Corporation or the subsidiary, as the case may be. 2002, c. 23, s. 4 (19).

Repeal

(19) This section is repealed on a day to be named by proclamation of the Lieutenant Governor. 2004, c. 23, Sched. B, s. 30 (17).

PART V.1
GAS MARKETERS AND RETAILERS OF ELECTRICITY — STANDARDS AND AUDITS

Licences

88.1 (1) A licence issued under Part IV or V,

(a) shall contain such conditions as may be prescribed by regulation; and

(b) may contain such other conditions provided by an order of the Board or any rule or code issued by the Board. 2010, c. 8, s. 38 (21).

Same

(2) For the purposes of subsection (1), a regulation may specify criteria, conditions or requirements that must or that may be included as a condition of licence in any licence issued to a gas marketer or a retailer of electricity, including criteria, conditions or requirements relating to the following:

1. The operations, management and business practices of a gas marketer or retailer of electricity, including but not limited to the conduct of employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
2. The activities, conduct or practices that must, may or may not be undertaken by the gas marketer or retailer of electricity, its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
3. The establishment of an assurance fund within each gas marketer or retailer of electricity, including,
    i. criteria and requirements as to the amount that the gas marketer or retailer of electricity is required to maintain in the fund or a method for determining the amount, and
    ii. the circumstances governing how the amount is to be contributed to the fund by the gas marketer or retailer of electricity and the times at which and the circumstances under which contributions are to be made and the amount is to be maintained.
4. Standards that are required to be met by a gas marketer or a retailer of electricity or its employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including standards related to,
    i. education, training, certifications and communications,
    ii. business practices,
    iii. performance standards,
    iv. background verifications and assessments as required under paragraph 7,
    v. record keeping,
    vi. contracting, including standards related to contracting with prescribed consumers or prescribed classes of consumers, and
    vii. such other matters as may be prescribed by regulation.
5. Information that is to be provided orally or in writing by a gas marketer or retailer of electricity or its employees, agents or third parties acting on its behalf to a consumer or a member of a class of consumers prescribed by regulation, the Board, the Ministry or to such other person or entity as may be prescribed by regulation and the circumstances in which the information must be provided and the time or times within which such information must be provided.
6. Identification, including criteria or requirements related to the identification credentials or badges or other forms of identification provided to the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity.
7. Background verification and assessment of the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the requirement to establish a process or processes to conduct the verifications and assessments and the criteria and requirements for the time or times at which the verification and assessments must be performed.
8. The establishment of processes related to employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity, including the prescribing of conditions, requirements or criteria to be met by such processes, for the following activities:
    i. Business related activities, including,
        A. licensing, including renewal, suspension and cancellation of licences,
        B. bonding and insurance,
        C. examination for prescribed credentials, certificates, accreditations or designations,
        D. creation of codes of conduct, best practices and policies,
        E. requirements in relation to independence from or permissible investment in or association with a gas marketer or retailer of electricity or another licensee, and
        F. such other matters as may be prescribed by regulation.

ii. The conduct of activities referred to in this section in relation to each of the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity at such times as may be prescribed by regulation.

iii. Ensuring that the employees, agents or third parties acting on behalf of the gas marketer or retailer of electricity adhere to the processes referred to in this section and, in particular, obtain any prescribed credentials.

9. Requirements or provisions that must be included in any arrangements or agreements relating to retailing of electricity or gas marketing in Ontario, including arrangements or agreements relating to retailing of electricity or gas marketing to consumers or to classes of consumers prescribed by regulation. Such requirements or provisions may be general or specific in nature. 2010, c. 8, s. 38 (21).

Licensing employees, etc.

88.2 (1) Where a regulation made under this Act so requires, the Board shall license the following persons and the regulation may specify conditions, criteria or requirements that must or may be included in a licence issued to the person:

1. Employees of a gas marketer or retailer of electricity or members of classes of such employees prescribed by regulation.

2. Employees of third parties acting on behalf of gas marketers or retailers of electricity or members of classes of such employees prescribed by regulation. 2010, c. 8, s. 38 (21).

Processes, etc.

(2) For the purposes of subsection (1), any process established by the Board to license the employees referred to in that subsection shall meet the criteria or requirements prescribed by regulation. 2010, c. 8, s. 38 (21).

Powers of audit

88.3 (1) The Board may appoint a person who meets the criteria as may be prescribed by regulation to audit the compliance of a gas marketer or retailer of electricity or its agents or employees with the requirements of,

(a) any condition of a licence referred to in section 48 or 57; or

(b) an enforceable provision. 2010, c. 8, s. 38 (21).

Time for audit

(2) The Board may authorize the person appointed to audit compliance to conduct the audit at such time as the Board may require. 2010, c. 8, s. 38 (21).

Audit, without notice

(3) Where the Board authorizes a person to audit the compliance of a gas marketer or retailer of electricity, the Board may do so without notice to the gas marketer or retailer of electricity. 2010, c. 8, s. 38 (21).

Audit, where notice provided

(4) Despite subsection (3), where the Board does provide notice of the audit to the gas marketer or retailer of electricity, it shall do so in the manner prescribed by regulation and the notice shall include the information prescribed by regulation. 2010, c. 8, s. 38 (21).

Examination of records, etc.

(5) For the purposes of subsection (1), the person appointed may do or cause to be done any one or more of the following:

1. Examining any record or copying any document or record, in any form, by any method.

2. Requiring any document or record that is required to be kept under this Act to be provided, in any form, and requiring any other document or record related to the purposes of the audit to be provided, in any form.

3. Examining documents relating to the training, education or professional credentials, certificates, accreditations or other designations of the employees, agents or third parties for the gas marketer or retailer of electricity, including determining which credentials, certificates, accreditations or other designations the employee, agent or third party has or has not received.

4. Removing from a place documents or records, in any form, that are provided under paragraph 2 for the purpose of making copies.

5. Making reasonable inquiries of any person, orally or in writing. 2010, c. 8, s. 38 (21).

Regulations

88.4 The Lieutenant Governor in Council may make regulations governing all matters dealt with in this Part that are required or permitted to be prescribed by regulation or that are required or permitted to be done in accordance with the regulations. 2010, c. 8, s. 38 (21).

88.5-88.8 REPEALED: 2003, c. 3, s. 58.

88.9-88.12 REPEALED: 2010, c. 8, s. 38 (21).

88.13, 88.14 REPEALED: 2003, c. 3, s. 61.

PART VI
TRANSMISSION AND DISTRIBUTION LINES

Definitions, Part VI

89. In this Part,

"electricity distribution line" means a line, transformers, plant or equipment used for conveying electricity at voltages of 50 kilovolts or less; ("ligne de distribution d'électricité")

"electricity transmission line" means a line, transformers, plant or equipment used for conveying electricity at voltages higher than 50 kilovolts; ("ligne de transport d'électricité")

"hydrocarbon line" means a pipe line carrying any hydrocarbon, other than a pipe line within an oil refinery, oil or petroleum storage depot, chemical processing plant or pipe line terminal or station; ("ligne pour hydrocarbures")

"interconnection" means the plant, equipment and apparatus linking adjacent transmission or distribution systems as defined in Part V; ("interconnexion")

"work" means a hydrocarbon line, electricity distribution line, electricity transmission line, interconnection or station. ("ouvrage") 1998, c. 15, Sched. B, s. 89; 2003, c. 3, s. 62.

Leave to construct hydrocarbon line

90. (1) No person shall construct a hydrocarbon line without first obtaining from the Board an order granting leave to construct the hydrocarbon line if,

(a) the proposed hydrocarbon line is more than 20 kilometres in length;

(b) the proposed hydrocarbon line is projected to cost more than the amount prescribed by the regulations;

(c) any part of the proposed hydrocarbon line,

(i) uses pipe that has a nominal pipe size of 12 inches or more, and

(ii) has an operating pressure of 2,000 kilopascals or more; or

(d) criteria prescribed by the regulations are met. 2003, c. 3, s. 63 (1).

Exception

(2) Subsection (1) does not apply to the relocation or reconstruction of a hydrocarbon line unless the size of the line is changed or unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 90 (2); 2003, c. 3, s. 63 (2).

Application for leave to construct hydrocarbon line or station

91. Any person may, before constructing a hydrocarbon line to which section 90 does not apply or a station, apply to the Board for an order granting leave to construct the hydrocarbon line or station. 2003, c. 3, s. 64.

Leave to construct, etc., electricity transmission or distribution line

92. (1) No person shall construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection without first obtaining from the Board an order granting leave to construct, expand or reinforce such line or interconnection. 1998, c. 15, Sched. B, s. 92 (1).

Exception

(2) Subsection (1) does not apply to the relocation or reconstruction of an existing electricity transmission line or electricity distribution line or interconnection where no expansion or reinforcement is involved unless the acquisition of additional land or authority to use additional land is necessary. 1998, c. 15, Sched. B, s. 92 (2).

93. REPEALED: 2003, c. 3, s. 65.

Route map

94. An applicant for an order granting leave under this Part shall file with the application a map showing the general location of the proposed work and the municipalities, highways, railways, utility lines and navigable waters through, under, over, upon or across which the proposed work is to pass. 1998, c. 15, Sched. B, s. 94.

Exemption, s. 90 or 92

95. The Board may, if in its opinion special circumstances of a particular case so require, exempt any person from the requirements of section 90 or 92 without a hearing. 1998, c. 15, Sched. B, s. 95.

Order allowing work to be carried out

96. (1) If, after considering an application under section 90, 91 or 92 the Board is of the opinion that the construction, expansion or reinforcement of the proposed work is in the public interest, it shall make an order granting leave to carry out the work. 1998, c. 15, Sched. B, s. 96.

Applications under s. 92

(2) In an application under section 92, the Board shall only consider the following when, under subsection (1), it considers whether the construction, expansion or reinforcement of the electricity transmission line or electricity distribution line, or the making of the interconnection, is in the public interest:

1. The interests of consumers with respect to prices and the reliability and quality of electricity service.
2. Where applicable and in a manner consistent with the policies of the Government of Ontario, the promotion of the use of renewable energy sources. 2009, c. 12, Sched. D, s. 16.

Condition, land-owner's agreements

97. In an application under section 90, 91 or 92, leave to construct shall not be granted until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board. 1998, c. 15, Sched. B, s. 97.

Right to enter land

98. (1) The following persons may enter on land at the intended location of any part of a proposed work and may make such surveys and examinations as are necessary for fixing the site of the work:

1. Any person who has leave under this Part or a predecessor of this Part to construct the work.
2. Any person who is exempted under section 95 from the requirement to obtain leave to construct the work.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 2 (1).

Interim order

(1.1) The Board may, upon application, issue an interim order authorizing a person and the officers, employees and agents of that person to enter on land at the intended location of any part of a proposed work and to make such surveys and examinations as are necessary for fixing the site of the work and as are specified in the order if,

(a) the person has applied for leave under section 90 or 92 and has complied with section 94;

(b) the person has applied to the Board for an exemption under section 95; or

(c) the Board has commenced a proceeding to determine whether to require the person, pursuant to a condition of the person's licence, to expand or reinforce a transmission or distribution system. 2006, c. 33, Sched. X, s. 2 (2).

Damages

(2) Any damages resulting from an entry onto land carried out under subsection (1) or pursuant to an order under subsection (1.1) shall be determined by agreement or, failing agreement, in the manner set out in section 100. 2006, c. 33, Sched. X, s. 2 (3).

Expropriation

99. (1) The following persons may apply to the Board for authority to expropriate land for a work:

1. Any person who has leave under this Part or a predecessor of this Part.

2. Any person who intends to construct, expand or reinforce an electricity transmission line or an electricity distribution line or make an interconnection and who is exempted from the requirement to obtain leave by the Board under section 95 or a regulation made under clause 127 (1) (f). 1998, c. 15, Sched. B, s. 99 (1).

Hearing

(2) The Board shall set a date for the hearing of the application, but the date shall not be earlier than 14 days after the date of the application. 1998, c. 15, Sched. B, s. 99 (2).

Information to be filed

(3) The applicant shall file with the Board a plan and description of the land required, together with the names of all persons having an apparent interest in the land. 1998, c. 15, Sched. B, s. 99 (3).

(4) REPEALED: 2003, c. 3, s. 67.

Power to make order

(5) If after the hearing the Board is of the opinion that the expropriation of the land is in the public interest, it may make an order authorizing the applicant to expropriate the land. 1998, c. 15, Sched. B, s. 99 (5).

Determination of compensation

100. If compensation for damages is provided for in this Part and is not agreed upon, the procedures set out in clauses 26 (a) and (b) of the *Expropriations Act* apply to the determination of the compensation, and the compensation shall be determined under section 27 of that Act or by the Ontario Municipal Board. 1998, c. 15, Sched. B, s. 100.

Crossings with leave

101. (1) The following persons may apply to the Board for authority to construct a work upon, under or over a highway, utility line or ditch:

1. Any person who has leave to construct the work under this Part.
2. Any person who intends to construct the work and who is exempted under section 95 from the requirement to obtain leave.
3. Where the proposed work is the expansion or reinforcement of a transmission or distribution system, any person who is required by the Board, pursuant to a condition of the person's licence, to expand or reinforce the transmission or distribution system.
4. The officers, employees and agents of a person described in paragraph 1, 2 or 3. 2006, c. 33, Sched. X, s. 3.

Procedure

(2) The procedure set out in subsections 99 (1) to (4) applies with necessary modifications to an application under this section. 1998, c. 15, Sched. B, s. 101 (2).

Order

(3) Without any other leave and despite any other Act, if after the hearing the Board is of the opinion that the construction of the work upon, under or over a highway, utility line or ditch is in the public interest, it may make an order authorizing the construction upon such conditions as it considers appropriate. 1998, c. 15, Sched. B, s. 101 (3).

Right to compensation for damages

102. Any person who has acquired land for a work under this Part by agreement with the owner of the land shall pay to the owner due compensation for any damages resulting from the exercise of the person's rights under the agreement and, if the compensation is not agreed upon, it shall be determined in the manner set out in section 100. 1998, c. 15, Sched. B, s. 102.

Entry upon land

103. (1) Any person may at any time enter upon land, without the consent of the owner of the land, for the purpose of inspecting, altering, maintaining, repairing, renewing, disconnecting, replacing or removing a work or part of a work where leave for the construction, expansion or reinforcement of the work or the making of an interconnection was granted under this Part or a predecessor of this Part. 1998, c. 15, Sched. B, s. 103 (1).

Compensation

(2) Compensation for any damages resulting from the exercise of a right under subsection (1), if not agreed upon by the person and the owner of the land, shall be determined in the manner set out in section 100. 1998, c. 15, Sched. B, s. 103 (2).

Non-application, *Public Utilities Act*, s. 58

104. If leave to construct a work has been granted under this Part, section 58 of the *Public Utilities Act* does not apply to that work. 1998, c. 15, Sched. B, s. 104.

PART VII
INSPECTORS AND INSPECTIONS

Board receives complaints and makes inquiries

105. The Board may,

(a) receive complaints concerning conduct that may be in contravention of an enforceable provision whether the conduct constitutes an offence or not; and

(b) make inquiries, gather information and attempt to mediate or resolve complaints, as appropriate, concerning any matter that comes to its attention that may be in contravention of an enforceable provision whether the matter constitutes an offence or not. 2010, c. 8, s. 38 (22).

Inspectors

106. (1) The Board's management committee may appoint persons to exercise and perform the powers and duties of an inspector under this Part. 2003, c. 3, s. 69.

Certificate of appointment

(2) The Board shall issue to every inspector a certificate of appointment bearing the signature of a member of the Board or a facsimile of his or her signature. 2010, c. 8, s. 38 (23).

Power to require documents, etc.

107. (1) An inspector may, for the purposes of this Act and any other Act that gives powers or duties to the Board, require any of the following persons to provide documents, records or information:

1. A person required to have a licence under section 48 or 57.

1.1 An affiliate, agent or employee of a gas marketer or retailer of electricity.

2. A gas distributor, gas transmitter or gas storage company or an affiliate of a gas transmitter, gas distributor or gas storage company.

3. An affiliate of a person required to have a licence under clause 57 (a) or (b).

4. A person exempted from the requirements of clause 57 (a) by regulation.

5. A person exempted from the requirements of clause 57 (b) by regulation.

6. A person exempted from the requirements of section 48 by regulation.

7. An affiliate, agent or employee of a person referred to in paragraph 4. 2003, c. 3, s. 70; 2010, c. 8, s. 38 (24).

Application of subs. (1)

(2) Subsection (1) only applies to documents, records and information that relate to the following:

1. Activities for which a licence is required under section 48 or 57.

1.1 The persons who are required to have a licence under section 48 or 57 and their affiliates, agents and employees.

1.2 Activities for which a licence is required under subsection 88.2 (1).

1.3 The persons who are required to have a licence under subsection 88.2 (1).

2. Gas distribution, gas transmission or gas storage, including the sale of gas by a gas distributor.

3. Transactions between a gas distributor, gas transmitter or gas storage company and its affiliates.

4. Transactions between a person required to have a licence under clause 57 (a) or (b) and its affiliates.

5. Adjustments, payments, set-offs and credits under sections 25.33 and 25.34 of the *Electricity Act, 1998* and under the regulations made under clauses 114 (1.3) (f) and (h) of that Act.

6. Payments under sections 78.1 to 78.5. 2004, c. 23, Sched. B, s. 32; 2009, c. 12, Sched. D, s. 17; 2010, c. 8, s. 38 (25).

Inspections

108. (1) An inspector may, for the purposes of this Act and any other Act that gives powers or duties to the Board, without a warrant or court order, at any reasonable time and with any reasonable assistance, conduct inspections and, for that purpose, the inspector may,

(a) enter any place that the inspector reasonably believes is likely to contain documents or records related to any of the activities referred to in subsection 107 (2); or

(b) enter any place where anything is being done that requires an order of the Board granting leave under Part VI. 2003, c. 3, s. 71 (1).

Same

(2) During an inspection under subsection (1), an inspector may,

(a) examine, record or copy any document or record, in any form, by any method;

(b) require any document or record that is required to be kept under this Act to be provided, in any form, and require any other document or record related to the purposes of the inspection to be provided, in any form;

(c) remove from a place documents or records, in any form, that are provided under clause (b) for the purpose of making copies;

(d) examine anything that is being done that requires an order of the Board granting leave under Part VI;

(e) make reasonable inquiries of any person, orally or in writing. 2003, c. 3, s. 71 (2).

Identification

(3) In conducting an inspection under this section, the inspector shall, upon request, produce his or her certificate of appointment. 2010, c. 8, s. 38 (26).

Duty to assist

(4) In exercising powers under this section, the inspector may require a person described in subsection 107 (1) or its officers, directors or employees to give all reasonable assistance to the inspector. 2003, c. 3, s. 71 (4).

Copying

(5) The inspector may, on giving a receipt, remove any document or record described in subsection (2) for the purpose of making copies or extracts and shall promptly return the document or record and obtain a written acknowledgment of its return. 2003, c. 3, s. 71 (4).

Documents in electronic form

(6) If a document or record is kept in electronic form, the inspector may make a copy of it or require that a copy of it be provided to him or her on paper or in a machine-readable medium or both. 1998, c. 15, Sched. B, s. 108 (6); 2003, c. 3, s. 71 (5); 2010, c. 8, s. 38 (27).

Evidence

(7) Copies or extracts from documents or records removed under this section and certified as being true copies or extracts from the originals by the person who made them are admissible in evidence to the same extent as and have the same evidentiary value as the originals. 1998, c. 15, Sched. B, s. 108 (7).

Dwellings

(8) This section does not authorize a person to enter a room or place actually used as a dwelling without the consent of the occupier except under the authority of a warrant issued under subsection (9). 1998, c. 15, Sched. B, s. 108 (8).

Warrant

(9) A justice of the peace may issue a warrant authorizing a person named in the warrant to enter a place identified in the warrant and exercise the powers given under this section if the justice of the peace is satisfied by information on oath that,

(a) there is reasonable ground to believe that,

(i) there are documents or records located in the place that are relevant to the carrying out of an inspection, or

(ii) anything is being done in the place that requires an order of the Board granting leave under Part VI; and

(b) entry to the place has been or will be denied. 2003, c. 3, s. 71 (6).

Same

(10) A warrant issued under this section shall,

(a) specify the hours and days during which it may be executed; and

(b) name a date on which it expires, which date shall not be later than 15 days after its issue. 1998, c. 15, Sched. B, s. 108 (10).

Extension

(11) Upon application without notice by the person named in a warrant, a justice of the peace may, before or after the warrant expires, extend the date on which the warrant expires for an additional period of not more than 15 days. 1998, c. 15, Sched. B, s. 108 (11).

Notifying Board

109. An inspector shall notify the Board of all matters he or she thinks relevant to Board proceedings or possible future Board proceedings. 1998, c. 15, Sched. B, s. 109; 2003, c. 3, s. 72.

Evidence, Board proceedings

Witnesses

110. (1) An inspector may be called as a witness by the Board in any Board proceeding. 1998, c. 15, Sched. B, s. 110 (1); 2003, c. 3, s. 73 (1).

No privilege

(2) No document, record or copy thereof obtained by an inspector under section 107 or 108, and no information obtained by an inspector under section 107, shall be excluded as evidence on the ground of privilege in any Board proceeding. 2003, c. 3, s. 73 (2).

Notice

(3) No document, record or copy thereof obtained by an inspector under section 107 or 108, and no information obtained by an inspector under section 107, shall be introduced in evidence in a Board proceeding unless,

(a) the Board gives the owner of the document or record or the person who provided the information notice that the inspector intends to introduce the evidence; and

(b) the Board gives the owner of the document or record or the person who provided the information an opportunity to make representations with respect to the intended introduction of that evidence. 2003, c. 3, s. 73 (3).

(4) REPEALED: 2003, c. 3, s. 73 (3).

Confidentiality

111. (1) All documents and records obtained by an inspector under section 107 or 108, and information obtained by an inspector under section 107, are confidential and shall not be disclosed to any person other than a member of the Board or an employee of the Board except,

(a) as may be required in connection with the administration of this Act or any other Act that gives powers or duties to the Board or in any proceeding under this or any other Act that gives powers or duties to the Board;

(b) to counsel for the Board or an employee of the Board; or

(c) with the consent of the owner of the document or record or the person who provided the information. 2003, c. 3, s. 74.

Same

(2) If any document, record or information obtained by an inspector under section 107 or 108 is admitted in evidence in a proceeding under this Act or any other Act that gives powers or duties to the Board, the Board may rule on whether the document, record or information is to be kept confidential. 2003, c. 3, s. 74.

Evidence

112. No document, record or information obtained by an inspector under this Part is admissible in evidence in any proceeding except a proceeding in respect of an order of the Board or a proceeding in respect of an offence under section 126. 2003, c. 3, s. 75.

PART VII.0.1
INVESTIGATORS AND INVESTIGATIONS

Investigators

112.0.1 (1) The chair may appoint persons to exercise and perform the powers and duties of an investigator under this Part and Part IX. 2010, c. 8, s. 38 (28).

Certificate of appointment

(2) The chair shall issue to every investigator a certificate of appointment bearing the chair's signature or a facsimile of his or her signature. 2010, c. 8, s. 38 (28).

Production of certificate of appointment

(3) Every investigator who is conducting an investigation shall, upon request, produce his or her certificate of appointment. 2010, c. 8, s. 38 (28).

Search warrant

112.0.2 (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant if he or she is satisfied on information under oath that there is reasonable ground for believing that,

(a) a person has contravened or is contravening an enforceable provision; and

(b) there is,

(i) in any building, dwelling, receptacle or place anything relating to the contravention of an enforceable provision, or

(ii) information or evidence relating to the contravention of an enforceable provision that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant. 2010, c. 8, s. 38 (28).

Powers under warrant

(2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,

(a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;

(b) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form;

(c) to exercise any of the powers specified in subsection (10); and

(d) to use any investigative technique or procedure or do anything described in the warrant. 2010, c. 8, s. 38 (28).

Entry of dwelling

(3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

(a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and

(b) the justice of the peace authorizes the entry into the dwelling. 2010, c. 8, s. 38 (28).

Conditions on a warrant

(4) A warrant obtained under subsection (1) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2010, c. 8, s. 38 (28).

Expert help

(5) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant. 2010, c. 8, s. 38 (28).

Time of execution

(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2010, c. 8, s. 38 (28).

Expiry of warrant

(7) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator. 2010, c. 8, s. 38 (28).

Use of force

(8) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant. 2010, c. 8, s. 38 (28).

Obstruction

(9) No person shall obstruct an investigator executing a warrant under this section or withhold from him or her or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant. 2010, c. 8, s. 38 (28).

Assistance

(10) An investigator may, in the course of executing a warrant, require a person to produce the evidence or information described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the evidence or information described in the warrant and the person shall produce the evidence or information or provide the assistance. 2010, c. 8, s. 38 (28).

Return of seized items

(11) An investigator who seizes any thing under this section or under section 112.0.3 may make a copy of it and shall return it within a reasonable time. 2010, c. 8, s. 38 (28).

Admissibility

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2010, c. 8, s. 38 (28).

Seizure of thing not specified

112.0.3 An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of his or her duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of an enforceable provision. 2010, c. 8, s. 38 (28).

Searches in exigent circumstances

112.0.4 (1) An investigator may exercise any of the powers described in subsection 112.0.2 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant. 2010, c. 8, s. 38 (28).

Dwelling

(2) Subsection (1) does not apply to a place or part of a place that is being used as a dwelling. 2010, c. 8, s. 38 (28).

Use of force

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary. 2010, c. 8, s. 38 (28).

Application of s. 112.0.2

(4) Subsections 112.0.2 (5), (9), (10), (11) and (12) apply with necessary modifications to a search under this section. 2010, c. 8, s. 38 (28).

Witnesses

112.0.5 (1) An investigator may be called as a witness by the Board in any Board proceeding. 2010, c. 8, s. 38 (28).

Notice

(2) No document, record or copy of one obtained by an investigator under a warrant obtained under section 112.0.2 or obtained without a warrant under the circumstances referred to in section 112.0.4 and no information obtained by an investigator under such a warrant or under the circumstances referred to in section 112.0.4 shall be introduced in evidence in a Board proceeding unless,

(a) the Board gives the owner of the document or record or the person who provided the information notice that the investigator intends to introduce the evidence; and

(b) the Board gives the owner of the document or record or the person who provided the information an opportunity to make representations with respect to the intended introduction of that evidence. 2010, c. 8, s. 38 (28).

Same

(3) No thing seized under section 112.0.3 and no information obtained by an investigator under such a seizure shall be introduced in evidence in a Board proceeding unless,

(a) the Board gives the owner of the thing or the person who provided the thing notice that the investigator intends to introduce the evidence; and

(b) the Board gives the owner of the thing or the person who provided the thing an opportunity to make representations with respect to the intended introduction of that evidence. 2010, c. 8, s. 38 (28).

Confidentiality

112.0.6 (1) All documents and records obtained by an investigator under this Part or Part IX are confidential and shall not be disclosed to any person other than a member of the Board or an employee of the Board except,

(a) as may be required in connection with the administration of this Act or any other Act that gives powers or duties to the Board or in any proceeding under this or any other Act that gives powers or duties to the Board;

(b) to counsel for the Board or an employee of the Board; or

(c) with the consent of the owner of the document or record or the person who provided the information. 2010, c. 8, s. 38 (28).

Same

(2) If any document, record or information obtained by an investigator under this Part or Part IX is admitted in evidence in a proceeding under this Act or any other Act that gives powers or duties to the Board, the Board may rule on whether the document, record or information is to be kept confidential. 2010, c. 8, s. 38 (28).

PART VII.1
COMPLIANCE

112.1 REPEALED: 2010, c. 8, s. 38 (29).

Procedure for orders under ss. 112.3 to 112.5

112.2 (1) An order under section 112.3, 112.4 or 112.5 may only be made on the Board's own motion. 2003, c. 3, s. 76.

Notice

(2) The Board shall give written notice to a person that it intends to make an order under section 112.3, 112.4 or 112.5. 2003, c. 3, s. 76.

Contents of notice

(3) Notice under subsection (2) shall set out the reasons for the proposed order and shall advise the person that, within 15 days after receiving the notice, the person may give notice requiring the Board to hold a hearing. 2003, c. 3, s. 76.

Service of notice or order

(3.1) Any notice or order required to be given or served by the Board under this Part or Part VII.2 is sufficiently given or served if,

(a) delivered personally;

(b) sent by registered mail; or

(c) sent by another manner, if the Board can prove receipt of the notice or order. 2010, c. 8, s. 38 (30).

Deemed service

(3.2) Where service is made by registered mail, the service is deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date. 2010, c. 8, s. 38 (30).

Exception

(3.3) Despite subsection (3.1), the Board may order any other method of service. 2010, c. 8, s. 38 (30).

Hearing

(4) A person to whom notice is given under subsection (2) may, within 15 days after receiving the notice, give notice to the Board requiring the Board to hold a hearing. 2003, c. 3, s. 76.

If hearing not required

(5) If no notice requiring a hearing is given within the time permitted by subsection (4), the Board may make an order. 2003, c. 3, s. 76.

Interim orders under s. 112.3

(6) An interim order of the Board may be made under section 112.3, with or without a hearing, and may take effect before the time for giving notice under subsection (4) has expired. 2003, c. 3, s. 76.

Action required to comply, etc.

112.3 (1) If the Board is satisfied that a person has contravened or is likely to contravene an enforceable provision, the Board may make an order requiring the person to comply with the enforceable provision and to take such action as the Board may specify to,

(a) remedy a contravention that has occurred; or

(b) prevent a contravention or further contravention of the enforceable provision. 2003, c. 3, s. 76.

Application

(2) This section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Suspension or revocation of licences

112.4 (1) If the Board is satisfied that a person who holds a licence under Part IV or V has contravened an enforceable provision, the Board may make an order suspending or revoking the licence. 2003, c. 3, s. 76.

Application

(2) This section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Administrative penalties

112.5 (1) If the Board is satisfied that a person has contravened an enforceable provision, the Board may, subject to the regulations under subsection (5), make an order requiring a person to pay an administrative penalty in the amount set out in the order for each day or part of a day on which the contravention occurred or continues. 2003, c. 3, s. 76.

Purpose

(1.1) The purpose of an administrative penalty is to promote compliance with the requirements established by this Act and the regulations. 2010, c. 8, s. 38 (31).

Limitation

(2) The Board shall not make an order under subsection (1) in respect of a contravention later than two years after the later of,

(a) the day the contravention occurred; and

(b) the day on which the evidence of the contravention first came to the attention of the Board. 2003, c. 3, s. 76.

Amount of penalty, limited

(3) An administrative penalty in respect of a contravention shall not exceed $20,000 for each day or part of a day on which the contravention occurs or continues. 2003, c. 3, s. 76.

No offence to be charged if penalty is paid

(4) If a person who is required by an order under subsection (1) to pay an administrative penalty in respect of a contravention pays the amount of the penalty in accordance with the order, the person shall not be charged with an offence in respect of the contravention. 2003, c. 3, s. 76.

Regulations

(5) The Lieutenant Governor in Council may make regulations,

(a) specifying types of contraventions in respect of which an order may not be made under this section and circumstances when the Board shall not make an order under this section;

(b) governing the determination of the amounts of administrative penalties, including the criteria to be considered and including providing for different amounts depending on when an administrative penalty is paid;

(c) respecting any other matter necessary for the administration of the system of administrative penalties provided for by this section. 2003, c. 3, s. 76.

General or particular

(6) A regulation under subsection (5) may be general or particular in its application. 2003, c. 3, s. 76.

Application

(7) Subject to subsection (8), this section applies to contraventions that occur before or after this section comes into force. 2003, c. 3, s. 76.

Same

(8) This section does not apply to a contravention that occurred before this section came into force unless, at the time it occurred, section 125.2 was in force and a notice could have been issued in respect of the contravention under that section. 2003, c. 3, s. 76.

Restraining orders

112.6 The Board may apply to the Superior Court of Justice for an order directing a person not to contravene an enforceable provision, and the court may make that order or such other order as the court considers just. 2003, c. 3, s. 76.

Voluntary compliance

112.7 (1) A person may give the Board a written assurance of voluntary compliance,

(a) to refrain from contravening an enforceable provision specified in the assurance;

(b) to take such action as is specified in the assurance to remedy a contravention of an enforceable provision; or

(c) to take such action as is specified in the assurance to prevent a contravention of an enforceable provision. 2003, c. 3, s. 76.

Force and effect

(2) An assurance of voluntary compliance has the same force and effect as an order of the Board. 2003, c. 3, s. 76.

(3) REPEALED: 2010, c. 8, s. 38 (32).

Public record

112.8 (1) The Board shall maintain a public record of,

(a) assurances of voluntary compliance given under this Act;

(b) compliance orders issued under this Act;

(c) orders made under section 112.10;

(d) any other prescribed document or information. 2010, c. 8, s. 38 (33).

Orders

(2) The Board may by order require the payment of fees for the inspection of public records maintained under subsection (1) and may approve the amount of those fees. 2010, c. 8, s. 38 (33).

Same

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to an order made under subsection (2). 2010, c. 8, s. 38 (33).

Form and manner of public record

(4) The public record maintained under subsection (1) shall be maintained by the Board in such form or manner as may be prescribed by regulation. 2010, c. 8, s. 38 (33).

PART VII.2
COMPLIANCE RE PART II OF THE ENERGY CONSUMER PROTECTION ACT, 2010

Application

112.9 (1) This Part applies in respect of enforceable provisions referred to in clause (b) of the definition of "enforceable provision" in section 3. 2010, c. 8, s. 38 (34).

Same

(2) This Part applies in addition to Part VII.1. 2010, c. 8, s. 38 (34).

Definitions

(3) For the purposes of this Part,

"consumer" has the same meaning as in Part II of the *Energy Consumer Protection Act, 2010*; ("consommateur")

"supplier" has the same meaning as in Part II of the *Energy Consumer Protection Act, 2010*. ("fournisseur") 2010, c. 8, s. 38 (34).

Freeze order

112.10 (1) If the conditions in subsection (2) are met, the Board may make an application to the Superior Court of Justice for,

(a) an order requiring any person having on deposit or controlling any assets or trust funds of a supplier or former supplier to hold those funds or assets;

(b) an order requiring a supplier or former supplier to refrain from withdrawing any asset or trust fund from a person having them on deposit or controlling them; or

(c) an order requiring a supplier or former supplier to hold any asset or trust fund of an energy consumer or other person in trust for the person entitled to it. 2010, c. 8, s. 38 (34).

Conditions

(2) The Board may make an application under subsection (1) if it believes that it is advisable for the protection of consumers and,

(a) a search warrant has been issued under this Act;

(b) an order has been made under section 112.3 or 112.11; or

(c) there has been an assurance of voluntary compliance under section 112.7 or 112.12. 2010, c. 8, s. 38 (34).

Person engaged in unfair practice

(3) Subsections (1) and (2) apply with necessary modifications to any person, whether or not the person is or was a supplier, if the person has engaged or is engaging in unfair practices under the *Energy Consumer Protection Act, 2010*. 2010, c. 8, s. 38 (34).

Limitation

(4) In the case of a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada), a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* or a loan or trust corporation, the order under subsection (1) applies only to the offices and branches named in the order. 2010, c. 8, s. 38 (34).

Release of assets

(5) The court may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order. 2010, c. 8, s. 38 (34).

Exception

(6) Subsection (1) does not apply if, prior to the Board obtaining an order under that subsection, the person files with the Board, in such manner and amount as the Board determines,

(a) a personal bond accompanied by collateral security;

(b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;

(c) a bond of a guarantor accompanied by collateral security; or

(d) another form of security prescribed by regulation. 2010, c. 8, s. 38 (34).

Application to court

(7) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund,

(a) by a person in receipt of an order under subsection (1), if that person is in doubt as to whether the order applies to the asset or trust fund; or

(b) by a person who claims an interest in the asset or trust fund subject to the order. 2010, c. 8, s. 38 (34).

Notice

(8) If an order is made under this section, the Board may register in the appropriate land registry office a notice that an order under subsection (1) has been issued and that the order may affect land belonging to the person referred to in the notice and the notice has the same effect as the registration of a certificate of pending litigation except that the Board may in writing revoke or modify the notice. 2010, c. 8, s. 38 (34).

Cancellation or discharge application

(9) A person in respect of whom an order has been made under subsection (1) or any person having an interest in land in respect of which a notice is registered under subsection (8) may apply to the Superior Court of Justice for cancellation in whole or in part of the order or for discharge in whole or in part of the registration. 2010, c. 8, s. 38 (34).

Disposition by court

(10) The Superior Court of Justice shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part, if the court finds,

(a) that the order or registration is not required in whole or in part for the protection of consumers or of other persons having an interest in the land; or

(b) that the interests of other persons are unduly prejudiced by the order or registration. 2010, c. 8, s. 38 (34).

Court application

(11) If the court has made an order under subsection (1) or the Board has registered a notice under subsection (8), the Board may apply to the court for directions or an order relating to the disposition of assets, trust funds or land affected by the order or notice. 2010, c. 8, s. 38 (34).

Notice not required

(12) An application by the Board under this section may be made without notice to any other person. 2010, c. 8, s. 38 (34).

Order for immediate compliance

112.11 (1) Without limiting the generality of section 112.3, the Board may make an order requiring immediate compliance with an enforceable provision and, subject to subsection (2), such an order takes effect immediately. 2010, c. 8, s. 38 (34).

Notice of order

(2) If the Board makes an order for immediate compliance, it shall serve on the person named in the order a notice that includes,

(a) the order;

(b) the written reasons for making the order; and

(c) a statement that the person is entitled to a hearing by the Board if the person mails or delivers to the Board, within 15 days after the notice is served, notice in writing requiring a hearing. 2010, c. 8, s. 38 (34).

Hearing

(3) When a person named in the order requires a hearing in accordance with the notice under subsection (2), the Board shall hold the hearing and may confirm or set aside the order or make such other order as the Board considers proper to give effect to the purposes of Part II of the *Energy Consumer Protection Act, 2010*. 2010, c. 8, s. 38 (34).

Expiration of order

(4) If a hearing by the Board is required,

(a) the order expires 15 days after the written request for a hearing is received by the Board; or

(b) the Board may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period referred to in clause (a). 2010, c. 8, s. 38 (34).

Same

(5) Despite subsection (4), if it is satisfied that the conduct of the person named in the order has delayed the commencement of the hearing, the Board may extend the time of the expiration for the order,

(a) until the hearing commences; and

(b) once the hearing commences, until the hearing is concluded. 2010, c. 8, s. 38 (34).

Parties

(6) The person who has required the hearing and such other persons as the Board may specify are parties to proceedings before the Board under this section. 2010, c. 8, s. 38 (34).

Voluntary compliance

112.12 (1) Without limiting the generality of section 112.7, a person may give the Board a written assurance of voluntary compliance,

(a) to publicize the assurance or the actions being undertaken as a result of the assurance;

(b) to pay any cost incurred in investigating the person's activities, any legal costs incurred in relation to the person's activities and any cost associated with the assurances;

(c) to take any such action as the Board considers appropriate in the circumstances. 2010, c. 8, s. 38 (34).

Security for any assurance of voluntary compliance

(2) The Board may require any person who is giving an assurance of voluntary compliance to provide, in such manner and amount as the Board determines, security in the form of,

(a) a personal bond accompanied by collateral security;

(b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;

(c) a bond of a guarantor accompanied by collateral security; or

(d) another form of security prescribed by regulation. 2010, c. 8, s. 38 (34).

Release of security

(3) The bond and any collateral security required under subsection (2) shall not be released until the Board is satisfied that the person has fulfilled the assurance. 2010, c. 8, s. 38 (34).

113.-120. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

PART IX
MISCELLANEOUS

Rules

121. The Board's management committee may make rules,

(a) governing the practices of employees to whom powers and duties are delegated under section 6;

(b) governing the making of rules under section 44 and the issuance of codes under section 70.1. 2003, c. 3, s. 77.

Provincial offences officers

122. Despite subsection 1 (3) of the *Provincial Offences Act*, the Board's management committee may, for the purposes of that Act, designate in writing any person or class of persons as a provincial offences officer, but the designation only applies in respect of offences under this Act. 2010, c. 8, s. 38 (35).

123. REPEALED: 2003, c. 3, s. 79.

124. REPEALED: 2003, c. 3, s. 80.

Obstruction

125. No person shall obstruct an inspector appointed under section 106 or a provincial offences officer designated under section 122 or an investigator appointed under subsection 112.0.1 (1) or knowingly withhold or conceal from that person or destroy any relevant document, record or information required to be provided by that person. 2003, c. 3, s. 81; 2010, c. 8, s. 38 (36).

Method of giving notice

125.1 Subsections 18 (2) to (5) and clause 24 (1) (a) of the *Statutory Powers Procedure Act* apply, with necessary modifications, to all notices given by the Board, whether or not a hearing is held. 2003, c. 3, s. 82.

Duties of directors and officers of a corporation

125.2 Where a retailer of electricity or gas marketer is a corporation, every director and officer of the corporation shall,

(a) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and

(b) take such measures as necessary to ensure that the corporation complies with all requirements under this Act and the *Energy Consumer Protection Act, 2010*. 2010, c. 8, s. 38 (37).

Offences

126. (1) A person is guilty of an offence who,

(a) undertakes an activity without a licence for which a licence is required under this Act and for which a person has not been granted an exemption from the requirement to hold a licence;

(b) knowingly furnishes false or misleading information in any application, statement or return made under this Act or in any circumstances where information is required or authorized to be provided under this Act;

(c) fails to comply with a condition of a licence or an order of the Board made under this or any other Act;

(c.1) fails to comply with an assurance of voluntary compliance given under section 112.7;

(c.2) fails to comply with an assurance of voluntary compliance entered into under section 88.8 before that section was repealed;

(d) contravenes this Act, the regulations or a rule made under section 44; or

(e) contravenes the *Energy Consumer Protection Act, 2010* or the regulations made under it. 1998, c. 15, Sched. B, s. 126 (1); 2002, c. 1, Sched. B, s. 16; 2002, c. 23, s. 4 (20); 2003, c. 3, s. 84 (1, 2); 2010, c. 8, s. 38 (38).

Officers, etc.

(2) It is an offence for any officer or director of a corporation to cause, authorize, permit or acquiesce in the commission by the corporation of an offence mentioned in subsection (1). 1998, c. 15, Sched. B, s. 126 (2).

Penalty

(3) An individual who is convicted of an offence under subsection (1) or (2) is liable to a fine of not more than $50,000 for a first offence and to a fine of not more than $150,000 for a subsequent offence. 1998, c. 15, Sched. B, s. 126 (3); 2003, c. 3, s. 84 (3).

Corporations

(4) A corporation that is convicted of an offence under subsection (1) is liable to a fine of not more than $250,000 for a first offence and to a fine of not more than $1,000,000 for a subsequent offence. 1998, c. 15, Sched. B, s. 126 (4); 2003, c. 3, s. 84 (4).

Increasing fine by amount of monetary benefit

(4.1) Despite the maximum fines set out in subsections (3) and (4), the court that convicts a person of an offence under subsection (1) or (2) may increase the fine imposed on the person by an amount equal to the monetary benefit that was acquired by, or that accrued to, the person as a result of the commission of the offence. 2003, c. 3, s. 84 (5).

Limitation

(5) Subject to subsection (6), no proceeding under this section shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Board. 1998, c. 15, Sched. B, s. 126 (5); 2010, c. 8, s. 38 (39).

Same, retailers of electricity and gas marketers

(6) Despite subsection (5), no proceeding under this section shall be commenced against the following persons more than two years after the facts upon which the proceeding is based first came to the knowledge of the Board:

1. A retailer of electricity or a gas marketer.

2. A director or officer of a corporation, where the person referred to in paragraph 1 is a corporation. 2010, c. 8, s. 38 (40).

Order for compensation, restitution

126.0.1 If a person referred to in subsection 126 (6) is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to pay compensation or make restitution. 2010, c. 8, s. 38 (41).

Default in payment of fines

126.0.2 (1) If a fine payable by a person referred to in subsection 126 (6) as a result of a conviction for an offence under this Act is in default for at least 60 days, the Board may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default. 2010, c. 8, s. 38 (41).

Where payment made

(2) Within 10 days after the Board has notice that the fine has been paid in full, the Board shall inform the consumer reporting agency of the payment. 2010, c. 8, s. 38 (41).

Liens and charges

126.0.3 (1) If a fine payable by a person referred to in subsection 126 (6) as a result of a conviction for an offence under this Act is in default for at least 60 days, the Board may by order create a lien against the property of the person who is liable to pay the fine. 2010, c. 8, s. 38 (41).

Liens on personal property

(2) If the lien created by the Board under subsection (1) relates to personal property,

(a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;

(b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and

(c) the Board may perfect the security interest referred to in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act. 2010, c. 8, s. 38 (41).

Liens and charges on real property

(3) If the lien created by the Board under subsection (1) relates to real property, the Board may register the lien against the property of the person liable to pay the fine in the proper land registry office and, on registration, the obligation under the lien becomes a charge on the property. 2010, c. 8, s. 38 (41).

Initiation of sale proceedings prohibited

(4) The Board shall not initiate sale proceedings in respect of any real property against which it has registered a lien under subsection (3). 2010, c. 8, s. 38 (41).

Proceeds of sale

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the Board shall ensure the funds it receives as result of the sale are used to pay the fine. 2010, c. 8, s. 38 (41).

Discharge of lien

(6) Within 10 days after the Board has knowledge of the payment in full of the fine, the Board shall,

(a) discharge the registration of any financing statement registered under clause (2) (c); and

(b) register a discharge of a charge created on registration of a lien under subsection (3). 2010, c. 8, s. 38 (41).

Admissibility in evidence of certified statements

126.1 (1) A statement as to,

(a) the licensing or non-licensing of any person;

(b) the filing or non-filing of any document, material or information with the Board;

(c) the date the facts upon which a proceeding is based first came to the knowledge of the Board; or

(d) any other matter pertaining to such licensing, non-licensing, filing or non-filing,

purporting to be certified by the secretary of the Board, is, without proof of the office or signature of the secretary, admissible in evidence in any prosecution or other proceeding as proof, in the absence of evidence to the contrary, of the facts stated. 2000, c. 26, Sched. D, s. 2 (13); 2003, c. 3, s. 85 (1, 2).

Certificate of assurance of voluntary compliance

(2) A copy of an assurance of voluntary compliance purporting to be certified by the secretary of the Board is, without proof of the office or signature of the secretary, admissible in evidence in any prosecution or other proceeding as proof, in the absence of evidence to the contrary, of the facts stated. 2003, c. 3, s. 85 (3).

Regulations, general

127. (1) The Lieutenant Governor in Council may make regulations,

(a) limiting, restricting or taking away any rights to use or consume gas without charge or at a reduced rate;

(b) requiring the Board to approve or fix rates under section 36;

(c) providing for compensation procedure for the owners of gas or oil rights and the rights to store gas and for the owners of land who are referred to in subsection 38 (2);

(d) REPEALED: 2003, c. 3, s. 86 (1).

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

(d) prescribing consumers and classes of consumers for the purposes of subsection 42 (2.1);

See: 2010, c. 8, ss. 38 (42), 40.

(e) REPEALED: 2001, c. 9, Sched. F, s. 2 (6).

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

(e) prescribing the conditions or criteria that must be satisfied for the purposes of subsections 42 (2.1) and (2.2);

(e.1) for the purposes of subsection 42 (2.2), governing security, alternative security arrangements and the conditions and criteria that must be satisfied and prescribing the requirements where a gas distributor must provide consumers or classes of consumers with specific arrangements in respect of security, including,

(i) prescribing the consumers or classes of consumers,

(ii) prescribing the type or kind of arrangements which the gas distributor must accept, the conditions and circumstances under which they must be accepted, the form of the arrangements and the circumstances where a gas distributor must forego requiring security from the consumer or member of a prescribed class of consumers, and

(iii) prescribing alternative security deposit arrangements;

(e.2) prescribing consumers or classes of consumers and additional requirements which gas distributors must meet for the purposes of subsection 42 (2.3);

(e.3) prescribing the meaning of "security" for the purposes of subsection 42 (2.4);

(e.4) for the purposes of subsections 42 (5) to (14), governing all matters dealt with in those subsections that are required or permitted to be prescribed by regulation or that are required or permitted to be done in accordance with the regulations;

See: 2010, c. 8, ss. 38 (42), 40.

(f) exempting any person from any provision of this Act, subject to such conditions or restrictions as may be prescribed by the regulations;

(g) defining any word or expression used in this Act that is not defined in this Act;

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

(g.1) for the purposes of clause 44 (1) (c.1), prescribing matters about which the Board may make a rule under section 44 in respect of gas marketers in relation to gas marketing;

See: 2010, c. 8, ss. 38 (42), 40.

(h) delegating all or part of the powers or duties of the Board with respect to the issuance or renewal of licences under Part IV or V to a self-regulatory organization on such conditions as the Lieutenant Governor in Council considers appropriate;

(i) delegating all or part of the powers or duties of the Board under Part IV or V to a tribunal on such conditions as the Lieutenant Governor in Council considers appropriate;

(j) prescribing a date or dates for the purposes of subsection 70 (10), which dates may be different for different classes of distributors;

(j.1), (j.2) REPEALED: 2010, c. 8, s. 38 (43).

(j.3) REPEALED: 2003, c. 3, s. 86 (3).

(j.4) REPEALED: 2010, c. 8, s. 38 (43).

(j.5) REPEALED: 2003, c. 3, s. 86 (4).

(j.6)-(j.10) REPEALED: 2010, c. 8, s. 38 (43).

(j.11) prescribing rights, powers or privileges under subsection 4 (2) for the purpose of clause 4.11 (e);

(j.12) prescribing provisions for the purpose of paragraph 4 of subsection 4.2 (6);

(j.13) prescribing classes of contracts for the purpose of clause 4.11 (d);

(j.14) prescribing powers or duties for the purpose of paragraph 7 of subsection 6 (2);

(j.15) prescribing an amount of money for the purpose of clause 90 (1) (b);

(j.16) prescribing criteria for the purpose of clause 90 (1) (d);

(j.17) prescribing provisions of the *Electricity Act, 1998* for the purpose of clause (b) of the definition of "enforceable provision" in section 112.1;

(j.18) prescribing deferral or variance accounts as deferral or variance accounts that relate to the commodity of gas for the purpose of subsections 36 (4.1) and (4.2) or to the commodity of electricity for the purpose of subsections 78 (6.1) and (6.2), or prescribing rules for determining if a deferral or variance account relates to the commodity of gas for the purpose of subsections 36 (4.1) and (4.2) or to the commodity of electricity for the purpose of subsections 78 (6.1) and (6.2);

(j.19) prescribing periods of time for the purpose of subsections 36 (4.2) and 78 (6.2);

(j.20) governing the making of orders that determine whether and how amounts recorded in deferral or variance accounts shall be reflected in rates for the purpose of sections 36 and 78;

(j.21) governing the awarding of costs under section 30 when section 22.1 is not complied with;

(k) prescribing anything in this Act that is referred to as being prescribed by regulation;

(l) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of this Act;

(m) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purposes of this Act. 1998, c. 15, Sched. B, s. 127 (1); 2000, c. 26, Sched. D, s. 2 (14); 2001, c. 9, Sched. F, s. 2 (6); 2002, c. 1, Sched. B, s. 18.; 2003, c. 3, s. 86 (1-5); 2010, c. 8, s. 38 (43).

(2) REPEALED: 2001, c. 9, Sched. F, s. 2 (7).

General or particular

(3) A regulation under this section may be general or particular in its application. 1998, c. 15, Sched. B, s. 127 (3).

Delegation to self-regulatory organization

(4) If a regulation is made under clause (1) (h) delegating powers or duties of the Board to a self-regulatory organization, subsections 6 (4) to (9) and sections 7 and 8 apply, with necessary modifications. 2003, c. 3, s. 86 (6).

Transition, *Green Energy Act, 2009*

(5) The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of amendments to this Act arising from the enactment of the *Green Energy and Green Economy Act, 2009* and to facilitate the implementation of the *Green Energy Act, 2009*. 2009, c. 12, Sched. D, s. 18.

Conflict with other legislation

128. (1) In the event of conflict between this Act and any other general or special Act, this Act prevails. 1998, c. 15, Sched. B, s. 128 (1).

Same

(2) This Act and the regulations prevail over any by-law passed by a municipality. 1998, c. 15, Sched. B, s. 128 (2).

Reports on Board effectiveness

128.1 (1) Not later than the fifth anniversary of the day this section comes into force, and not later than every fifth anniversary thereafter, the Minister shall cause a report to be prepared and submitted to the Minister on the Board's effectiveness in meeting the objectives set out in sections 1 and 2. 2003, c. 3, s. 87.

Tabling

(2) The Minister shall submit the report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2003, c. 3, s. 87.

129. REPEALED 2003, c. 3, s. 88.

Transition, uniform system of accounts

130. On the coming into force of section 44, Ontario Regulation 504/97 shall be deemed to be a rule of the Board made under that section and the Board may change or amend the rule in accordance with that section. 1998, c. 15, Sched. B, s. 130; 2003, c. 3, s. 89.

Transition, undertakings

131. Despite the repeal of the *Ontario Energy Board Act* under the *Energy Competition Act, 1998*, any undertaking made to the Lieutenant Governor in Council under the repealed Act, if valid immediately before this section comes into force, continues to be valid and binding. 1998, c. 15, Sched. B, s. 131.

Transition, director of licensing

132. (1) A licence issued by the Board's director of licensing before this section comes into force shall be deemed to be a licence issued by the Board. 2003, c. 3, s. 90.

Same

(2) An order made by the Board's director of licensing before this section comes into force shall be deemed to be an order made by the Board. 2003, c. 3, s. 90.

Same

(3) Any matter pending before the Board's director of licensing when this section comes into force is continued before the Board, subject to the directions of the Board's management committee. 2003, c. 3, s. 90.

133. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1998, c.15, Sched. B, s. 133.

Note: The Crown and its agents are protected from certain liabilities relating to or resulting from amendments made to this Act by the *Electricity Pricing, Conservation and Supply Act, 2002*, or from any action taken pursuant to those amendments or pursuant to regulations made under those amendments. See: 2002, c. 23, s. 6.

Français

Back to top

TAB 3

Français

Electricity Act, 1998

S.O. 1998, CHAPTER 15
Schedule A

Consolidation Period: From June 20, 2012 to the e-Laws currency date.

Last amendment: 2012, c. 8, Sched. 11, s. 46.

Skip Table of Contents

CONTENTS

113.9 Conflict

PART I
GENERAL

Purposes

1. The purposes of this Act are,

(a) to ensure the adequacy, safety, sustainability and reliability of electricity supply in Ontario through responsible planning and management of electricity resources, supply and demand;

(b) to encourage electricity conservation and the efficient use of electricity in a manner 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 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")

"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")

"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); 2010, c. 8, s. 37 (1); 2011, c. 9, Sched. 27, s. 23 (1).

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).

Smart grid

(1.3) For the purposes of this Act, the smart grid means the advanced information exchange systems and equipment that when utilized together improve the flexibility, security, reliability, efficiency and safety of the integrated power system and distribution systems, particularly for the purposes of,

(a) enabling the increased use of renewable energy sources and technology, including generation facilities connected to the distribution system;

(b) expanding opportunities to provide demand response, price information and load control to electricity customers;

(c) accommodating the use of emerging, innovative and energy-saving technologies and system control applications; or

(d) supporting other objectives that may be prescribed by regulation. 2009, c. 12, Sched. B, s. 1 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 2 is amended by adding the following subsection:

Exception, "security"

(1.4) The definition of "security" in subsection (1) does not apply in respect of section 30.1. 2010, c. 8, s. 37 (2).

See: 2010, c. 8, ss. 37 (2), 40.

Determinations of Board

(2) The definitions of "distribute", "distribution system", "distributor", "transmission system", "transmit" and "transmitter" in subsection (1) are subject to any determination made under section 84 of the *Ontario Energy Board Act, 1998*. 1998, c. 15, Sched. A, s. 2 (2).

References to Ontario Hydro

(3) Subject to the regulations, a reference in this or any other Act or in the regulations made under this or any other Act to Ontario Hydro shall be deemed, after section 54 comes into force, to be a reference to the Financial Corporation, unless the context requires otherwise. 1998, c. 15, Sched. A, s. 2 (3).

References to Financial Corporation

(4) A reference in this or any other Act or in the regulations made under this or any other Act to the Financial Corporation shall be deemed, before section 54 comes into force, to be a reference to Ontario Hydro, unless the context requires otherwise. 1998, c. 15, Sched. A, s. 2 (4).

References to Generation Corporation

(5) A reference to the Generation Corporation in the regulations made under this or any other Act, an order made under Part X or a statement made under section 124 shall be deemed to be a reference to Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 2 (7).

References to Services Corporation

(6) A reference to the Services Corporation in the regulations made under this or any other Act, an order made under Part X or a statement made under section 124 shall be deemed to be a reference to Hydro One Inc. 2002, c. 1, Sched. A, s. 2 (7).

References to Independent Electricity Market Operator

(7) A reference in a statement mentioned in section 124 or in a regulation, order or rule made under this or any other Act,

(a) to the Independent Electricity Market Operator shall be deemed to be a reference to the Independent Electricity System Operator, unless the context requires otherwise, and to the IMO shall be deemed to be a reference to the IESO, unless the context requires otherwise;

(b) to the IMO-administered markets shall be deemed to be a reference to the IESO-administered markets;

(c) to the IMO-controlled grid shall be deemed to be a reference to the IESO-controlled grid; and

(d) to the members of the Market Surveillance Panel of the Independent Electricity Market Operator in the Table to section 6 of Ontario Regulation 91/02 (General) made under the *Civil Remedies Act, 2001* shall be deemed to be a reference to the members of the Market Surveillance Panel of the Ontario Energy Board or, if the Market Surveillance Panel has been dissolved under the *Ontario Energy Board Act, 1998*, to the members of the Ontario Energy Board. 2004, c. 23, Sched. A, s. 2 (13); 2007, c. 13, s. 42.

***Corporations Tax Act* references**

(8) Any reference to the *Corporations Tax Act* in this Act shall be deemed to be a reference to that Act as it applied to corporations for taxation years under that Act ending on or before December 31, 2008. 2008, c. 19, Sched. V, s. 3.

Municipal Act, 2001

3. (1) This Act applies despite the provisions of the *Municipal Act, 2001* relating to the production, manufacture, distribution or supply of a public utility by a municipality or a municipal service board. 1998, c. 15, Sched. A, s. 3; 2002, c. 17, Sched. F, Table.

City of Toronto Act, 2006

(2) This Act applies despite the provisions of the *City of Toronto Act, 2006* relating to the production, manufacture, distribution or supply of a public utility by the City or by a city board as defined in subsection 3 (1) of that Act. 2006, c. 11, Sched. B, s. 4 (1).

Minister's advisory committee

3.1 (1) The Minister shall establish an advisory committee to provide advice to the Minister on such matters relating to electricity as the Minister may specify. 2004, c. 23, Sched. A, s. 3.

Appointment

(2) The Minister shall appoint the members of the advisory committee. 2004, c. 23, Sched. A, s. 3.

PART II
INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Independent Electricity System Operator

4. (1) The Independent Electricity Market Operator is continued as a corporation without share capital under the name Independent Electricity System Operator in English and Société indépendante d'exploitation du réseau d'électricité in French. 2004, c. 23, Sched. A, s. 4 (1).

Composition

(2) The IESO is composed of those persons who, from time to time, comprise its board of directors. 1998, c. 15, Sched. A, s. 4 (2); 2004, c. 23, Sched. A, s. 4 (2).

Objects and character

5. (1) The objects of the IESO are,

(a) to exercise the powers and perform the duties assigned to the IESO under this Act, the market rules and its licence;

(b) to enter into agreements with transmitters giving the IESO authority to direct the operation of their transmission systems;

(c) to direct the operation and maintain the reliability of the IESO-controlled grid to promote the purposes of this Act;

(d) to participate in the development by any standards authority of standards and criteria relating to the reliability of transmission systems;

(e) to work with the responsible authorities outside Ontario to co-ordinate the IESO's activities with their activities;

(f) to collect and provide to the OPA and the public information relating to the current and short-term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs; and

(g) to operate the IESO-administered markets to promote the purposes of this Act. 2004, c. 23, Sched. A, s. 5 (1).

Not for profit

(2) The business and affairs of the IESO shall be carried on without the purpose of gain and any profits shall be used by the IESO for the purpose of carrying out its objects. 1998, c. 15, Sched. A, s. 5 (2); 2004, c. 23, Sched. A, s. 5 (2).

Capacity

(3) The IESO has the capacity and the rights, powers and privileges of a natural person for the purpose of carrying out its objects. 1998, c. 15, Sched. A, s. 5 (3); 2004, c. 23, Sched. A, s. 5 (2).

Dissolution

(4) Upon the dissolution of the IESO and after the payment of all debts and liabilities, the remaining property of the IESO is vested in Her Majesty in right of Ontario. 2004, c. 23, Sched. A, s. 5 (3).

Not Crown agent

6. The IESO is not an agent of Her Majesty for any purpose, despite the *Crown Agency Act*. 1998, c. 15, Sched. A, s. 6; 2004, c. 23, Sched. A, s. 6.

Board of directors

7. (1) The IESO's board of directors shall manage and supervise the management of the IESO's business and affairs. 2004, c. 23, Sched. A, s. 7.

Composition

(2) The board of directors shall be composed of,

(a) the chief executive officer of the IESO; and

(b) 10 additional individuals who are appointed as directors by the Minister. 2004, c. 23, Sched. A, s. 7.

Directors to be independent

(3) Each director shall hold office as an independent director and not as a representative of any class of persons. 2004, c. 23, Sched. A, s. 7.

Restriction on persons who may be directors

(4) No person who is a member of a class of persons prescribed by the regulations may hold office as a director of the IESO. 2004, c. 23, Sched. A, s. 7.

Term of office and reappointment

(5) A director appointed in accordance with clause (2) (b) shall hold office at pleasure for an initial term not exceeding two years and, subject to subsection (4), may be reappointed for successive terms not exceeding five years each. 2004, c. 23, Sched. A, s. 7.

Quorum

(6) A majority of the members of the board of directors constitute a quorum of the board. 2004, c. 23, Sched. A, s. 7.

Chair

(7) The board of directors shall appoint one of the directors as chair of the board. 2004, c. 23, Sched. A, s. 7.

Ceasing to hold office

(8) A director ceases to hold office in the circumstances specified in the Governance and Structure By-law. 2004, c. 23, Sched. A, s. 7.

Vacancy in board

(9) If there are one or more vacancies in the board of directors, the remaining directors may exercise all the powers of the board if they would constitute a quorum of the board if there were no vacancies. 2004, c. 23, Sched. A, s. 7.

Former directors cease to hold office

(10) A person who was a member of the board of directors immediately before this subsection comes into force ceases to be a member of the board of directors when this subsection comes into force, but nothing in this subsection prevents the person from being reappointed. 2004, c. 23, Sched. A, s. 7.

No claim for compensation

(11) A director who ceases to hold office as director by reason of subsection (10) has no right of recourse against the Crown or any person. 2004, c. 23, Sched. A, s. 7.

Chief executive officer

8. (1) The board of directors of the IESO shall appoint a chief executive officer of the IESO. 1998, c. 15, Sched. A, s. 8; 2004, c. 23, Sched. A, s. 8 (1).

Exception

(2) Despite subsection (1), the first chief executive officer appointed on or after the day this subsection comes into force shall be appointed by the Minister, but nothing in this subsection prevents the board of directors of the IESO from appointing any subsequent chief executive officer. 2004, c. 23, Sched. A, s. 8 (2).

Director duties

9. Every director of the IESO shall, in exercising and performing his or her powers and duties,

(a) act honestly and in good faith in the best interests of the IESO; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. 1998, c. 15, Sched. A, s. 9; 2004, c. 23, Sched. A, s. 9.

Conflict of interest

10. The directors and officers of the IESO shall comply with the provisions of the Governance and Structure By-law relating to conflict of interest. 1998, c. 15, Sched. A, s. 10; 2004, c. 23, Sched. A, s. 10.

Codes of conduct

11. (1) The board of directors of the IESO may establish codes of conduct applicable to the directors, officers, employees and agents of the IESO and to members of panels established by the IESO. 1998, c. 15, Sched. A, s. 11 (1); 2004, c. 23, Sched. A, s. 11 (1).

Conflict

(2) Any provision of a code of conduct that conflicts with this Act or the IESO's by-laws is void. 1998, c. 15, Sched. A, s. 11 (2); 2004, c. 23, Sched. A, s. 11 (2).

Delegation

12. Subject to the Governance and Structure By-law, the board of directors of the IESO may delegate any of the IESO's powers or duties to a committee of the board, to a panel established by the board of directors or to any other person or body, subject to such conditions and restrictions as may be specified by the board of directors. 2004, c. 23, Sched. A, s. 12.

Panels

13. (1) The board of directors of the IESO may establish one or more panels for the purposes of this Act. 2004, c. 23, Sched. A, s. 13.

Testimony

(2) A member of a panel established for the purpose of resolving or attempting to resolve a dispute between market participants, or a dispute between one or more market participants and the IESO, shall not be required in any civil proceeding to give testimony with respect to information obtained in the course of resolving or attempting to resolve the dispute. 2004, c. 23, Sched. A, s. 13.

Staff and assistance

13.1 Subject to the by-laws of the IESO, a panel established by the board of directors may use the services of,

(a) the IESO's employees, with the consent of the IESO; and

(b) persons other than the IESO's employees who have technical or professional expertise that is considered necessary. 2004, c. 23, Sched. A, s. 14.

Stakeholder input

13.2 The IESO shall establish one or more processes by which consumers, distributors, generators, transmitters and other persons who have an interest in the electricity industry may provide advice and recommendations for consideration by the IESO. 2004, c. 23, Sched. A, s. 14.

Liability

14. (1) No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the IESO, a member of the advisory committee or a member of a panel established by the board of directors of the IESO for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under any Act, the regulations under any Act, the IESO's licence, the IESO's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty. 2004, c. 23, Sched. A, s. 15 (1).

Same

(2) Subsection (1) does not relieve the IESO of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1). 1998, c. 15, Sched. A, s. 14 (2); 2004, c. 23, Sched. A, s. 15 (2).

Confidential information relating to market participant

14.1 A record that contains information provided to or obtained by the IESO relating to a market participant and that is designated by the IESO as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. 2002, c. 1, Sched. A, s. 4; 2004, c. 23, Sched. A, s. 16.

Liability of directors under the *Employment Standards Act, 2000*

15. Part XX of the *Employment Standards Act, 2000* does not apply to a director of the IESO. 2004, c. 23, Sched. A, s. 17.

By-laws

16. (1) The board of directors of the IESO may make by-laws regulating the business and affairs of the IESO. 1998, c. 15, Sched. A, s. 16 (1); 2004, c. 23, Sched. A, s. 18 (1).

Governance and Structure By-Law

(2) The board of directors shall make a by-law under subsection (1) dealing with matters of corporate governance and structure, including,

(a) REPEALED: 2004, c. 23, Sched. A, s. 18 (2).

(b) the appointment of the chief executive officer of the IESO;

(c) the circumstances in which a director ceases to hold office;

(c.1) the remuneration and benefits of the chair and the other members of the board;

(d) conflict of interest;

(e) the delegation of the IESO's powers and duties;

(f) the establishment, composition and functions of panels. 1998, c. 15, Sched. A, s. 16 (2); 2004, c. 23, Sched. A, s. 18 (2-5).

Same

(3) The Governance and Structure By-law may be made only with the approval in writing of the Minister. 1998, c. 15, Sched. A, s. 16 (3).

Amendment or repeal of Governance and Structure By-Law

(4) A by-law that amends or repeals the Governance and Structure By-law shall be filed with the Minister by the board of directors. 1998, c. 15, Sched. A, s. 16 (4).

Disallowance

(5) The Minister may disallow a by-law to which subsection (4) applies by written notice to the board of directors given within 60 days after the by-law is filed with the Minister. 1998, c. 15, Sched. A, s. 16 (5).

Effective date

(6) A by-law to which subsection (4) does not apply comes into force on the day it is made or on such later date as may be specified in the by-law. 1998, c. 15, Sched. A, s. 16 (6).

Same

(7) Subject to subsections (5) and (8), a by-law to which subsection (4) applies comes into force on the earlier of the following dates:

1. The expiry of the 60-day period referred to in subsection (5).
2. The date on which the Minister notifies the board of directors in writing that he or she will not disallow the by-law. 1998, c. 15, Sched. A, s. 16 (7).

Same

(8) Subject to subsection (5), a by-law to which subsection (4) applies may specify that it comes into force on a date later than the date determined under subsection (7). 1998, c. 15, Sched. A, s. 16 (8).

Conflict between by-laws

(9) In the event of a conflict between the Governance and Structure By-law and another by-law, the Governance and Structure By-law prevails. 1998, c. 15, Sched. A, s. 16 (9).

***Legislation Act, 2006*, Part III**

(10) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made under this section. 1998, c. 15, Sched. A, s. 16 (10); 2006, c. 21, Sched. F, s. 136 (1).

Transition

(11) For greater certainty, all by-laws made by the board of directors before subsection 4 (1) of Schedule A to the *Electricity Restructuring Act, 2004* comes into force remain in effect until amended or revoked in accordance with this Act. 2004, c. 23, Sched. A, s. 18 (6).

Province may purchase securities, etc.

17. (1) The Lieutenant Governor in Council may by order authorize the Minister of Finance to purchase securities of or make loans to the IESO at such times and on such terms and conditions as the Minister may determine subject to the maximum principal amount and to any other terms and conditions that are specified by the Lieutenant Governor in Council. 1998, c. 15, Sched. A, s. 17 (1); 2004, c. 23, Sched. A, s. 19.

Payment from C.R.F.

(2) The Minister of Finance may pay out of the Consolidated Revenue Fund any amount required for the purposes of subsection (1). 1998, c. 15, Sched. A, s. 17 (2).

Delegation

(3) In an order under subsection (1), the Lieutenant Governor in Council may delegate to an officer or employee of the Crown or an agency of the Crown or to a solicitor engaged to act for the Minister of Finance, any or all of the powers of the Minister of Finance under this section. 1998, c. 15, Sched. A, s. 17 (3).

Fees payable to Minister of Finance

(4) The IESO shall pay to the Minister of Finance such fees as are prescribed by the regulations in respect of securities purchased and sums loaned under this section. 1998, c. 15, Sched. A, s. 17 (4); 2004, c. 23, Sched. A, s. 19.

Fees

18. The IESO may establish and charge fees for anything done in connection with the IESO-controlled grid or the IESO-administered markets. 2004, c. 23, Sched. A, s. 20.

Review of requirements and fees

19. (1) The IESO shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the IESO's proposed business plan for the fiscal year under section 19.1. 2004, c. 23, Sched. A, s. 21.

Board's powers

(2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the IESO for further consideration with the Board's recommendations. 2004, c. 23, Sched. A, s. 21.

Same

(3) In reviewing the IESO's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the IESO. 2004, c. 23, Sched. A, s. 21.

Changes in fees

(4) The IESO shall not establish, eliminate or change any fees without the approval of the Board. 2004, c. 23, Sched. A, s. 21.

Hearing

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so. 2004, c. 23, Sched. A, s. 21.

(6), (7) REPEALED: 2009, c. 33, Sched. 14, s. 2 (1).

Business plan

19.1 (1) At least 90 days before the beginning of its 2006 and each subsequent fiscal year, the IESO shall submit its proposed business plan for the fiscal year to the Minister for approval. 2004, c. 23, Sched. A, s. 22.

Minister's approval

(2) The Minister may approve the proposed business plan or refer it back to the IESO for further consideration. 2004, c. 23, Sched. A, s. 22.

Deemed approval

(3) If the Minister does not approve the proposed business plan and does not refer it back to the IESO for further consideration at least 70 days before the beginning of the fiscal year to which it relates, the Minister shall be deemed to approve the IESO's proposed business plan for the fiscal year. 2004, c. 23, Sched. A, s. 22.

(4) REPEALED: 2009, c. 33, Sched. 14, s. 2 (2).

Auditor

20. The board of directors of the IESO shall appoint one or more auditors licensed under the *Public Accounting Act*, *2004* to audit annually the accounts and transactions of the IESO. 1998, c. 15, Sched. A, s. 20; 2004, c. 8, s. 46; 2004, c. 23, Sched. A, s. 23.

Auditor General

20.1 The Auditor General may audit the accounts and transactions of the IESO. 2004, c. 23, Sched. A, s. 24; 2008, c. 7, Sched. G, s. 2.

Annual report

21. (1) The IESO shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of its board of directors. 1998, c. 15, Sched. A, s. 21 (1); 2004, c. 23, Sched. A, s. 25.

Financial statements

(2) The audited financial statements of the IESO shall be included in the annual report. 1998, c. 15, Sched. A, s. 21 (2); 2004, c. 23, Sched. A, s. 25.

Tabling

(3) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 1998, c. 15, Sched. A, s. 21 (3).

Other persons

(4) The IESO may give its annual report to other persons before the Minister complies with subsection (3). 1998, c. 15, Sched. A, s. 21 (4); 2004, c. 23, Sched. A, s. 25.

Other reports

22. (1) The IESO shall submit to the Minister such reports and information as the Minister may require from time to time. 2004, c. 23, Sched. A, s. 26.

Same

(2) The IESO shall submit to the Minister of Finance and the Minister such reports and information as the Minister of Finance may require from time to time. 2004, c. 23, Sched. A, s. 26.

Information to Board, OPA, etc.

23. The IESO shall provide the Board, the OPA and the Market Surveillance Panel with such information as the Board, OPA or Panel may require from time to time. 2004, c. 23, Sched. A, s. 27.

Application of corporations statutes

24. Except as otherwise provided by the regulations, the *Corporations Act* and the *Corporations Information Act* do not apply to the IESO. 1998, c. 15, Sched. A, s. 24; 2004, c. 23, Sched. A, s. 28.

Statutory Powers Procedure Act

25. The *Statutory Powers Procedure Act* does not apply to a proceeding before the IESO, its board of directors or any committee, panel, person or body to which a power or duty has been delegated under this Part. 1998, c. 15, Sched. A, s. 25; 2004, c. 23, Sched. A, s. 28.

PART II.1
ONTARIO POWER AUTHORITY

Ontario Power Authority

25.1 (1) A corporation without share capital to be known in English as the Ontario Power Authority and in French as Office de l'électricité de l'Ontario is hereby established. 2004, c. 23, Sched. A, s. 29.

Composition

(2) The OPA is composed of those persons who, from time to time, comprise its board of directors. 2004, c. 23, Sched. A, s. 29.

Objects and character

25.2 (1) The objects of the OPA are,

(a) to forecast electricity demand and the adequacy and reliability of electricity resources for Ontario for the medium and long term;

(b) to conduct independent planning for electricity generation, demand management, conservation and transmission and develop integrated power system plans for Ontario;

(c) to engage in activities in support of the goal of ensuring adequate, reliable and secure electricity supply and resources in Ontario;

(d) to engage in activities to facilitate the diversification of sources of electricity supply by promoting the use of cleaner energy sources and technologies, including alternative energy sources and renewable energy sources;

(e) to establish system-wide goals for the amount of electricity to be produced from alternative energy sources and renewable energy sources;

(f) to engage in activities that facilitate load management;

(g) to engage in activities that promote electricity conservation and the efficient use of electricity;

(h) to assist the Ontario Energy Board by facilitating stability in rates for certain types of consumers;

(i) to collect and provide to the public and the Ontario Energy Board information relating to medium and long term electricity needs of Ontario and the adequacy and reliability of the integrated power system to meet those needs. 2004, c. 23, Sched. A, s. 29.

Not for profit

(2) The business and affairs of the OPA shall be carried on without the purpose of gain and any profits shall be used by the OPA for the purpose of carrying out its objects. 2004, c. 23, Sched. A, s. 29.

Dissolution

(3) Upon the dissolution of the OPA and after the payment of all debts and liabilities, the remaining property of the OPA is vested in Her Majesty in right of Ontario. 2004, c. 23, Sched. A, s. 29.

Capacity

(4) The OPA has the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects, except as limited under subsection (6). 2004, c. 23, Sched. A, s. 29.

Powers

(5) Without limiting the generality of subsection (4), the OPA has the power,

(a) to enter into contracts relating to the adequacy and reliability of electricity supply;

(b) to enter into contracts relating to the procurement of electricity supply and capacity in or outside Ontario;

(c) to enter into contracts relating to the procurement of electricity supply and capacity using alternative energy sources or renewable energy sources to assist the Government of Ontario in achieving goals in the development and use of alternative or renewable energy technology and resources;

(d) to enter into contracts relating to the procurement of reductions in electricity demand and the management of electricity demand to assist the Government of Ontario in achieving goals in electricity conservation;

(e) to take such steps as it considers advisable to facilitate the provision of services relating to,

(i) electricity conservation and the efficient use of electricity,

(ii) electricity load management, or

(iii) the use of cleaner energy sources, including alternative energy sources and renewable energy sources;

(f) to take such steps as it considers advisable to ensure there is adequate transmission capacity as identified in the integrated power system plan;

(g) to enter into contracts with distributors to provide services referred to in clause (e);

(h) to act as a settlement agent for amounts determined under sections 78.1, 78.2 and 78.5 of the *Ontario Energy Board Act, 1998* and to contract with the IESO or another entity to perform or assist in performing the settlements;

(i) to create a security interest in any property currently owned or subsequently acquired by the OPA, including fees receivable, rights, powers and undertakings, in order to secure any debt, obligation or liability of the OPA. 2004, c. 23, Sched. A, s. 29; 2009, c. 12, Sched. B, s. 2.

Limitation

(6) The OPA's power to borrow and to invest its funds and to manage its financial assets, liabilities and risks is subject to such rules and restrictions as may be prescribed. 2004, c. 23, Sched. A, s. 29.

Not a Crown agent

25.3 The OPA is not an agent of Her Majesty for any purpose, despite the *Crown Agency Act*. 2004, c. 23, Sched. A, s. 29.

Board of directors

25.4 (1) The OPA's board of directors shall manage and supervise the management of the OPA's business and affairs. 2004, c. 23, Sched. A, s. 29.

Composition

(2) The board of directors shall be composed of,

(a) the chief executive officer of the OPA; and

(b) 10 additional individuals appointed by the Minister. 2004, c. 23, Sched. A, s. 29.

Directors to be independent

(3) Every director shall hold office as an independent director and not as a representative of any class of persons. 2004, c. 23, Sched. A, s. 29.

Directors

(4) No person who is a member of a class of persons prescribed by the regulations may hold office as a director of the OPA. 2004, c. 23, Sched. A, s. 29.

Term of office and reappointment

(5) A director appointed in accordance with clause (2) (b) shall hold office at pleasure for an initial term not exceeding two years and, subject to subsection (4), may be reappointed for successive terms not exceeding five years each. 2004, c. 23, Sched. A, s. 29.

Quorum

(6) A majority of the members of the board of directors constitute a quorum of the board. 2004, c. 23, Sched. A, s. 29.

Chair

(7) The board of directors shall appoint one of the directors as chair of the board. 2004, c. 23, Sched. A, s. 29.

Ceasing to hold office

(8) A director ceases to hold office in the circumstances specified in the Governance and Structure By-law. 2004, c. 23, Sched. A, s. 29.

Vacancy in board

(9) If there are one or more vacancies in the board of directors, the remaining directors may exercise all the powers of the board if they would constitute a quorum of the board if there were no vacancies. 2004, c. 23, Sched. A, s. 29.

Director duties

25.5 Every director of the OPA shall, in exercising and performing his or her powers and duties,

(a) act honestly and in good faith in the best interests of the OPA; and

(b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. 2004, c. 23, Sched. A, s. 29.

Chief executive officer

25.6 (1) The board of directors of the OPA shall appoint a chief executive officer of the OPA. 2004, c. 23, Sched. A, s. 29.

Exception

(2) Despite subsection (1), the Minister shall appoint the first chief executive officer of the OPA, but nothing in this subsection prevents the board of directors of the OPA from appointing any subsequent chief executive officer. 2004, c. 23, Sched. A, s. 29.

Conflict of interest

25.7 The directors and officers of the OPA shall comply with the provisions of the Governance and Structure By-law relating to conflict of interest. 2004, c. 23, Sched. A, s. 29.

Codes of conduct

25.8 (1) The board of directors of the OPA may establish codes of conduct applicable to the directors, officers, employees and agents of the OPA and to members of panels established by the OPA. 2004, c. 23, Sched. A, s. 29.

Conflict

(2) Any provision of a code of conduct that conflicts with this Act or the OPA's by-laws is void. 2004, c. 23, Sched. A, s. 29.

Delegation

25.9 Subject to the Governance and Structure By-law, the board of directors of the OPA may delegate any of the OPA's powers or duties to a committee of the board, to a panel established by the board or to any other person or body, subject to such conditions and restrictions as may be specified by the board of directors. 2004, c. 23, Sched. A, s. 29.

Panels

25.10 The board of directors of the OPA shall establish such panels as the board considers necessary for the purposes of this Act. 2004, c. 23, Sched. A, s. 29.

25.11 REPEALED: 2009, c. 12, Sched. B, s. 3.

Stakeholder input

25.12 The OPA shall establish one or more processes by which consumers, distributors, generators, transmitters and other persons who have an interest in the electricity industry may provide advice and recommendations for consideration by the OPA. 2004, c. 23, Sched. A, s. 29.

Staff and assistance

25.13 (1) Subject to the by-laws of the OPA, a panel established by the board of directors may use the services of,

(a) the OPA's employees, with the consent of the OPA; and

(b) persons other than the OPA's employees who have technical or professional expertise that is considered necessary. 2004, c. 23, Sched. A, s. 29.

Provision of information to the IESO

(2) The OPA shall provide the IESO with such information as the IESO may require from time to time. 2004, c. 23, Sched. A, s. 29.

Confidential information relating to a market participant

(3) A record that contains information provided to or obtained by the OPA relating to a market participant and that is designated by the OPA as confidential or highly confidential shall be deemed, for the purpose of section 17 of the *Freedom of Information and Protection of Privacy Act*, to be a record that reveals a trade secret or scientific, technical, commercial, financial or labour relations information, supplied in confidence implicitly or explicitly, the disclosure of which could reasonably be expected to prejudice significantly the competitive position or interfere significantly with the contractual or other negotiations of a person, group of persons, or organization. 2004, c. 23, Sched. A, s. 29.

Liability

25.14 (1) No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the OPA or a member of the Advisory Committee or a panel established by the board for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this or any other Act, the regulations, the OPA's licence, the OPA's by-laws or the market rules, or for any neglect or default in the exercise or performance in good faith of such a power or duty. 2004, c. 23, Sched. A, s. 29.

Same

(2) Subsection (1) does not relieve the OPA of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1). 2004, c. 23, Sched. A, s. 29.

Liability of directors under the *Employment Standards Act, 2000*

25.15 Part XX of the *Employment Standards Act, 2000* does not apply to a director of the OPA. 2004, c. 23, Sched. A, s. 29.

By-laws

25.16 (1) The board of directors of the OPA may make by-laws regulating the business and affairs of the OPA. 2004, c. 23, Sched. A, s. 29.

Governance and Structure By-law

(2) The board of directors shall make a by-law under subsection (1) dealing with matters of corporate governance and structure, including,

(a) the appointment of the chief executive officer of the OPA;

(b) REPEALED: 2009, c. 12, Sched. B, s. 4.

(c) the circumstances in which a director ceases to hold office;

(d) the remuneration and benefits of the chair and the other members of the board;

(e) conflict of interest;

(f) the delegation of the OPA's powers and duties;

(g) the establishment, composition and functions of panels. 2004, c. 23, Sched. A, s. 29; 2009, c. 12, Sched. B, s. 4.

Same

(3) The Governance and Structure By-law may be made only with the approval in writing of the Minister. 2004, c. 23, Sched. A, s. 29.

Amendment or repeal of Governance and Structure By-law

(4) A by-law that amends or repeals the Governance and Structure By-law shall be filed with the Minister by the board of directors. 2004, c. 23, Sched. A, s. 29.

Disallowance

(5) The Minister may disallow a by-law to which subsection (4) applies by written notice to the board of directors given within 60 days after the by-law is filed with the Minister. 2004, c. 23, Sched. A, s. 29.

Effective date

(6) A by-law to which subsection (4) does not apply comes into force on the day it is made or on such later date as may be specified in the by-law. 2004, c. 23, Sched. A, s. 29.

Same

(7) Subject to subsections (5) and (8), a by-law to which subsection (4) applies comes into force on the earlier of the following dates:

1. The expiry of the 60-day period referred to in subsection (5).
2. The date on which the Minister notifies the board of directors in writing that he or she will not disallow the by-law. 2004, c. 23, Sched. A, s. 29.

Same

(8) Subject to subsection (5), a by-law to which subsection (4) applies may specify that it comes into force on a date later than the date determined under subsection (7). 2004, c. 23, Sched. A, s. 29.

Conflict between by-laws

(9) In the event of a conflict between the Governance and Structure By-law and another by-law, the Governance and Structure By-law prevails. 2004, c. 23, Sched. A, s. 29.

***Legislation Act, 2006*, Part III**

(10) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made under this section. 2004, c. 23, Sched. A, s. 29; 2006, c. 21, Sched. F, s. 136 (1).

Province may purchase securities, etc.

25.17 (1) The Lieutenant Governor in Council may by order authorize the Minister of Finance to purchase securities of or make loans to the OPA at such times and on such terms and conditions as the Minister of Finance may determine subject to the maximum principal amount and to any other terms and conditions that are specified by the Lieutenant Governor in Council. 2004, c. 23, Sched. A, s. 29.

Payment from C.R.F.

(2) The Minister of Finance may pay out of the Consolidated Revenue Fund any amount required for the purposes of subsection (1). 2004, c. 23, Sched. A, s. 29.

Delegation

(3) In an order under subsection (1), the Lieutenant Governor in Council may delegate to an officer or employee of the Crown or an agency of the Crown or to a solicitor engaged to act for the Minister of Finance, any or all of the powers of the Minister of Finance under this section. 2004, c. 23, Sched. A, s. 29.

Fees payable to Minister of Finance

(4) The OPA shall pay to the Minister of Finance such fees as are prescribed by the regulations in respect of securities purchased and sums loaned under this section. 2004, c. 23, Sched. A, s. 29.

Reimbursement of costs incurred by the Crown

25.18 (1) The OPA shall reimburse the Crown or, if so directed by the Minister of Finance, an agency of the Crown for costs relating to the OPA, a procurement contract, an initiative described in clause 25.32 (4) (a) or a matter within the objects of the OPA, if,

(a) the costs were incurred by the Crown or an agency of the Crown after January 20, 2004 and before the Board's first approval of the OPA's procurement process under subsection 25.31 (4); or

(b) the liability of the Crown or an agency of the Crown for the costs arose during the period described in clause (a). 2004, c. 23, Sched. A, s. 29.

Payment of reimbursement

(2) The OPA shall make the reimbursement by making one or more payments in such amount or amounts at such time or times as may be determined by the Minister of Finance. 2004, c. 23, Sched. A, s. 29.

Minister's determinations final

(3) The determinations of the Minister under subsection (2) are final and conclusive and shall not be stayed, varied or set aside by any court. 2004, c. 23, Sched. A, s. 29.

25.19 REPEALED: 1998, c. 15, Sched. A, s. 25.19 (3). See: 2004, c. 23, Sched. A, s. 30.

Fees and charges

25.20 (1) The OPA may establish and impose fees and charges to recover,

(a) the costs of doing anything the OPA is required or permitted to do under this or any other Act; and

(b) any other type of expenditure the recovery of which is permitted by the regulations, subject to any limitations and restrictions set out in the regulations. 2004, c. 23, Sched. A, s. 31 (1).

Collection

(2) The IESO shall, in accordance with the regulations, collect and pay to the OPA all fees and charges payable to the OPA. 2004, c. 23, Sched. A, s. 31 (1).

May recover costs of procurement contracts

(3) For greater certainty, the OPA may, subject to the regulations, establish and impose charges to recover from consumers its costs and payments under procurement contracts. 2004, c. 23, Sched. A, s. 31 (2).

Board deemed to approve recovery

(4) The OPA's recovery of its costs and payments related to procurement contracts shall be deemed to be approved by the Board. 2004, c. 23, Sched. A, s. 31 (2).

Review of requirements and fees

25.21 (1) The OPA shall, at least 60 days before the beginning of each fiscal year, submit its proposed expenditure and revenue requirements for the fiscal year and the fees it proposes to charge during the fiscal year to the Board for review, but shall not do so until after the Minister approves or is deemed to approve the OPA's proposed business plan for the fiscal year under section 25.22. 2004, c. 23, Sched. A, s. 32.

Board's powers

(2) The Board may approve the proposed requirements and the proposed fees or may refer them back to the OPA for further consideration with the Board's recommendations. 2004, c. 23, Sched. A, s. 32.

Same

(3) In reviewing the OPA's proposed requirements and proposed fees, the Board shall not take into consideration the remuneration and benefits of the chair and other members of the board of directors of the OPA. 2004, c. 23, Sched. A, s. 32.

Changes in fees

(4) The OPA shall not establish, eliminate or change any fees without the approval of the Board. 2004, c. 23, Sched. A, s. 32.

Hearing

(5) The Board may hold a hearing before exercising its powers under this section, but it is not required to do so. 2004, c. 23, Sched. A, s. 32.

(6), (7) REPEALED: 2009, c. 33, Sched. 14, s. 2 (3).

Business plan

25.22 (1) At least 90 days before the beginning of its 2006 and each subsequent fiscal year, the OPA shall submit its proposed business plan for the fiscal year to the Minister for approval. 2004, c. 23, Sched. A, s. 32.

Minister's approval

(2) The Minister may approve the proposed business plan or refer it back to the OPA for further consideration. 2004, c. 23, Sched. A, s. 32.

Deemed approval

(3) If the Minister does not approve the proposed business plan and does not refer it back to the OPA for further consideration at least 70 days before the beginning of the fiscal year to which it relates, the Minister shall be deemed to have approved the OPA's proposed business plan for the fiscal year. 2004, c. 23, Sched. A, s. 32.

(4) REPEALED: 2009, c. 33, Sched. 14, s. 2 (4).

Auditor

25.23 The board of directors of the OPA shall appoint one or more auditors licensed under the *Public Accountancy Act* to audit annually the accounts and transactions of the OPA. 2004, c. 23, Sched. A, s. 32.

Auditor General

25.24 The Auditor General may audit the accounts and transactions of the OPA. 2004, c. 23, Sched. A, s. 32; 2008, c. 7, Sched. G, s. 3.

Annual report

25.25 (1) The OPA shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of its board of directors. 2004, c. 23, Sched. A, s. 32.

Financial statements

(2) The audited financial statements of the OPA shall be included in the annual report. 2004, c. 23, Sched. A, s. 32.

Tabling

(3) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2004, c. 23, Sched. A, s. 32.

Other persons

(4) The OPA may give its annual report to other persons before the Minister complies with subsection (3). 2004, c. 23, Sched. A, s. 32.

Other reports

25.26 (1) The OPA shall submit to the Minister such reports and information as the Minister may require from time to time. 2004, c. 23, Sched. A, s. 32.

Same

(2) The OPA shall submit to the Minister of Finance and the Minister such reports and information as the Minister of Finance may require from time to time. 2004, c. 23, Sched. A, s. 32.

Information to Board

25.27 The OPA shall provide the Board with such information as the Board may require from time to time. 2004, c. 23, Sched. A, s. 32.

Application of corporations statutes

25.28 Except as otherwise provided by the regulations, the *Corporations Act* and the *Corporations Information Act* do not apply to the OPA. 2004, c. 23, Sched. A, s. 32.

PART II.2
MANAGEMENT OF ELECTRICITY SUPPLY, CAPACITY AND DEMAND

Assessment of electricity resources

25.29 (1) The OPA shall make an assessment of the adequacy and reliability of electricity resources with respect to anticipated electricity supply, capacity, reliability and demand for each assessment period prescribed by the regulations. 2004, c. 23, Sched. A, s. 33.

Same

(2) As part of an assessment under subsection (1), the OPA shall consider generation and transmission capacities and technologies and conservation measures. 2004, c. 23, Sched. A, s. 33.

Integrated power system plan

25.30 (1) Once during each period prescribed by the regulations, or more frequently if required by the Minister or the Board, the OPA shall develop and submit to the Board an integrated power system plan,

(a) that is designed to assist, through effective management of electricity supply, transmission, capacity and demand, the achievement by the Government of Ontario of,

  (i) its goals relating to the adequacy and reliability of electricity supply, including electricity supply from alternative energy sources and renewable energy sources, and

  (ii) its goals relating to demand management; and

(b) that encompasses such other related matters as may be prescribed by the regulations. 2004, c. 23, Sched. A, s. 34.

Minister's directives

(2) The Minister may issue, and the OPA shall follow in preparing its integrated power system plans, directives that have been approved by the Lieutenant Governor in Council that set out the goals to be achieved during the period to be covered by an integrated power system plan, including goals relating to,

(a) the production of electricity from particular combinations of energy sources and generation technologies;

(b) increases in generation capacity from alternative energy sources, renewable energy sources or other energy sources;

(c) the phasing-out of coal-fired generation facilities; and

(d) the development and implementation of conservation measures, programs and targets on a system-wide basis or in particular service areas. 2004, c. 23, Sched. A, s. 34.

Publication

(3) A directive issued under subsection (2) shall be published in *The Ontario Gazette*. 2004, c. 23, Sched. A, s. 34.

Review of integrated power system plan

(4) The Board shall review each integrated power system plan submitted by the OPA to ensure it complies with any directions issued by the Minister and is economically prudent and cost effective. 2004, c. 23, Sched. A, s. 34.

Board's powers

(5) After review, the Board may approve a plan or refer it back with comments to the OPA for further consideration and resubmission to the Board. 2004, c. 23, Sched. A, s. 34.

Deadline for review

(6) The Board shall carry out the review of an integrated power system plan under subsection (4) within such time as the Minister directs. 2004, c. 23, Sched. A, s. 34.

Procurement process for electricity supply, etc.

25.31 (1) The OPA shall develop appropriate procurement processes for managing electricity supply, capacity and demand in accordance with its approved integrated power system plans. 2004, c. 23, Sched. A, s. 35.

Same

(2) The OPA's procurement processes must provide for simpler procurement processes for electricity supply or capacity to be generated using alternative energy sources or renewable energy sources, or both, where the supply or capacity or the generation facility or unit satisfies the prescribed conditions. 2004, c. 23, Sched. A, s. 35.

Application for approval

(3) The OPA shall apply to the Board for approval of its proposed procurement processes, and any amendments it proposes. 2004, c. 23, Sched. A, s. 35.

Board approval

(4) The Board shall review the OPA's proposed procurement processes and any proposed amendments and may approve the procurement processes or refer all or part of them back with comments to the OPA for further consideration and resubmission to the Board. 2004, c. 23, Sched. A, s. 35.

Deadline for review

(5) The Board shall carry out the review of the proposed procurement processes and any proposed amendments within such time as the Minister directs. 2004, c. 23, Sched. A, s. 35.

Procurement contracts

25.32 (1) When the OPA considers it advisable, it shall enter into contracts in accordance with procurement processes approved under section 25.31 for the procurement of,

(a) electricity supply or capacity, including supply or capacity to be generated using alternative energy sources, renewable energy sources or both; or

(b) measures that will manage electricity demand or result in the improved management of electricity demand on an on-going or emergency basis. 2004, c. 23, Sched. A, s. 36.

Contract to comply with regulations and directions

(2) The OPA shall not enter into a procurement contract that does not comply with,

(a) the regulations; or

(b) a direction issued under subsection (4), (4.1), (4.4), (4.5), (4.6) or (4.7) or section 25.35. 2009, c. 12, Sched. B, s. 5 (1).

Resolution of procurement contract disputes

(3) The parties to a procurement contract shall ensure that the contract provides a mechanism to resolve any disputes between them with respect to the contract. 2004, c. 23, Sched. A, s. 36.

Transition

(4) Despite subsection (2), the Minister may direct the OPA to assume, as of such date as the Minister considers appropriate, responsibility for exercising all powers and performing all duties of the Crown, including powers and duties to be exercised and performed through an agency of the Crown,

(a) under any request for proposals, draft request for proposals, another form of procurement solicitation issued by the Crown or through an agency of the Crown or any other initiative pursued by the Crown or through an agency of the Crown,

(i) that was issued or pursued after January 1, 2004 and before the Board's first approval of the OPA's procurement process under subsection 25.31 (4), and

(ii) that relates to the procurement of electricity supply or capacity or reductions in electricity demand or to measures for the management of electricity demand; and

(b) under any contract entered into by the Crown or an agency of the Crown pursuant to a procurement solicitation or other initiative referred to in clause (a). 2004, c. 23, Sched. A, s. 36.

Same

(4.1) The Minister may direct the OPA to undertake any request for proposal, any other form of procurement solicitation or any other initiative or activity that relates to,

(a) the procurement of electricity supply or capacity derived from renewable energy sources;

(b) reductions in electricity demand; or

(c) measures related to conservation or the management of electricity demand. 2009, c. 12, Sched. B, s. 5 (2).

Direction re process

(4.2) The Minister may, as part of a direction under subsection (4.1), specify that the OPA is to use a competitive or a non-competitive process as part of the initiative or activity. 2009, c. 12, Sched. B, s. 5 (2).

Direction re pricing

(4.3) A direction issued by the Minister under subsection (4.1) may allow the Minister to specify the pricing or other economic factors to be used or achieved by the OPA. 2009, c. 12, Sched. B, s. 5 (2).

Directions re consultation

(4.4) The Minister may direct the OPA to implement procedures for consulting aboriginal peoples and other persons or groups as may be specified in the direction, on the planning, development or procurement of electricity supply, capacity, transmission systems and distribution systems and the direction may specify the manner or method by which such consultations shall occur and the timing within which such consultations shall occur. 2009, c. 12, Sched. B, s. 5 (2).

Direction re programs for aboriginal participation

(4.5) The Minister may direct the OPA to establish measures to facilitate the participation of aboriginal peoples in the development of renewable energy generation facilities, transmission systems and distribution systems and such measures may include programs or funding for, or associated with, aboriginal participation in the development of such facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Direction re programs for participation of groups

(4.6) The Minister may direct the OPA to establish measures to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the measures may include programs or funding for or associated with the participation of groups and organizations, including but not limited to municipalities, in the development of the facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Direction re municipal programs

(4.7) The Minister may direct the OPA to develop programs that are designed to reimburse the direct costs incurred by a municipality in order to facilitate the development of renewable energy generation facilities, transmission systems and distribution systems and the funding may include funding for infrastructure associated with or affected by the development of the facilities or systems. 2009, c. 12, Sched. B, s. 5 (2).

Release of the Crown, etc.

(5) As of the day specified in the Minister's direction under subsection (4), the OPA shall assume responsibility in accordance with that subsection and the Crown and any Crown agency referred to in that subsection are released from any and all liabilities and obligations with respect to the matters for which the OPA has assumed responsibility. 2004, c. 23, Sched. A, s. 36.

Deemed compliance

(6) The following contracts shall be deemed to be procurement contracts entered into in accordance with any integrated power system plan and procurement process approved by the Board:

1. A contract entered into by the OPA following a procurement solicitation or other initiative referred to in clause (4) (a).
2. A contract referred to in clause (4) (b).
3. A contract entered into by the OPA following a procurement solicitation or other initiative referred to in subsection (4.1), (4.4), (4.5) or (4.6) or section 25.35 or an expenditure made under subsection (4.7). 2004, c. 23, Sched. A, s. 36; 2009, c. 12, Sched. B, s. 5 (3).

Same

(7) The OPA shall enter into any contract following a procurement solicitation or other initiative referred to in clause (4) (a) if directed to do so by the Minister of Energy, and that contract shall be deemed to be a procurement contract that was entered into in accordance with any integrated power system plan and procurement process approved by the Board. 2004, c. 23, Sched. A, s. 36.

Electricity pricing to reflect costs

IESO to make adjustments

25.33 (1) The IESO shall, through its billing and settlement systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of market participants in Ontario that are prescribed by regulation reflect amounts paid, in accordance with the regulations, to generators, distributors, the OPA and the Financial Corporation, whether the amounts are determined under the market rules or under sections 78.1 to 78.5 of the *Ontario Energy Board Act, 1998*. 2009, c. 12, Sched. B, s. 6 (1).

Distributors and retailers to make adjustments

(2) Distributors and retailers shall, through their billing systems, make adjustments in accordance with the regulations that ensure that, over time, payments by classes of consumers in Ontario that are prescribed by regulation reflect amounts paid, in accordance with the regulations, to generators, distributors, the OPA and the Financial Corporation, whether the amounts are determined under the market rules or under sections 78.1 to 78.5 of the *Ontario Energy Board Act, 1998*. 2009, c. 12, Sched. B, s. 6 (1).

Exception

(3) Any adjustment that would otherwise be made under subsection (1) or (2) and that relates to electricity that is consumed by any of the following types of consumers shall instead be made in accordance with the regulations to one or more variance accounts established and maintained by the OPA:

1. REPEALED: 2009, c. 12, Sched. B, s. 6 (2).
2. A consumer whose rates are determined by the Board under section 79.16 of the *Ontario Energy Board Act, 1998*.
3. A consumer who is a member of a class of consumers prescribed by the regulations. 2004, c. 23, Sched. A, s. 37; 2009, c. 12, Sched. B, s. 6 (2).

Adjustments, payments, set-offs and credits

(4) The OPA, the IESO, distributors and retailers shall,

(a) make such adjustments in their accounts as may be required or permitted by the regulations to record adjustments described in subsections (1), (2) and (3); and

(b) make and receive such payments, set-offs and credits as may be required or permitted by the regulations with respect to consumers described in subsection (3). 2004, c. 23, Sched. A, s. 37.

Variance accounts

(5) The OPA shall establish and maintain such variance accounts as may be necessary to record all amounts payable or receivable by it under this section. 2004, c. 23, Sched. A, s. 37.

Compliance

(6) The Board shall ensure that adjustments, payments, set-offs and credits required or permitted under this section are made in accordance with the regulations. 2004, c. 23, Sched. A, s. 37.

Adjustment not assignable

(7) An adjustment made under subsection (1) or (2) is not assignable by a consumer in a contract with a retailer, whether the contract is entered into before or after this section comes into force. 2004, c. 23, Sched. A, s. 37.

No cause of action

(8) No cause of action against a consumer, a retailer or the Crown arises as the result of a contract or a term of a contract ceasing to have effect because of the operation of subsection (7). 2004, c. 23, Sched. A, s. 37.

Payments with respect to certain retail contracts

25.34 (1) The OPA shall make and receive such payments as may be required by the regulations with respect to contracts prescribed by the regulations that were in effect on November 11, 2002 between retailers and consumers. 2004, c. 23, Sched. A, s. 38.

Payments

(2) The OPA, the IESO, distributors and retailers shall make and receive such payments, set-offs and credits relating to payments referred to in subsection (1) as may be required by the regulations. 2004, c. 23, Sched. A, s. 38.

Compliance

(3) The Board shall ensure that payments, set-offs and credits required under this section are made in accordance with the regulations. 2004, c. 23, Sched. A, s. 38.

Feed-in tariff program

25.35 (1) The Minister may direct the OPA to develop a feed-in tariff program that is designed to procure energy from renewable energy sources under such circumstances and conditions, in consideration of such factors and within such period as the Minister may require. 2009, c. 12, Sched. B, s. 7.

Minister's directions

(2) Where the Minister has issued a direction under subsection (1), the Minister may issue, and the OPA shall follow in preparing its feed-in tariff program, directions that set out the goals to be achieved during the period to be covered by the program, including goals relating to,

(a) the participation by aboriginal peoples in the development and establishment of renewable energy projects; and

(b) the involvement of members of the local community in the development and establishment of renewable energy projects. 2009, c. 12, Sched. B, s. 7.

Same, domestic content

(3) Where the Minister has issued a direction under subsection (1), the Minister shall issue, and the OPA shall follow in preparing its feed-in tariff program, directions that set out the goals relating to domestic content to be achieved during the period to be covered by the program. 2009, c. 12, Sched. B, s. 7.

Definition

(4) In this section,

"feed-in tariff program" means a program for procurement, including a procurement process, providing standard program rules, standard contracts and standard pricing regarding classes of generation facilities differentiated by energy source or fuel type, generator capacity and the manner by which the generation facility is used, deployed, installed or located. 2009, c. 12, Sched. B, s. 7.

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

(5) An exemption under subsection (4) may be subject to such conditions and restrictions as may be specified by the Board. 1998, c. 15, Sched. A, s. 29 (5).

Same

(6) The Board shall not exempt a distributor entirely from all the provisions of this section unless, after holding a hearing, the Board is satisfied that consumers in the distributor's service area will continue to have access to electricity. 1998, c. 15, Sched. A, s. 29 (6).

Conservation measures

29.1 (1) Subject to section 71 of the *Ontario Energy Board Act, 1998* and such limits and criteria as may be prescribed by the regulations, a transmitter, distributor or the OPA may provide services that would assist the Government of Ontario in achieving its goals in electricity conservation, including services related to,

(a) the promotion of electricity conservation and the efficient use of electricity;

(b) electricity load management; or

(c) the promotion of cleaner energy sources, including alternative energy sources and renewable energy sources. 2004, c. 23, Sched. A, s. 40.

Same

(2) Nothing in subsection (1) allows a distributor or transmitter to generate electricity by any means except through an affiliate approved by the Board under section 71 of the *Ontario Energy Board Act, 1998*. 2004, c. 23, Sched. A, s. 40.

Allocation during emergencies, etc.

30. (1) If the supply of electricity to a distributor is interrupted or reduced as a result of an emergency or a breakdown, repair or extension of a transmission or distribution system, the distributor may allocate the available electricity among the consumers in its service area. 1998, c. 15, Sched. A, s. 30 (1).

No breach of contract

(2) An allocation of electricity under subsection (1) shall be deemed not to be a breach of any contract. 1998, c. 15, Sched. A, s. 30 (2).

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

Security criteria

30.1 (1) Where a distributor or suite meter provider requires security for the payment of charges related to electricity by or on behalf of a prescribed consumer or a member of a prescribed class of consumers, the distributor or suite meter provider shall,

(a) meet the criteria or requirements prescribed by regulation; and

(b) satisfy the criteria or requirements in any order made by the Board or code issued by the Board. 2010, c. 8, s. 37 (4).

Security, requirements, etc.

(2) If required to do so by regulation, a distributor or suite meter provider shall,

(a) meet specific requirements in relation to any security being required by it in respect of consumers or members of a class of consumers;

(b) accept forms of security prescribed by regulation and, in circumstances prescribed by regulation, shall forego any requirement for security; and

(c) provide consumers or classes of consumers prescribed by regulation with alternative security arrangements, which meet the criteria prescribed by regulation, where the conditions or circumstances prescribed by regulation are satisfied by the consumers or classes of consumers. 2010, c. 8, s. 37 (4).

Additional requirements

(3) In addition to the matters referred to in subsection (2), a distributor or suite meter provider shall comply with such other requirements with respect to security as may be prescribed. 2010, c. 8, s. 37 (4).

Definition

(4) For the purposes of this section,

"security" has the meaning as may be prescribed by regulation. 2010, c. 8, s. 37 (4).

See: 2010, c. 8, ss. 37 (4), 40.

Termination of service

31. (1) A distributor may shut off the distribution of electricity to a property if any amount payable by a person for the distribution or retail of electricity to the property pursuant to section 29 is overdue. 1998, c. 15, Sched. A, s. 31 (1).

Notice

(2) A distributor shall provide reasonable notice of the proposed shut-off to the person who is responsible for the overdue amount by personal service or prepaid mail or by posting the notice on the property in a conspicuous place. 1998, c. 15, Sched. A, s. 31 (2).

Recovery of amount

(3) A distributor may recover all amounts payable despite shutting off the distribution of electricity. 1998, c. 15, Sched. A, s. 31 (3).

Exception

(4) A distributor shall not shut off the distribution of electricity to a property under subsection (1) during the period that begins on the day this subsection comes into force and ends on March 31, 2003 or during any other period prescribed by the regulations. 2002, c. 23, s. 3 (7).

Restoration of electricity

(5) If a distributor shuts off the distribution of electricity to a property under subsection (1) after November 11, 2002 and before April 1, 2003, or during a period prescribed by the regulations, the distributor shall, as soon as possible,

(a) restore, without charge, the distribution of electricity to the property; and

(b) compensate any person who suffered a loss as a result of the shut-off of electricity. 2002, c. 23, s. 3 (7).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 31 is repealed and the following substituted:

Termination of service

31. (1) A distributor or suite meter provider may shut off the distribution of electricity to a property,

(a) if any amount payable by a person for the distribution or retail of electricity to the property pursuant to section 29 or Part III of the *Energy Consumer Protection Act, 2010* is overdue; and

(b) if the shutting off of the distribution of electricity to the property complies with any condition of a licence of the distributor or suite-meter provider included in the licence under clause 70 (2) (d.1) of the *Ontario Energy Board Act, 1998*. 2010, c. 8, s. 37 (5).

Notice, to whom

(2) A distributor or suite meter provider shall provide reasonable notice of the proposed shut-off of the distribution of electricity to,

(a) the person who is responsible for the overdue amount; and

(b) any other person who resides at the property who meets the criteria prescribed by regulation. 2010, c. 8, s. 37 (5).

Notice, means

(3) The notice of the proposed shut-off of the distribution of electricity shall be provided,

(a) by personal service, prepaid mail or posting the notice in a conspicuous place on the property where the electricity is distributed; or

(b) by such other means or in such manner as is prescribed by regulation. 2010, c. 8, s. 37 (5).

Notice, information and manner of presentation

(4) The notice of the proposed shut-off of the distribution of electricity shall contain such information as may be prescribed by regulation and the information shall be presented in such manner as may be prescribed by regulation. 2010, c. 8, s. 37 (5).

Recovery of amount

(5) A distributor or suite meter provider may recover all amounts payable despite shutting off the distribution of electricity. 2010, c. 8, s. 37 (5).

Exception

(6) A distributor or suite meter provider shall not shut off the distribution of electricity to a property where it has received by the time prescribed by regulation such information as may be prescribed by regulation about the consumer or member of a class of consumers prescribed by regulation who resides at the property under such circumstances as may be prescribed by regulation,

(a) where the consumer does such things, or takes such steps or actions as may be prescribed by the regulations or provides such information as may be prescribed by the regulations to the distributor, the suite meter provider, the Board or such other entity as may be prescribed by regulation; or

(b) during any period prescribed by the regulations. 2010, c. 8, s. 37 (5).

Same

(7) For the purposes of subsection (6), where a regulation requires that a thing be done, a step be taken or information be provided by a certain date, a distributor shall not shut off the distribution of electricity to the property before the time prescribed by regulation has elapsed. 2010, c. 8, s. 37 (5).

Same, different steps

(8) For the purposes of subsection (6), a prescribed consumer or a member of a prescribed class of consumers may be required to take different prescribed steps during the different prescribed periods provided for under that subsection. 2010, c. 8, s. 37 (5).

Restoration of electricity

(9) If a distributor or suite meter provider shuts off the distribution of electricity to a property in contravention of this section, the distributor or suite meter provider shall, as soon as possible,

(a) restore, without charge, the distribution of electricity to the property; and

(b) compensate any person who suffered a loss as a result of the shut-off of electricity. 2010, c. 8, s. 37 (5).

See: 2010, c. 8, ss. 37 (5), 40.

Emergency termination of service

31.1 (1) A distributor may shut off the distribution of electricity to a property without notice if the distributor has reason to believe that a condition exists in respect of the property that threatens or is likely to threaten,

(a) the safety of any person; or

(b) the reliability of all or part of the distribution system. 2005, c. 33, s. 5.

Notice

(2) The distributor shall,

(a) give the Electrical Safety Authority written notice of the shut-off under subsection (1) as soon as possible afterwards; and

(b) post a notice of the shut-off under subsection (1) in a conspicuous place on the property within 10 days afterwards. 2005, c. 33, s. 5.

Same

(3) The notices under subsection (2) shall set out the reasons for the shut-off and the notice posted under clause (2) (b) shall describe the right to a review by the Board, as provided by subsection (6). 2005, c. 33, s. 5.

Restoration of electricity

(4) At the request of the owner or occupier of the property to have the distribution of electricity to the property restored, the distributor shall assess the conditions existing in respect of the property and, subject to any requirements under Part VIII, shall restore the distribution of electricity to the property as soon as possible after the distributor is satisfied that neither of the conditions described in clauses (1) (a) and (b) exists in respect of the property. 2005, c. 33, s. 5.

Limit

(5) Despite subsection (4), the distributor is not required to assess the conditions existing in respect of the property more than once every five days. 2005, c. 33, s. 5.

Application for review

(6) The owner or occupier of the property may file an application in writing to the Board to have the distribution of electricity to the property restored, but may not file an application with the Board without first making a request to the distributor under subsection (4). 2005, c. 33, s. 5.

Same

(7) The Board shall forward a copy of an application filed under subsection (6) to the distributor before commencing its review. 2005, c. 33, s. 5.

Review by Board

(8) Upon receipt of an application under subsection (6), the Board shall review the matter and, upon the completion of its review, if it finds that the distributor acted unreasonably in shutting off the distribution of electricity to the property or in failing to restore the distribution of electricity to the property, may make an order directing the distributor to restore the distribution of electricity to the property, subject to any requirements under Part VIII. 2005, c. 33, s. 5.

Termination not a breach of contract

(9) If the Board finds that the distributor did not act unreasonably in shutting off the distribution of electricity to a property under subsection (1), the shut-off of the distribution of electricity to the property shall be deemed not to be a breach of any contract. 2005, c. 33, s. 5.

MARKET RULES

Market rules

32. (1) The IESO may make rules,

(a) governing the IESO-controlled grid;

(b) establishing and governing markets related to electricity and ancillary services; and

(c) establishing and enforcing standards and criteria relating to the reliability of electricity service or the IESO-controlled grid, including standards and criteria relating to electricity supply generated from sources connected to a distribution system that alone or in aggregate could impact the reliability of electricity service or the IESO-controlled grid. 1998, c. 15, Sched. A, s. 32 (1); 2004, c. 23, Sched. A, s. 41 (1, 2); 2009, c. 12, Sched. B, s. 11 (1).

Examples

(2) Without limiting the generality of subsection (1), the market rules may include provisions,

(a) governing the making and publication of market rules;

(b) governing the conveying of electricity into, through or out of the IESO-controlled grid and the provision of ancillary services;

(c) governing standards and procedures to be observed in system emergencies;

(d) authorizing and governing the giving of directions by the IESO, including,

(i) for the purpose of maintaining the reliability of electricity service or the IESO-controlled grid, directions requiring persons, including persons providing electricity supply generated from sources connected to a distribution system, within such time as may be specified in the direction, to synchronize, desynchronize, increase, decrease or maintain electrical output, to take such other action as may be specified in the direction or to refrain from such action as may be specified in the direction, and

(ii) other directions requiring market participants, within such time as may be specified in the direction, to take such action or refrain from such action as may be specified in the direction, including action related to a system emergency; and

(e) authorizing and governing the making of orders by the IESO, including orders,

(i) imposing financial penalties on market participants,

(ii) authorizing a person 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, or

(iii) terminating, suspending or restricting a person's rights 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. 1998, c. 15, Sched. A, s. 32 (2); 2004, c. 23, Sched. A, s. 41 (2-6); 2009, c. 12, Sched. B, s. 11 (2).

General or particular

(3) A market rule may be general or particular in its application. 1998, c. 15, Sched. A, s. 32 (3).

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to the market rules or to any directions or orders made under the market rules. 1998, c. 15, Sched. A, s. 32 (4); 2006, c. 21, Sched. F, s. 136 (1).

Publication and inspection of market rules

(5) The IESO shall publish the market rules in accordance with the market rules and shall make the market rules available for public inspection during normal business hours at the offices of the IESO. 1998, c. 15, Sched. A, s. 32 (5); 2004, c. 23, Sched. A, s. 41 (7).

Notice to Board

(6) The IESO shall not make a rule under this section unless it first gives the Board an assessment of the impact of the rule on the interests of consumers with respect to prices and the reliability and quality of electricity service. 2004, c. 23, Sched. A, s. 41 (8).

Transition

(7) All rules made before subsection 4 (1) of Schedule A to the *Electricity Restructuring Act, 2004* comes into force remain in effect until amended or revoked in accordance with this Act. 2004, c. 23, Sched. A, s. 41 (8).

(8), (9) REPEALED: 2004, c. 23, Sched. A, s. 41 (8).

Amendment of market rules

33. (1) The IESO shall, in accordance with the market rules, publish any amendment to the market rules at least 22 days before the amendment comes into force. 2004, c. 23, Sched. A, s. 42.

Notice to the Board

(2) The IESO shall give the Board a copy of the amendment and such other information as is prescribed by the regulations on or before the date the IESO publishes the amendment under subsection (1). 2004, c. 23, Sched. A, s. 42.

Board's power to revoke

(3) Despite section 4.1 of the *Statutory Powers Procedure Act* and section 35.1 of this Act, the Board may, not later than 15 days after the amendment is published under subsection (1) and without holding a hearing, revoke the amendment on a date specified by the Board and refer the amendment back to the IESO for further consideration. 2004, c. 23, Sched. A, s. 42.

Application for review

(4) Any person may apply to the Board for review of an amendment to the market rules by filing an application with the Board within 21 days after the amendment is published under subsection (1). 2004, c. 23, Sched. A, s. 42.

Application of *Ontario Energy Board Act, 1998*

(5) Subsection 19 (4) of the *Ontario Energy Board Act, 1998* applies to an application under subsection (4). 2004, c. 23, Sched. A, s. 42.

Review by Board

(6) The Board shall issue an order that embodies its final decision within 60 days after receiving an application for review of an amendment. 2004, c. 23, Sched. A, s. 42.

Stay of amendment

(7) No application for review of an amendment under this section shall stay the operation of the amendment pending the completion of the Board's review of the amendment unless the Board orders otherwise. 2004, c. 23, Sched. A, s. 42.

Same

(8) In determining whether to stay the operation of an amendment, the Board shall consider,

(a) the public interest;

(b) the merits of the application;

(c) the possibility of irreparable harm to any person;

(d) the impact on consumers; and

(e) the balance of convenience. 2004, c. 23, Sched. A, s. 42.

Order

(9) If, on completion of its review, the Board finds that the amendment is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board shall make an order,

(a) revoking the amendment on a date specified by the Board; and

(b) referring the amendment back to the IESO for further consideration. 2004, c. 23, Sched. A, s. 42.

Urgent amendments

34. (1) Section 33 does not apply if the IESO files a statement with the Board indicating that, in its opinion, an amendment to the market rules is urgently required for one or more of the following reasons:

1. To avoid, reduce the risk of or mitigate the effects of conditions that affect the ability of the integrated power system to function normally.
2. To avoid, reduce the risk of or mitigate the effects of the abuse of market power.
3. To implement standards or criteria of a standards authority.
4. To avoid, reduce the risk of or mitigate the effects of an unintended adverse effect of a market rule.
5. A reason prescribed by the regulations. 1998, c. 15, Sched. A, s. 34 (1); 2002, c. 23, s. 3 (14); 2004, c. 23, Sched. A, s. 43 (1).

Publication of urgent amendment

(2) The IESO shall publish the amendment in accordance with the market rules at the same time or as soon as reasonably possible after the statement referred to in subsection (1) is filed. 1998, c. 15, Sched. A, s. 34 (2); 2004, c. 23, Sched. A, s. 43 (2).

Notice to the Board

(2.1) The IESO shall give the Board a copy of the amendment and such other information as may be prescribed by the regulations on or before the date the IESO publishes the amendment under subsection (2). 2004, c. 23, Sched. A, s. 43 (3).

Board's power to revoke

(2.2) Despite section 4.1 of the *Statutory Powers Procedure Act* and section 35.1 of this Act, the Board may, not later than 15 days after the amendment is published under subsection (2) and without holding a hearing, revoke the amendment on a date specified by the Board and refer the amendment back to the IESO for further consideration. 2004, c. 23, Sched. A, s. 43 (3).

Review by Board

(3) On application by a person who is directly affected by the amendment, the Board shall review the amendment. 1998, c. 15, Sched. A, s. 34 (3); 2002, c. 23, s. 3 (17).

Time for application

(4) The application must be filed within 21 days after the amendment is published under subsection (2). 1998, c. 15, Sched. A, s. 34 (4).

Effect of revocation by Board

(4.1) If the Board revokes the amendment under subsection (2.2),

(a) subsection (3) ceases to apply to the amendment; and

(b) the Board shall not proceed with any review that arises from an application that was made under subsection (3) before it revoked the amendment. 2009, c. 33, Sched. 14, s. 2 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4.1) is repealed. See: 2009, c. 33, Sched. 14, s. 2 (6), 4 (2).

Stay of amendment

(5) An application under this section does not stay the operation of the amendment pending the completion of the review. 1998, c. 15, Sched. A, s. 34 (5).

Referral back to IMO

(6) If, on completion of its review, the Board finds that the amendment is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board,

(a) shall make an order referring the amendment back to the IESO for further consideration; and

(b) may make an order revoking the amendment on a date specified by the Board. 1998, c. 15, Sched. A, s. 34 (6); 2004, c. 23, Sched. A, s. 43 (4).

Other reviews of market rules

35. (1) On application by a person who is directly affected by a provision of the market rules, the Board may review the provision. 2002, c. 23, s. 3 (20).

Exception

(2) Subsection (1) does not apply to a provision of the market rules that was reviewed by the Board under section 33 or 34 within the 24 months before the application. 1998, c. 15, Sched. A, s. 35 (2).

Review of market rule made by the Minister

(3) Subsection (1) does not apply to a provision of the market rules that was made by the Minister before May 1, 2002 unless the application is made before May 1, 2005. 2004, c. 23, Sched. A, s. 44 (1).

Restriction

(4) An application shall not be made under this section by a market participant unless the applicant has made use of the provisions of the market rules relating to the review of market rules. 1998, c. 15, Sched. A, s. 35 (4).

Stay of provision

(5) An application under this section does not stay the operation of the provision pending the completion of the review. 1998, c. 15, Sched. A, s. 35 (5).

Referral back to IMO

(6) If, on completion of a review under this section, the Board finds that the provision is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board shall make an order directing the IESO to amend the market rules in a manner and within the time specified by the Board. 1998, c. 15, Sched. A, s. 35 (6); 2004, c. 23, Sched. A, s. 44 (2).

Publication

(7) The IESO shall, in accordance with the market rules, publish any amendment made pursuant to an order under subsection (6). 1998, c. 15, Sched. A, s. 35 (7); 2004, c. 23, Sched. A, s. 44 (2).

Further reviews

(8) Sections 33 and 34 do not apply to an amendment made in accordance with an order under subsection (6). 1998, c. 15, Sched. A, s. 35 (8).

Statutory powers of decision

35.1 The powers of the Board to make orders under sections 33, 34 and 35 shall be deemed to be statutory powers of decision for the purpose of the *Statutory Powers Procedure Act*. 2000, c. 26, Sched. D, s. 1 (1).

Appeals from orders

36. (1) A person who is subject to an order made under the market rules may appeal the order to the Board if the order,

(a) requires the person to pay a financial penalty or other amount of money that exceeds the amount prescribed by the regulations;

(b) denies the person authorization 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; or

(c) terminates, suspends or restricts the person's rights 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. 1998, c. 15, Sched. A, s. 36 (1); 2004, c. 23, Sched. A, s. 45 (1).

Other methods of resolution

(2) An appeal shall not be commenced under subsection (1) unless the appellant has made use of the provisions of the market rules relating to dispute resolution. 1998, c. 15, Sched. A, s. 36 (2).

Time for appeal

(3) The appeal must be filed within the time prescribed by the rules of the Board. 1998, c. 15, Sched. A, s. 36 (3).

Stay of order

(4) An appeal does not stay the operation of the order pending the determination of the appeal unless the Board orders otherwise. 1998, c. 15, Sched. A, s. 36 (4).

Same

(5) In determining whether to stay the operation of an order, the Board shall consider,

(a) the public interest;

(b) the merits of the appeal;

(c) the possibility of irreparable harm to any person; and

(d) the balance of convenience. 1998, c. 15, Sched. A, s. 36 (5).

Powers of Board

(6) After considering the appeal, the Board may make an order,

(a) dismissing the appeal;

(b) revoking or amending the order appealed from; or

(c) making any other order or decision that the IESO could have made. 1998, c. 15, Sched. A, s. 36 (6); 2004, c. 23, Sched. A, s. 45 (2).

Same

(7) In addition to its powers under subsection (6), the Board may also make an order revoking, suspending or adding or amending a condition of the appellant's licence. 1998, c. 15, Sched. A, s. 36 (7).

(8) REPEALED: 2000, c. 26, Sched. D, s. 1 (2).

Exemptions from market rules

36.1 (1) A person may apply to the IESO for an exemption from any provision of the market rules. 2001, c. 9, Sched. F, s. 1 (2); 2004, c. 23, Sched. A, s. 46 (1).

Notice of application

(2) The IESO shall, in accordance with the market rules, publish notice of the application. 2001, c. 9, Sched. F, s. 1 (2); 2004, c. 23, Sched. A, s. 46 (1).

Determined by panel of directors

(3) The application shall be determined by a panel of at least two directors of the IESO assigned to the application by the chair of the IESO's board of directors. 2004, c. 23, Sched. A, s. 46 (2).

Written submissions

(4) The panel is not required to hold a hearing but shall consider all written submissions made in accordance with the market rules in respect of the application. 2001, c. 9, Sched. F, s. 1 (2).

Exemption requires approval of two-thirds of panel

(5) An exemption shall not be granted unless the exemption is approved by at least two-thirds of the directors on the panel. 2004, c. 23, Sched. A, s. 46 (3).

Terms of exemption

(6) An exemption,

(a) may be granted in whole or in part; and

(b) may be granted subject to conditions or restrictions. 2001, c. 9, Sched. F, s. 1 (2).

Expiry of exemption

(7) If an exemption is granted, it shall specify that it expires,

(a) on a date fixed by the panel; or

(b) on the occurrence of an event specified by the panel. 2001, c. 9, Sched. F, s. 1 (2).

Same

(8) A date fixed for the expiry of an exemption under clause (7) (a) shall not be later than five years after the exemption takes effect, unless the panel is satisfied that the circumstances justify a later date. 2001, c. 9, Sched. F, s. 1 (2).

Reasons

(9) When the panel decides to grant or refuse to grant an exemption, it shall give written reasons for its decision. 2001, c. 9, Sched. F, s. 1 (2).

Notice of decision

(10) When the panel decides to grant or refuse to grant an exemption, the IESO shall, in accordance with the market rules, publish notice of the decision. 2001, c. 9, Sched. F, s. 1 (2); 2004, c. 23, Sched. A, s. 46 (4).

Appeal

(11) A person who is directly affected by the panel's decision to grant or refuse to grant an exemption and who made written submissions to the panel may appeal to the Board within 14 days after publication of the notice of the decision. 2001, c. 9, Sched. F, s. 1 (2).

Short-term exemptions

(12) Subsection (11) does not apply to a decision to grant an exemption that expires less than 60 days after it is granted. 2001, c. 9, Sched. F, s. 1 (2).

Stay

(13) An appeal does not stay the decision of the panel pending the determination of the appeal. 2001, c. 9, Sched. F, s. 1 (2).

Powers of Board

(14) After considering the appeal, the Board may make an order,

(a) dismissing the appeal; or

(b) if the Board finds that the decision of the panel is inconsistent with the purposes of this Act,

(i) referring the application for the exemption back to the panel for further consideration,

(ii) revoking or amending the decision of the panel, or

(iii) making any decision that the panel could have made. 2001, c. 9, Sched. F, s. 1 (2).

Removal of exemption

(15) If the board of directors proposes to remove an exemption, subsections (2), (3), (4), (6), (9), (10), (11), (13) and (14) apply, with necessary modifications, and subsection (16) applies without modification. 2004, c. 23, Sched. A, s. 46 (5).

Appeal of removal of exemption

(16) If a decision is made to remove an exemption, the only person who may appeal under subsection (11) is the person in whose favour the exemption was granted. 2001, c. 9, Sched. F, s. 1 (2).

Previous exemptions

(17) An exemption from a provision of the market rules that was granted by the IESO before the day this subsection came into force in respect of a metering installation that was in service before April 17, 2000 or in respect of which the major components were ordered or procured before or within 30 days following April 17, 2000 shall be deemed to have been authorized by law and shall continue until it expires pursuant to its terms or until it is removed under subsection (15). 2001, c. 9, Sched. F, s. 1 (2); 2004, c. 23, Sched. A, s. 46 (6).

Rules

(18) The IESO's directors may make rules governing the practice and procedure before panels of directors under this section. 2004, c. 23, Sched. A, s. 46 (7).

Report

(19) The IESO shall, not later than May 1, 2007, submit a report to the Minister on the need for and operation of this section. 2004, c. 23, Sched. A, s. 46 (8).

Extension

(20) The Lieutenant Governor in Council may, before May 1, 2007, extend by not more than six months the date by which the report referred to in subsection (19) must be submitted. 2004, c. 23, Sched. A, s. 46 (8).

Tabling of report

(21) The Minister shall submit the report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2001, c. 9, Sched. F, s. 1 (2).

RELIABILITY STANDARDS

Reliability standards

Posting the standard

36.2 (1) Within seven days after the IESO receives notification of the approval of a reliability standard by a standards authority, the IESO shall post the standard on its public website together with any other information and materials that may be prescribed by regulation. 2008, c. 7, Sched. G, s. 4.

Other notice

(2) If required by regulation, the IESO shall give additional notice of the standard and of any information and materials that may be prescribed by regulation in such other manner and at the time or times prescribed by regulation. 2008, c. 7, Sched. G, s. 4.

Application for review

(3) Any person may apply to the Board for review of a reliability standard by filing an application with the Board within 21 days after the standard is posted under subsection (1). 2008, c. 7, Sched. G, s. 4.

Board-initiated review

(4) The Board on its own motion may initiate a review of a reliability standard within 21 days, or such longer period of time as may be prescribed by regulation, after the standard is posted under subsection (1). 2008, c. 7, Sched. G, s. 4.

Stay pending Board review

(5) No application for review under subsection (3) or initiation of a review by the Board under subsection (4) shall stay the operation of the reliability standard pending the completion of the Board's review of the standard unless the Board orders otherwise. 2008, c. 7, Sched. G, s. 4.

Same

(6) In determining whether to stay the operation of a reliability standard, the Board shall consider,

(a) the public interest;

(b) the merits of the application;

(c) the possibility of irreparable harm to any person;

(d) the impact on consumers;

(e) the balance of convenience;

(f) the need to co-ordinate the implementation of the standard in Ontario with other jurisdictions;

(g) the need to co-ordinate the review of the standard in Ontario with regulatory bodies in other jurisdictions that have reviewed, are reviewing or may review the standard and that have the authority to refer the standard back to the standards authority for further consideration; and

(h) any other matter that may be prescribed by regulation. 2008, c. 7, Sched. G, s. 4.

Order re inconsistency or discrimination

(7) If, on completion of its review, the Board finds that the standard is inconsistent with the purposes of this Act or unjustly discriminates against or in favour of a market participant or class of market participants, the Board shall make an order,

(a) revoking the operation of the standard in Ontario, if it is already operational, or disallowing the future operation of the standard in Ontario, on a date specified by the Board; and

(b) referring the standard back to the standards authority for further consideration. 2008, c. 7, Sched. G, s. 4.

Order re co-ordination with other jurisdictions

(8) The Board may also make the order described in subsection (7) if, on completion of its review, the Board finds that there is a need to co-ordinate with other jurisdictions or with regulatory bodies in other jurisdictions regarding the reliability standard. 2008, c. 7, Sched. G, s. 4.

Order on prescribed grounds

(9) The Lieutenant Governor in Council may make regulations prescribing additional grounds on which the Board shall or may make the order described in subsection (7). 2008, c. 7, Sched. G, s. 4.

Application

(10) This section does not apply to a reliability standard approved by a standards authority before the day this section comes into force, but does apply to an amendment to a reliability standard, whether the reliability standard being amended was approved before, on or after the day this section comes into force, if the amendment to the reliability standard is approved on or after the day this section comes into force. 2008, c. 7, Sched. G, s. 4.

Appeals from sanction orders

36.3 (1) The IESO may appeal to the Board an order, finding or remedial action made or taken by a standards authority in respect of a violation of a reliability standard in Ontario, subject to such limitations as may be prescribed by regulation. 2008, c. 7, Sched. G, s. 4.

Other options to appeal

(2) An appeal shall not be commenced under subsection (1) unless the IESO has commenced all other reviews and appeals available to it and such reviews and appeals have been finally determined. 2008, c. 7, Sched. G, s. 4.

Time for appeal

(3) The appeal must be filed within the time prescribed by the rules of the Board. 2008, c. 7, Sched. G, s. 4.

Stay of order

(4) An appeal does not stay the operation of the order, finding or remedial action pending the determination of the appeal unless the Board orders otherwise. 2008, c. 7, Sched. G, s. 4.

Same

(5) In determining whether to stay the operation of an order, finding or remedial action, the Board shall consider,

(a) the public interest;

(b) the merits of the appeal;

(c) the possibility of irreparable harm to any person; and

(d) the balance of convenience. 2008, c. 7, Sched. G, s. 4.

Powers of Board

(6) After considering the appeal, the Board may make an order,

(a) dismissing the appeal;

(b) revoking or amending the order, finding or remedial action appealed from; or

(c) making any other order, finding or decision or taking any other remedial action that the standards authority could have made or taken. 2008, c. 7, Sched. G, s. 4.

Same

(7) In addition to its powers under subsection (6), the Board may also make an order,

(a) revoking or suspending a condition of the IESO's licence;

(b) amending a condition of the IESO's licence; or

(c) adding a condition to the IESO's licence. 2008, c. 7, Sched. G, s. 4.

Statutory powers of decision

36.4 The powers of the Board to make orders under sections 36.2 and 36.3 shall be deemed to be statutory powers of decision for the purpose of the *Statutory Powers Procedure Act*. 2008, c. 7, Sched. G, s. 4.

INVESTIGATIONS

Investigation by Market Surveillance Panel

37. (1) The Market Surveillance Panel may investigate any activity related to the IESO-administered markets or the conduct of a market participant. 2002, c. 1, Sched. A, s. 6; 2004, c. 23, Sched. A, s. 47 (1).

Right to examine

(2) For the purposes of an investigation under this section, the Panel may examine any documents or other things, whether they are in the possession or control of the person whose activities are being investigated or any other person. 2002, c. 1, Sched. A, s. 6.

Power to compel testimony

(3) For the purposes of an investigation under this section, the Panel has the same power to summon and enforce the attendance of any person and to compel him or her to testify on oath or otherwise, and to summon and compel any person to produce documents and other things, as is vested in the Superior Court of Justice for the trial of civil actions. 2002, c. 1, Sched. A, s. 6.

Contempt

(4) The Superior Court of Justice has the same power to punish for contempt a person who refuses to attend, testify or produce documents or other things when required to do so by the Panel under this section as it would if the person had disobeyed an order of the Court. 2002, c. 1, Sched. A, s. 6.

Rights of witness

(5) A person giving evidence under subsection (3) may be represented by counsel and may claim any privilege to which the person is entitled. 2002, c. 1, Sched. A, s. 6.

Inspection

(6) A person authorized in writing by the Panel may, on production of the authorization, enter any business premises, other than premises used as a dwelling, during business hours for the purposes of conducting an investigation under this section, where the person reasonably believes that relevant documents, records or other things may be found in the business premises. 2002, c. 1, Sched. A, s. 6.

Copies

(7) On giving a receipt, a person mentioned in subsection (6) may remove documents, records or other things for the purpose of making copies or extracts, and shall promptly return them to the person who produced them. 2002, c. 1, Sched. A, s. 6.

Documents in electronic form

(8) If a document, record or other thing is kept in electronic form, the person mentioned in subsection (6) may require that a copy of it be provided on paper or in a machine-readable medium or both. 2002, c. 1, Sched. A, s. 6.

Authorization to search

(9) For the purposes of an investigation under this section, a person authorized in writing by the Panel may apply to a judge of the Ontario Court of Justice in the absence of the public and without notice for a warrant authorizing the person or persons named in the warrant to enter and search any building, receptacle or place specified and to seize anything described in the authorization that is found in the building, receptacle or place and to bring it before the judge granting the authorization or another judge to be dealt with according to law. 2002, c. 1, Sched. A, s. 6.

Grounds

(10) No authorization shall be granted under subsection (9) unless the judge to whom the application is made is satisfied on information under oath that there are reasonable grounds to believe that there is in the building, receptacle or place to be searched anything that may reasonably relate to an investigation under this section. 2002, c. 1, Sched. A, s. 6.

Power to enter, search and seize

(11) A person named in a warrant under subsection (9) may, on production of the warrant, enter any building, receptacle or place specified in the warrant between 6 a.m. and 9 p.m. and search for and seize anything specified in the warrant. 2002, c. 1, Sched. A, s. 6.

Expiration

(12) Every warrant under subsection (9) shall name the day that it expires, which shall not be later than 15 days after the warrant is granted. 2002, c. 1, Sched. A, s. 6.

Dwellings

(13) For the purposes of subsections (9), (10) and (11),

"building, receptacle or place" does not include premises used as a dwelling. 2002, c. 1, Sched. A, s. 6.

Application

(14) Sections 159 and 160 of the *Provincial Offences Act* apply to searches and seizures under this section with such modifications as the circumstances require. 2002, c. 1, Sched. A, s. 6.

Report and recommendations

(15) On completion of an investigation, the Panel shall prepare a report that may include recommendations for amendment of the market rules or other recommendations. 2002, c. 1, Sched. A, s. 6.

Submission of report

(16) The Panel shall submit the report to the IESO, the Board and any other person that the Panel considers appropriate. 2004, c. 23, Sched. A, s. 47 (2).

Same

(17) The report shall be deemed, for the purpose of section 14 of the *Freedom of Information and Protection of Privacy Act*, to be a report prepared in the course of law enforcement, inspections or investigations by an agency which has the function of enforcing and regulating compliance with a law. 2002, c. 1, Sched. A, s. 6.

Review of materials by Panel

37.1 (1) Every market participant shall deliver to the Market Surveillance Panel, at any time required by the Panel, any books, records or documents that are required to be kept by the market participant under the market rules or Ontario law. 2002, c. 1, Sched. A, s. 6.

Same

(2) The Panel may review and keep copies of any books, records or documents provided under subsection (1) for the purposes of market surveillance. 2002, c. 1, Sched. A, s. 6.

Inspection

(3) A person authorized in writing by the Panel may enter the business premises of any market participant, other than premises used as a dwelling, during business hours, and may examine and make copies of any books, records or documents mentioned in subsection (1) for the purposes of market surveillance. 2002, c. 1, Sched. A, s. 6.

No obstruction

37.2 (1) No person shall obstruct, hinder or interfere with a person who is acting pursuant to an authorization granted under subsection 37 (6) or (9) or 37.1 (3). 2002, c. 1, Sched. A, s. 6.

Penalty

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine not exceeding $50,000. 2002, c. 1, Sched. A, s. 6.

Confidentiality

37.3 (1) All information and material that is not otherwise public and that is furnished to or received or obtained by the Panel or anyone acting on behalf of the Panel pursuant to section 37 or 37.1 is confidential, and no person shall communicate the information or allow access to or inspection of the material except in the ordinary course of his or her duties, unless,

(a) the Panel has made an order under subsection (3);

(b) the information or material was considered by the Panel in preparing a report under subsection 37 (15) and communication of the information or access to or inspection of the material is required by a summons or direction of the Board; or

(c) the information is communicated to or access to or inspection of the material is allowed to a police force or other investigatory agency or to a regulatory agency. 2002, c. 1, Sched. A, s. 6.

Not evidence in proceedings

(2) No document, record, copy or other thing obtained pursuant to section 37 or 37.1 is admissible in evidence in any proceeding, except a review by the Board under section 38, unless the Panel has made an order under subsection (3). 2002, c. 1, Sched. A, s. 6.

Disclosure by Panel

(3) The Panel shall make an order permitting the disclosure of information or material obtained pursuant to section 37 or 37.1 if, after giving the person from whom the information or material was obtained and any other person who, in the opinion of the Panel, is an interested party an opportunity to be heard, the Panel is of the opinion that disclosure is in the public interest. 2002, c. 1, Sched. A, s. 6.

ABUSE OF MARKET POWER

Abuse of market power

38. (1) If the Market Surveillance Panel submits a report to the IESO and the Board under section 37 that contains recommendations relating to the abuse or possible abuse of market power, the IESO shall, within 30 days after receiving the report, inform the Board what action the IESO has taken or intends to take in response to the report. 1998, c. 15, Sched. A, s. 38 (1); 2004, c. 23, Sched. A, s. 48.

Review by Board

(2) After receiving the report of the Market Surveillance Panel and after receiving any information provided by the IESO under subsection (1), the Board may conduct a review to determine whether the market rules or the licence of any market participant should be amended. 1998, c. 15, Sched. A, s. 38 (2); 2004, c. 23, Sched. A, s. 48.

Minister's directive

(3) If directed to do so by the Minister under section 28 of the *Ontario Energy Board Act, 1998*, the Board shall, in accordance with the directive, conduct a review to determine whether the market rules or the licence of any market participant should be amended. 1998, c. 15, Sched. A, s. 38 (3).

Powers of Board

(4) On the completion of a review under subsection (2) or (3), the Board may, for the purpose of avoiding, reducing the risk of or mitigating the effects of an abuse of market power,

(a) amend the licence of any market participant; or

(b) make an order directing the IESO to amend the market rules in a manner and within the time specified by the Board. 1998, c. 15, Sched. A, s. 38 (4); 2004, c. 23, Sched. A, s. 48.

Publication

(5) The IESO shall, in accordance with the market rules, publish any amendment made pursuant to an order under clause (4) (b). 1998, c. 15, Sched. A, s. 38 (5); 2004, c. 23, Sched. A, s. 48.

Further reviews

(6) Sections 33 and 34 do not apply to an amendment made in accordance with an order under clause (4) (b). 1998, c. 15, Sched. A, s. 38 (6).

EMERGENCY PLANS

Emergency plans

39. (1) The Minister shall require the IESO to prepare and file with the Minister such emergency plans as the Minister considers necessary. 1998, c. 15, Sched. A, s. 39 (1); 2004, c. 23, Sched. A, s. 49 (1).

Same

(2) The Minister may require a market participant to prepare and file with the Minister such emergency plans as the Minister considers necessary. 1998, c. 15, Sched. A, s. 39 (2).

Co-ordination of plans

(3) The IESO shall assist in co-ordinating the preparation of plans under subsections (1) and (2). 1998, c. 15, Sched. A, s. 39 (3); 2004, c. 23, Sched. A, s. 49 (1).

Implementation

(4) The Minister may direct the IESO or a market participant to implement an emergency plan filed under subsection (1) or (2), with such changes as the Minister considers necessary. 1998, c. 15, Sched. A, s. 39 (4); 2004, c. 23, Sched. A, s. 49 (1).

Nuclear generation facilities

(5) Every generator that owns or operates a nuclear generation facility shall file with the Minister a copy of any emergency plans relating to the facility that are filed with the Canadian Nuclear Safety Commission. 1998, c. 15, Sched. A, s. 39 (5).

(6) REPEALED: 2004, c. 23, Sched. A, s. 49 (2).

POWERS OF ENTRY

Powers of entry

40. (1) A transmitter or distributor may, at reasonable times, enter land on which its transmission or distribution system is located,

(a) to inspect, maintain, repair, alter, remove, replace or disconnect wires or other facilities used to transmit or distribute electricity; or

(b) to install, inspect, read, calibrate, maintain, repair, alter, remove or replace a meter. 1998, c. 15, Sched. A, s. 40 (1).

Same: multi-unit buildings

(2) If a transmitter or distributor has the necessary consent of an owner or occupant to connect a line of its transmission or distribution system to part of a building and other parts of the building are owned by different owners or are in the possession of different occupants, the transmitter or distributor may, at reasonable times, enter on the other parts of the building to install, construct or maintain its transmission or distribution system, including anything necessary to make the connection. 1998, c. 15, Sched. A, s. 40 (2).

Same: common passages

(3) If a transmitter or distributor has the necessary consent of an owner or occupant to connect a line of its transmission or distribution system to land and the owner or occupant shares a mutual driveway or other common passage with the owners or occupants of neighbouring land, the transmitter or distributor may, at reasonable times, enter the common passage to install, construct or maintain its transmission or distribution system, including anything necessary to make the connection. 1998, c. 15, Sched. A, s. 40 (3).

Same: removal of obstructions

(4) A transmitter or distributor may enter any land for the purpose of cutting down or removing trees, branches or other obstructions if, in the opinion of the transmitter or distributor, it is necessary to do so to maintain the safe and reliable operation of its transmission or distribution system. 1998, c. 15, Sched. A, s. 40 (4).

Shutting off electricity

(5) For the purposes of this section, the transmitter or distributor may shut off or reduce the supply of electricity to the property or connect or disconnect equipment or open or close circuits. 1998, c. 15, Sched. A, s. 40 (5).

Employees, etc.

(6) If a person has a power of entry under this section, the power may be exercised by an employee or agent of the person who may be accompanied by any other person under the direction of the employee or agent. 1998, c. 15, Sched. A, s. 40 (6).

Identification

(7) A person exercising a power of entry under this section must on request display or produce proper identification. 1998, c. 15, Sched. A, s. 40 (7).

Notice, compensation, etc.

(8) If a person exercises a power of entry under this section, the person shall,

(a) provide reasonable notice of the entry to the occupier of the property;

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

(c) provide compensation for any damages caused by the entry. 1998, c. 15, Sched. A, s. 40 (8).

PROPERTY INTERESTS

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).

Telecommunications services

42. (1) If part of a transmission or distribution system is located on land with respect to which the transmitter or distributor has an easement or other right to use the land, the transmitter or distributor may,

(a) use the land that is subject to the easement or other right for the purpose of providing telecommunications service; or

(b) enter into agreements with other persons, including affiliates of the transmitter or distributor, authorizing them to use the land that is subject to the easement or other right for the purpose of providing telecommunications service. 1998, c. 15, Sched. A, s. 42 (1).

Same

(2) Subject to subsection (3), subsection (1) applies despite any other Act and despite any agreement or instrument to the contrary. 1998, c. 15, Sched. A, s. 42 (2).

Same

(3) Clause (1) (a) is subject to section 71 of the *Ontario Energy Board Act, 1998*. 1998, c. 15, Sched. A, s. 42 (3).

No compensation

(4) The transmitter or distributor is not required to pay any compensation for attaching wires or other telecommunications facilities to a transmission or distribution pole pursuant to clause (1) (a). 1998, c. 15, Sched. A, s. 42 (4).

Same

(5) A person who is authorized to use land pursuant to an agreement entered into under clause (1) (b) is not required to pay any compensation, other than compensation provided for in the agreement, for attaching wires or other telecommunications facilities to a transmission or distribution pole pursuant to the agreement. 1998, c. 15, Sched. A, s. 42 (5).

Definition

(6) In this section,

"telecommunications service" has the same meaning as in the *Telecommunications Act* (Canada). 1998, c. 15, Sched. A, s. 42 (6).

Easement: generators, transmitters and distributors

42.1 An easement in favour of a generator, transmitter or distributor for the purpose of generation, transmission or distribution does not have to be appurtenant or annexed to or for the benefit of any specific parcel of land to be valid. 2002, c. 1, Sched. A, s. 7.

Easement over lands sold for taxes

Transmitters and distributors

43. (1) Despite any other Act, if land that was or is subject to easements, ways, rights of way or entry, licences or rights to maintain property thereon, owned by or belonging to a transmitter or distributor, has been or is sold for taxes, or in respect of which a tax arrears certificate has been or is registered, such easements, ways, rights of way or entry, licences, or rights to maintain property shall be deemed not to have been or be affected by the sale or registration. 1998, c. 15, Sched. A, s. 43 (1).

Same: generators

(2) Despite any other Act, if land that was or is subject to flooding rights owned by or belonging to a generator has been or is sold for taxes, or in respect of which a tax arrears certificate has been or is registered, such flooding rights shall be deemed not to have been or be affected by the sale or registration. 1998, c. 15, Sched. A, s. 43 (2).

Easement: municipal public utilities

43.1 Section 91 of the *Municipal Act, 2001* or section 72 of the *City of Toronto Act, 2006*, as the case may be, applies, with necessary modifications, with respect to a corporation incorporated under section 142 and its subsidiaries as if the corporation or subsidiary, as the case may be, were a municipality and with respect to an easement in favour of a generator, transmitter or distributor for the purpose of generation, transmission or distribution as if it were an easement of a public utility under that section. 2002, c. 1, Sched. A, s. 8; 2006, c. 32, Sched. C, s. 16 (1).

Ownership of fixtures

44. Despite any other Act, if property of a transmitter or distributor has been affixed to realty, the property remains subject to the rights of the transmitter or distributor as fully as it was before being so affixed and does not become part of the realty unless otherwise agreed by the transmitter or distributor in writing. 1998, c. 15, Sched. A, s. 44.

Exemption from seizure

45. Personal property of a transmitter or distributor that is used for or in connection with transmitting or distributing electricity to land is exempt from seizure,

(a) against the owner or occupant of the land under the *Execution Act*; and

(b) against a person with a leasehold interest in the land for overdue rent. 1998, c. 15, Sched. A, s. 45.

Unregistered rights

46. (1) If, immediately before the repeal of section 48 of the *Power Corporation Act* under the *Energy Competition Act, 1998*, land was subject to a right referred to in subsection 48 (2) or (3) of the *Power Corporation Act*, the land continues to be subject to the right until the right expires or until it is released by the holder of the right. 1998, c. 15, Sched. A, s. 46 (1).

Transfer of right

(2) A right referred to in subsection (1) may be transferred to,

(a) Hydro One Inc.;

(b) Ontario Power Generation Inc.;

(c) a subsidiary of Hydro One Inc. that is authorized to transmit or distribute electricity;

(c.1) a subsidiary of Ontario Power Generation Inc. that is authorized to generate electricity;

(d) a corporation established pursuant to section 142 that is authorized to transmit or distribute electricity; or

(e) a subsidiary of a corporation established pursuant to section 142, if the subsidiary is authorized to transmit or distribute electricity. 1998, c. 15, Sched. A, s. 46 (2); 2002, c. 1, Sched. A, s. 9.

Information

(3) On the request of the owner of land or a person intending to acquire an interest in land, the holder of a right referred to in subsection (1) shall make a search of its records and, within 21 days after receiving the request, shall inform the owner or person whether or not it has a right affecting the land that is not registered under the *Land Titles Act* or the *Registry Act* and, if it has such a right, shall also inform the owner or person of the term and extent of the right. 1998, c. 15, Sched. A, s. 46 (3).

Compensation

(4) A person who suffers loss or damage due to the failure of the holder of a right to comply with subsection (3) is entitled to compensation for the loss or damage from the holder of the right. 1998, c. 15, Sched. A, s. 46 (4).

Application of *Expropriations Act*

(5) The *Expropriations Act* applies with necessary modifications to a claim for compensation under subsection (4) as if it constituted injurious affection and, for the purpose,

(a) a reference to the statutory authority shall be deemed to be a reference to the holder of the right; and

(b) a reference to the owner shall be deemed to be a reference to the person mentioned in subsection (4). 1998, c. 15, Sched. A, s. 46 (5).

Transition

Use of land in connection with generation

46.1 (1) If, on March 31, 1999, the occupier of land used or could lawfully have used the land in connection with the generation of electricity, any occupier of the land may,

(a) use the land in connection with the generation of electricity,

(i) for the use for which the land was used on March 31, 1999, or

(ii) for any use for which the land could lawfully have been used on March 31, 1999; and

(b) use or erect on the land any building or structure in connection with a use of the land that is authorized by clause (a). 2001, c. 23, s. 67.

Same

(2) For the purpose of subsection (1), if, on March 31, 1999, land was used or could lawfully have been used in connection with a generation facility that used a type of fuel prescribed by the regulations to generate electricity and, with respect to that type of fuel, the regulations prescribe another type of fuel as a substitute fuel, it shall be deemed to have been lawful on March 31, 1999 to use the land in connection with a generation facility that used the substitute fuel to generate electricity. 2001, c. 23, s. 67.

Transition: use of land in connection with transmission or distribution

(3) If, on March 31, 1999, the occupier of land used or could lawfully have used the land in connection with the transmission or distribution of electricity, any occupier of the land may,

(a) use the land in connection with the transmission or distribution of electricity,

(i) for the use for which the land was used on March 31, 1999, or

(ii) for any use for which the land could lawfully have been used on March 31, 1999; and

(b) use or erect on the land any building or structure in connection with a use of the land that is authorized by clause (a). 2001, c. 23, s. 67.

Planning Act

(4) This section applies despite any provision of the *Planning Act* that was enacted before the day the *Responsible Choices for Growth and Fiscal Responsibility Act (Budget Measures), 2001* received Royal Assent and despite any by-law, regulation or order made under the *Planning Act* before that day. 2001, c. 23, s. 67.

Toronto land used by Ontario Hydro

46.2 (1) Despite section 46.1, if, before March 31, 1999, Ontario Hydro occupied and used land in the City of Toronto in connection with the generation of electricity using fossil fuels and for any ancillary use, any occupier of the land may,

(a) use the land in connection with any one or more of the generation of electricity using a type of fuel prescribed by the regulations, the transmission of electricity and the distribution of electricity and for any ancillary uses; and

(b) use or erect on the land any building or structure in connection with a use of the land that is authorized by clause (a). 2002, c. 23, s. 3 (21).

Conflict

(2) This section applies despite any provision of the *Planning Act* or any other Act and despite any by-law, regulation or order made under the *Planning Act* or any other Act. 2002, c. 23, s. 3 (21).

Affixing signs, etc.

47. Every person who, without the consent of a transmitter or distributor, nails or otherwise attaches anything, or causes anything to be nailed or otherwise attached to or upon any wooden transmission or distribution pole of the transmitter or distributor is guilty of an offence and on conviction is liable to a fine of not more than $200. 1998, c. 15, Sched. A, s. 47.

PART IV
HYDRO ONE INC.

Objects of Hydro One Inc.

48. (1) The objects of Hydro One Inc. include, in addition to any other objects, owning and operating transmission systems and distribution systems through one or more subsidiaries. 2002, c. 1, Sched. A, s. 10.

Status

(2) Hydro One Inc. and its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*. 2002, c. 1, Sched. A, s. 10.

Statutory duties and restrictions

48.1 (1) Hydro One Inc. shall, through one or more subsidiaries, operate generation facilities and distribution systems in, and shall distribute electricity within, such communities as may be prescribed by regulation, whether or not the community is connected to the IESO-controlled grid, and shall do so in accordance with such conditions and restrictions as may be prescribed by regulation. 2010, c. 8, s. 37 (6).

Restriction

(2) Hydro One Inc. shall not own or operate transmission systems or distribution systems in Ontario except through one or more subsidiaries. 2002, c. 1, Sched. A, s. 10.

Same

(3) A subsidiary of Hydro One Inc. shall not transmit or distribute electricity in Ontario if it transmits or distributes electricity outside Ontario. 2002, c. 1, Sched. A, s. 10.

Mandatory provisions in articles

48.2 (1) The articles of incorporation of Hydro One Inc. and of such of its subsidiaries as may be prescribed by regulation must contain the following:

1. Such provisions as may be prescribed by regulation governing the creation and issuance of one or more classes of special shares to be issued to the Minister, to hold on behalf of Her Majesty in right of Ontario, and governing the rights, privileges, restrictions and conditions attaching to each such class of shares.
2. Such provisions as may be prescribed by regulation with respect to constraints on the issue, transfer and ownership, including joint ownership, of voting securities of the corporation.
3. Such provisions as may be prescribed by regulation with respect to the enforcement of the constraints. 2002, c. 1, Sched. A, s. 10.

Restrictions

(2) The articles of incorporation and by-laws of Hydro One Inc. and of its subsidiaries that are prescribed for the purposes of subsection (1) must not contain any provisions that are inconsistent with those required by subsection (1). 2002, c. 1, Sched. A, s. 10.

Enforcement

(3) Without limiting the generality of paragraph 3 of subsection (1), the provisions referred to in that paragraph may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal to issue or register voting securities and the sale of voting securities held contrary to the constraints and payment of the net proceeds of the sale to the person or entity entitled to those proceeds. 2002, c. 1, Sched. A, s. 10.

Non-application of *Business Corporations Act*, s. 42

(4) Subsection (1) applies despite subsection 42 (1) of the *Business Corporations Act*. 2002, c. 1, Sched. A, s. 10.

Same

(5) Subsection 42 (2) of the *Business Corporations Act* does not operate to prohibit any offer to the public of shares that are subject to the rights, privileges, restrictions, conditions and constraints required by subsection (1). 2002, c. 1, Sched. A, s. 10.

Rights of the Minister

49. (1) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, Hydro One Inc. or any of its subsidiaries. 2002, c. 1, Sched. A, s. 10.

Agreements

(2) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1). 2002, c. 1, Sched. A, s. 10.

Corporations authorized re Hydro One Inc.

50. (1) The Lieutenant Governor in Council may cause corporations to be incorporated under the *Business Corporations Act* or the *Corporations Act* for the purpose of acquiring, holding, disposing of and otherwise dealing with securities or debt obligations of, or any other interest in, Hydro One Inc. or any of its subsidiaries. 2002, c. 1, Sched. A, s. 10.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (1) is amended by striking out "the *Corporations Act*" and substituting "the *Not-for-Profit Corporations Act, 2010*". See: 2010, c. 15, ss. 223, 249.

Same

(2) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of and otherwise deal with securities or debt obligations of, or any other interest in, a corporation incorporated pursuant to subsection (1). 2002, c. 1, Sched. A, s. 10.

Agreements, etc.

(3) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1) or (2). 2002, c. 1, Sched. A, s. 10.

Crown agent

(4) A corporation incorporated pursuant to subsection (1) is an agent of Her Majesty for all purposes. 2002, c. 1, Sched. A, s. 10.

Dividends paid to Crown agent

(5) If an agent of Her Majesty in right of Ontario is paid dividends in respect of the shares of Hydro One Inc., the agent shall pay the dividends to the Financial Corporation, less any amount that it considers is required to pay obligations it has assumed, or Her Majesty in right of Ontario has assumed, under clause 122 (1) (a). 2002, c. 1, Sched. A, s. 10.

Corporations and other entities and arrangements to hold securities, etc.

50.1 (1) The Lieutenant Governor in Council may cause corporations or other entities to be established or arrangements to be made for the purpose of acquiring, holding, disposing of or otherwise dealing with, directly or indirectly,

(a) securities, assets, liabilities, rights, obligations, revenues and income of Hydro One Inc. or any of its subsidiaries; and

(b) interests in or entitlements to those securities, assets, liabilities, rights, obligations, revenues and income. 2002, c. 1, Sched. A, s. 10.

Status

(2) A corporation or other entity established under subsection (1) is not an agent of Her Majesty for any purpose, despite the *Crown Agency Act*. 2002, c. 1, Sched. A, s. 10.

Agreements, etc.

(3) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1). 2002, c. 1, Sched. A, s. 10.

Direction by Minister

(4) If Her Majesty in right of Ontario or an agent of Her Majesty is the only holder of voting securities of Hydro One Inc., the Minister may direct it,

(a) to transfer any of its securities, assets, liabilities, rights, obligations, revenues and income to any person or entity;

(b) to transfer an interest in or entitlement to any of its securities, assets, liabilities, rights, obligations, revenues and income to any person or entity;

(c) to transfer to any person or entity any securities, assets, liabilities, rights, obligations, revenues and income of any subsidiary of which Hydro One Inc. is the only holder, directly or indirectly, of voting securities; or

(d) to transfer to any person or entity an interest in or entitlement to any securities, assets, liabilities, rights, obligations, revenues and income of any subsidiary of which Hydro One Inc. is the only holder, directly or indirectly, of voting securities. 2002, c. 1, Sched. A, s. 10.

Same

(5) The Minister may impose conditions and restrictions when giving a direction under subsection (4). 2002, c. 1, Sched. A, s. 10.

Types of entities

(6) Without limiting the generality of subsection (1), a trust or a partnership may be established under that subsection. 2002, c. 1, Sched. A, s. 10.

Right of the Minister re corporations and other entities and arrangements

50.2 (1) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of or otherwise deal with securities or debt obligations of, or any other interest in, a corporation or other entity established under subsection 50.1 (1). 2002, c. 1, Sched. A, s. 10.

Same

(2) The Minister, on behalf of Her Majesty in right of Ontario, may acquire, hold, dispose of or otherwise deal with any interest in an arrangement made under subsection 50.1 (1). 2002, c. 1, Sched. A, s. 10.

Agreements, etc.

(3) The Minister, on behalf of Her Majesty in right of Ontario, may enter into any agreement or arrangement that the Minister considers necessary or incidental to the exercise of a power under subsection (1) or (2). 2002, c. 1, Sched. A, s. 10.

Proceeds of disposition

50.3 (1) All proceeds payable to Her Majesty in right of Ontario in respect of the disposition of any securities or debt obligations of, or any other interest in, Hydro One Inc., a corporation established under section 50, a corporation or other entity established under section 50.1 or an arrangement made under section 50.1 shall be paid to the Financial Corporation,

(a) less any amount that the Minister of Finance considers advisable in connection with the acquisition of such securities, debt obligations or interest, including the amount of the purchase price, any obligations assumed and any other costs incurred by Her Majesty in right of Ontario; and

(b) less the amount of any costs incurred by Her Majesty in right of Ontario in disposing of the securities, debt obligations or other interest. 2002, c. 1, Sched. A, s. 10.

Payments in respect of capital

(2) All amounts payable to Her Majesty in right of Ontario in respect of capital for any shares of Hydro One Inc. shall be paid to the Financial Corporation less the amount, if any, described in clause (1) (a). 2002, c. 1, Sched. A, s. 10.

Non-application of *Financial Administration Act*

(3) Clause 1.1 (1) (b) and subsection 2 (1) of the *Financial Administration Act* do not apply with respect to proceeds to be paid to the Financial Corporation under subsection (1). 2002, c. 1, Sched. A, s. 10.

Repeal

(4) This section is repealed on the day on which Part V is repealed under section 84.1. 2002, c. 1, Sched. A, s. 10.

Reporting requirements

50.4 (1) Hydro One Inc. shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the board of directors. 2002, c. 1, Sched. A, s. 10.

Same

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2002, c. 1, Sched. A, s. 10.

Same

(3) Hydro One Inc. may give its annual report to other persons before the Minister complies with subsection (2). 2002, c. 1, Sched. A, s. 10.

Additional reports and information

(4) Hydro One Inc. shall give such other reports and information to the Minister of Finance or to the Minister as each of them may require from time to time. 2002, c. 1, Sched. A, s. 10.

Repeal

(5) This section is repealed on a day to be named by proclamation of the Lieutenant Governor. 2002, c. 1, Sched. A, s. 10.

Non-application, *Financial Administration Act*, s. 28

51. Section 28 of the *Financial Administration Act* does not apply with respect to any transaction authorized by this Part. 2002, c. 1, Sched. A, s. 10.

Residual power of the Crown

52. Nothing in this Part restricts the powers of Her Majesty in right of Ontario or any member of the Executive Council at common law or under any Act, whether as a shareholder or otherwise. 2002, c. 1, Sched. A, s. 10.

Regulations

53. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing communities for the purposes of subsection 48.1 (1);

(b) prescribing conditions and restrictions with respect to the statutory duties of Hydro One Inc. under subsection 48.1 (1);

(c) prescribing, for the purposes of subsection 48.2 (1), mandatory provisions to be included in articles of incorporation;

(d) prescribing subsidiaries for the purposes of subsection 48.2 (1). 2002, c. 1, Sched. A, s. 10.

Types of constraints

(2) Without limiting the generality of clause (1) (c), a regulation under that clause may include provisions governing,

(a) the mandatory disclosure of information in documents issued or published by the applicable corporation;

(b) the duties and powers of the directors to refuse to issue or register transfers of shares in accordance with the articles of the corporation;

(c) the limitations on voting rights of any shares held contrary to the articles of the corporation;

(d) the powers of the directors to require disclosure of beneficial ownership of shares of the corporation and the rights of the corporation and its directors, employees or agents to rely on the disclosure and the effects of the reliance;

(e) the manner of determining how much of the equity of a corporation a person or class of persons owns. 2002, c. 1, Sched. A, s. 10.

Non-application re constraints, etc.

(3) A regulation under clause (1) (c) may provide that a provision imposing a constraint or a provision for the enforcement of a constraint does not apply with respect to such persons and in such circumstances as are described in the regulation. 2002, c. 1, Sched. A, s. 10.

Limited application re constraints, etc.

(4) A regulation under clause (1) (c) may provide that a provision imposing a constraint or a provision for the enforcement of a constraint applies only with respect to such persons and in such circumstances as are described in the regulation. 2002, c. 1, Sched. A, s. 10.

General or specific

(5) A regulation may be general or specific. 2002, c. 1, Sched. A, s. 10.

Restriction on powers

(6) On the day on which this subsection comes into force, the Lieutenant Governor in Council ceases to have the authority to make regulations under clause (1) (c). 2002, c. 1, Sched. A, s. 10.

Effect of restriction

(7) Despite subsection (6),

(a) a regulation made under clause (1) (c) before the day subsection (6) comes into force continues in effect after that day according to its terms; and

(b) on and after the day on which subsection (6) comes into force, the Lieutenant Governor in Council retains the authority to revoke a regulation made under clause (1) (c) before that day or to revoke one or more provisions of such a regulation. 2002, c. 1, Sched. A, s. 10.

Commencement

(8) Subsections (6) and (7) come into force on a day to be named by proclamation of the Lieutenant Governor. 2002, c. 1, Sched. A, s. 10.

Regulations, smart grid

53.0.1 The Lieutenant Governor in Council may make regulations governing the smart grid and its implementation, including regulations,

(a) in respect of the timeframe for the development of the smart grid;

(b) assigning roles and responsibilities for the development, implementation and standardization of the smart grid;

(c) prescribing the standards for communications and any other aspects in respect of the operation of the smart grid. 2009, c. 12, Sched. B, s. 12.

PART IV.1
ONTARIO POWER GENERATION INC.

Objects of Ontario Power Generation Inc.

53.1 (1) The objects of Ontario Power Generation Inc. include, in addition to any other objects, owning and operating generation facilities. 2002, c. 1, Sched. A, s. 11.

Status

(2) Ontario Power Generation Inc. and its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*. 2002, c. 1, Sched. A, s. 11.

Rights of the Minister

53.2 The Minister, on behalf of Her Majesty in right of Ontario, may acquire and hold shares of Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Corporations to hold shares

53.3 (1) The Lieutenant Governor in Council may cause corporations to be incorporated under the *Business Corporations Act* for the purpose of acquiring and holding shares in Ontario Power Generation Inc. 2002, c. 1, Sched. A, s. 11.

Same

(2) Shares in a corporation incorporated pursuant to subsection (1) may be acquired and held in the name of Her Majesty in right of Ontario by a member of the Executive Council designated by the Lieutenant Governor in Council. 2002, c. 1, Sched. A, s. 11.

Crown agent

(3) A corporation incorporated pursuant to subsection (1) is an agent of Her Majesty for all purposes. 2002, c. 1, Sched. A, s. 11.

Dividends paid to Crown agent

(4) If an agent of Her Majesty in right of Ontario is paid dividends in respect of shares of Ontario Power Generation Inc., the agent shall pay the dividends to the Financial Corporation, less any amount that it considers is required to pay obligations it has assumed under clause 122 (1) (a). 2002, c. 1, Sched. A, s. 11.

Reporting requirements

53.4 (1) Ontario Power Generation Inc. shall, within 90 days after the end of every fiscal year, submit to the Minister an annual report on its affairs during that fiscal year, signed by the chair of the board of directors. 2002, c. 1, Sched. A, s. 11.

Same

(2) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 2002, c. 1, Sched. A, s. 11.

Same

(3) Ontario Power Generation Inc. may give its annual report to other persons before the Minister complies with subsection (2). 2002, c. 1, Sched. A, s. 11.

Additional reports and information

(4) Ontario Power Generation Inc. shall give such other reports and information to the Minister of Finance or to the Minister as each of them may require from time to time. 2002, c. 1, Sched. A, s. 11.

Residual power of the Crown

53.5 Nothing in this Part restricts the powers of Her Majesty in right of Ontario or any member of the Executive Council at common law or under any Act, whether as a shareholder or otherwise. 2002, c. 1, Sched. A, s. 11.

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 estate or interest in land and a guardian, committee, executor, administrator or trustee in whom land or any property is vested; ("propriétaire")

"property" means property of any kind, other than land, and includes any interest in property; ("bien")

"works" includes all property, plant, machinery, buildings, erections, constructions, installations, materials, devices, fittings, apparatus, appliances and equipment for the generation, transformation, transmission, distribution, supply or use of power. ("ouvrages") 2004, c. 23, Sched. A, s. 51.

PART IV.2
THE SMART METERING ENTITY

The Smart Metering Entity

53.7 (1) To accomplish the government's policies in relation to its smart metering initiative, the Minister,

(a) may cause the Smart Metering Entity to be incorporated as a corporation under the *Business Corporations Act*;

(b) may cause the Smart Metering Entity to be formed as a limited partnership under the *Limited Partnerships Act*;

(c) may cause the Smart Metering Entity to be formed as a partnership; or

(d) may designate an entity by regulation as the Smart Metering Entity. 2006, c. 3, Sched. B, s. 2.

Name of the Smart Metering Entity

(2) Subject to the *Business Corporations Act*, the *Business Names Act* and the *Limited Partnerships Act*, as applicable, the Smart Metering Entity shall have the name prescribed for it by regulation and the regulation may require that the Smart Metering Entity maintain the prescribed name. 2006, c. 3, Sched. B, s. 2.

Objects or nature of the business of the Smart Metering Entity

53.8 The objects of the Smart Metering Entity, if it is a corporation, or the nature of its business activities, if the Smart Metering Entity is a limited partnership or a partnership, include, in addition to any other objects or business activities, the following:

1. To plan and implement and, on an ongoing basis, oversee, administer and deliver any part of the smart metering initiative as required by regulation under this or any Act or directive made pursuant to sections 28.3 or 28.4 of the *Ontario Energy Board Act, 1998*, and, if so authorized, to have the exclusive authority to conduct these activities.
2. To collect and manage and to facilitate the collection and management of information and data and to store the information and data related to the metering of consumers' consumption or use of electricity in Ontario, including data collected from distributors and, if so authorized, to have the exclusive authority to collect, manage and store the data.
3. To establish, to own or lease and to operate one or more databases to facilitate collecting, managing, storing and retrieving smart metering data.

4. To provide and promote non-discriminatory access, on appropriate terms and subject to any conditions in its licence relating to the protection of privacy, by distributors, retailers, the OPA and other persons,
    i. to the information and data referred to in paragraph 2, and
    ii. to the telecommunication system that permits the Smart Metering Entity to transfer data about the consumption or use of electricity to and from its databases, including access to its telecommunication equipment, systems and technology and associated equipment, systems and technologies.
5. To own or to lease and to operate equipment, systems and technology, including telecommunication equipment, systems and technology that permit the Smart Metering Entity to transfer data about the consumption or use of electricity to and from its databases, including owning, leasing or operating such equipment, systems and technology and associated equipment, systems and technologies, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.
6. To engage in such competitive procurement activities as are necessary to fulfil its objects or business activities.
7. To procure, as and when necessary, meters, metering equipment, systems and technology and any associated equipment, systems and technologies on behalf of distributors, as an agent or otherwise, directly or indirectly, including through one or more subsidiaries, if the Smart Metering Entity is a corporation.
8. To recover, through just and reasonable rates, the costs and an appropriate return approved by the Board associated with the conduct of its activities.
9. To undertake any other objects that are prescribed by regulation. 2006, c. 3, Sched. B, s. 2.

Status of the Smart Metering Entity

53.9 The Smart Metering Entity is not an agent of Her Majesty for any purpose and, if the Smart Metering Entity is a corporation, its subsidiaries are not agents of Her Majesty for any purpose, despite the *Crown Agency Act*. 2006, c. 3, Sched. B, s. 2.

Powers of Smart Metering Entity corporation

53.10 If the Minister incorporates or designates a corporation as the Smart Metering Entity, it shall have the powers of a natural person except as limited under this Act. 2006, c. 3, Sched. B, s. 2.

Mandatory provisions in articles

53.11 (1) If the Smart Metering Entity is a corporation, its articles of incorporation and of such of its subsidiaries as may be prescribed by regulation must contain the conditions, restrictions, criteria or requirements that are prescribed by regulation. 2006, c. 3, Sched. B, s. 2.

Application of *Business Corporations Act*

(2) Despite clause 2 (3) (a) of the *Business Corporations Act*, the *Business Corporations Act* applies to the Smart Metering Entity, if it is a corporation, except that a regulation made under this Act may provide for the non-application of provisions of the *Business Corporations Act* to the Smart Metering Entity. 2006, c. 3, Sched. B, s. 2.

Smart Metering Entity participation in partnerships, etc.

53.12 (1) Nothing in this Part prevents the Smart Metering Entity, if it is incorporated, from participating in partnerships, limited partnerships, joint ventures or any other transaction or arrangement that may be prescribed by regulation, subject to such conditions or restrictions as may be prescribed by regulation. 2006, c. 3, Sched. B, s. 2.

Same

(2) For the purpose of subsection (1), the Smart Metering Entity may participate in transactions or arrangements directly or indirectly as a partner, limited partner, general partner or as a participant in a joint venture or may hold an interest in, directly or through one or more subsidiaries, a partnership, limited partnership, joint venture or any other transaction or arrangement. 2006, c. 3, Sched. B, s. 2.

Reporting requirements

53.13 The Smart Metering Entity shall provide the reports and information to the Minister that the Minister requires. 2006, c. 3, Sched. B, s. 2.

Collection of consumer information

53.14 In carrying out its objects or business activities, the Smart Metering Entity,

(a) may directly or indirectly collect information and data relating to the consumption or use of electricity from consumers, distributors or any other person; and

(b) may manage and aggregate the data related to consumers' electricity consumption or use. 2006, c. 3, Sched. B, s. 2.

Reciprocal obligations concerning information

53.15 (1) Distributors, retailers and other persons shall provide the Smart Metering Entity with such information as it requires to fulfil its objects or conduct its business activities. 2006, c. 3, Sched. B, s. 2.

Restrictions on the Smart Metering Entity

(2) If the Smart Metering Entity has provided access to a distributor, retailer or another person to information under this Part, it shall not engage in a business activity prescribed by regulation if,

(a) the person to whom access has been provided is also engaged in the business activity; and

(b) the access was granted for the purpose of the person engaging in the business activity. 2006, c. 3, Sched. B, s. 2.

Obligations of distributors, etc., re: installing meters

53.16 (1) When a distributor or any person licensed by the Board to do so installs a smart meter, metering equipment, systems and technology and any associated equipment, systems and technologies or replaces an existing meter, the distributor or person shall use a meter, metering equipment, systems and technology and associated equipment, systems and technologies of a type, class or kind prescribed by regulation or that meets the criteria or requirements prescribed by regulation or mandated by a code issued by the Board or by an order of the Board for the classes of property or classes of consumers prescribed by regulation or required by the Board. 2006, c. 3, Sched. B, s. 2.

Same

(2) A regulation, code or order referred to in subsection (1) may require that a distributor or other person take certain actions and may require that the actions be taken within a specified time. 2006, c. 3, Sched. B, s. 2.

Exclusive authority of Board

(3) A regulation referred to in subsection (1) may provide the Board with exclusive authority to approve or authorize the meters, the metering equipment, systems and technology and associated equipment, systems and technologies after a prescribed date. 2006, c. 3, Sched. B, s. 2.

Obligations of distributors, etc., re: procurement, contracts or arrangements

(4) When a distributor or any person licensed by the Board to conduct the activities referred to in subsection (1) enters into a procurement process, contract or arrangement in relation to the smart metering initiative, the procurement process, contract or arrangement shall meet the criteria or requirements prescribed by regulation or mandated by a code issued by the Board or by an order of the Board. 2006, c. 3, Sched. B, s. 2.

53.17 REPEALED: 2010, c. 8, s. 37 (7).

Prohibition re: discretionary metering activities

53.18 (1) On and after November 3, 2005, no distributor shall conduct discretionary metering activities unless the distributor is authorized to conduct the activity by this Act, a regulation, the *Energy Consumer Protection Act, 2010*, an order of the Board or a code issued by the Board or it is required to do so under the *Electricity and Gas Inspection Act* (Canada). 2006, c. 3, Sched. B, s. 2; 2010, c. 8, s. 37 (8).

Definition

(2) For the purpose of this section,

"discretionary metering activity" means the installation, removal, replacement or repair of meters, metering equipment, systems and technology and any associated equipment, systems and technologies which is not mandated by the *Electricity and Gas Inspection Act* (Canada), by regulation, by an order of the Board or by a code issued by the Board or authorized by a regulation made under this Act. 2006, c. 3, Sched. B, s. 2.

Procurement contracts, transition

53.19 (1) The Minister may direct the Smart Metering Entity to assume, as of the date the Minister considers appropriate, responsibility for exercising all powers and performing all duties of the Crown, including powers and duties to be exercised and performed through an agency of the Crown,

(a) under any request for proposals, draft request for proposals, another form of procurement solicitation issued by the Crown or through an agency of the Crown or any other initiative pursued by the Crown or through an agency of the

Crown, which relate to the government's smart metering initiative that was issued or pursued after November 3, 2005 and before January 1, 2008; and

(b) under any contract that relates to a procurement that was entered into by the Crown or an agency of the Crown pursuant to a request for proposal, a draft request for proposal or another form of procurement solicitation referred to in clause (a). 2006, c. 3, Sched. B, s. 2.

Release of the Crown, etc.

(2) As of the day specified in the Minister's direction under subsection (1), the Smart Metering Entity shall assume responsibility in accordance with that subsection and the Crown and any Crown agency are released from any and all liabilities and obligations with respect to the matters for which the Smart Metering Entity has assumed responsibility. 2006, c. 3, Sched. B, s. 2.

Reimbursement of costs incurred by the Crown

53.20 (1) The Smart Metering Entity shall reimburse the Crown or, if so directed by the Minister, an agency of the Crown for costs relating to the Smart Metering Entity, a procurement contract or a matter within the objects of the Smart Metering Entity, if,

(a) the costs were incurred by the Crown or an agency of the Crown after November 3, 2005 and before January 1, 2008; or

(b) the liability of the Crown or an agency of the Crown for the costs arose during the period described in clause (a). 2006, c. 3, Sched. B, s. 2.

Payment of reimbursement

(2) The Smart Metering Entity shall make the reimbursement by making one or more payments in such amount or amounts at such time or times as may be determined by the Minister. 2006, c. 3, Sched. B, s. 2.

Minister's determinations final

(3) The determinations of the Minister under subsection (2) are final and conclusive and shall not be stayed, varied or set aside by any court. 2006, c. 3, Sched. B, s. 2.

Regulations

53.21 (1) The Lieutenant Governor in Council may make regulations,

(a) designating an entity as the Smart Metering Entity;

(b) prescribing the name of the Smart Metering Entity;

(c) governing the smart metering initiative;

(d) authorizing the Smart Metering Entity to have exclusive authority to conduct the metering activities referred to in section 53.8;

(e) prescribing objects for the purposes of section 53.8;

(f) governing the collection, use and disclosure of information relating to consumers' consumption or use of electricity, including personal information;

(g) prescribing, for the purposes of subsection 53.11 (1), conditions, restrictions, criteria or requirements to be included in the Smart Metering Entity's articles of incorporation and in the articles of incorporation of such of its subsidiaries as may be prescribed;

(h) prescribing subsidiaries of the Smart Metering Entity for the purposes of subsection 53.11 (1);

(i) prescribing provisions of the *Business Corporations Act* that do not apply to the Smart Metering Entity or to any of its subsidiaries that are prescribed;

(j) prescribing transactions or arrangements for the purposes of subsection 53.12 (1) and conditions or restrictions that apply to them;

(k) governing smart meters and the installation and maintenance of smart meters, metering equipment, systems and technology and any associated equipment, systems and technologies;

(l) identifying actions to be taken by the Smart Metering Entity, distributors and other persons licensed by the Board in respect of the installation of prescribed meters, metering equipment, systems and technology and any associated equipment, systems and technologies at prescribed locations throughout Ontario or for prescribed classes of properties

and prescribed classes of consumers in priority to other locations or classes of property or classes of consumers and prescribing the time within which such actions must be taken;

(m) prescribing the date for the purpose of subsection 53.16 (3);

(n) prescribing criteria or requirements that the procurement process, contract or arrangement must meet for the purpose of subsection 53.16 (4);

(o), (p) REPEALED: 2010, c. 8, s. 37 (10).

(q) authorizing activity as discretionary metering activity for the purpose of section 53.18;

(r) prescribing measures to be taken by the Smart Metering Entity to facilitate the achievement of the targets associated with the smart metering initiative;

(s) identifying specific objectives or criteria applicable to the Smart Metering Entity's metering and telecommunications technologies;

(t) approving, with respect to a class of consumers, meters or a class of meters and metering equipment, systems and technology and associated equipment, systems and technologies to be installed by a distributor or a person licensed by the Board to do so, including approving or fixing the maximum costs of the meters and metering equipment, systems and technology and associated equipment, systems and technologies and specifying criteria which any one of them must meet. 2006, c. 3, Sched. B, s. 2; 2010, c. 8, s. 37 (9, 10).

General or specific

(2) A regulation may be general or specific in its application. 2006, c. 3, Sched. B, s. 2.

PART V
THE FINANCIAL CORPORATION

Ontario Hydro Financial Corporation

54. (1) Ontario Hydro is continued as a corporation without share capital under the name Ontario Hydro Financial Corporation in English and Société financière Ontario Hydro in French. 1998, c. 15, Sched. A, s. 54 (1).

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.

Regulations

(2) The Lieutenant Governor in Council may make regulations changing the name of the Financial Corporation. 1998, c. 15, Sched. A, s. 54 (2).

Same

(3) Despite subsection 2 (3) but subject to the regulations, if a regulation is made changing the name of the Financial Corporation, a reference in this or any other Act or in the regulations made under this or any other Act to Ontario Hydro or to the Financial Corporation shall be deemed to be a reference to the new name, unless the context requires otherwise. 1998, c. 15, Sched. A, s. 54 (3).

Rights to Ontario Hydro name

(4) Despite subsections (1) and (2) but subject to any transfer order made under Part X, the Financial Corporation retains all rights to the name Ontario Hydro. 1998, c. 15, Sched. A, s. 54 (4).

Composition

(5) The Financial Corporation is composed of those persons who, from time to time, comprise its board of directors. 1998, c. 15, Sched. A, s. 54 (5).

Objects and character

55. (1) The objects of the Financial Corporation include, in addition to any other objects,

(a) managing its debt;

(b) receiving payments made to the Financial Corporation under this Act or pursuant to any other authority;

(c) administering assets, liabilities, rights and obligations of the Financial Corporation and disposing or otherwise dealing with them as it considers appropriate or as the Minister of Finance directs under section 74;

(d) exercising and performing powers and duties under Part VII;

(e) effecting financings, including establishing trusts, corporations, partnerships or other entities for that purpose; and

(f) such other objects as may be specified by the Lieutenant Governor in Council. 1998, c. 15, Sched. A, s. 55 (1); 2002, c. 1, Sched. A, s. 12 (1).

Managing debt

(2) For the purpose of this section, managing the Financial Corporation's debt includes,

(a) servicing and retiring debt;

(b) borrowing, including refinancing, renewing or replacing debt;

(c) investing funds; and

(d) managing financial assets, financial liabilities and financial risks. 1998, c. 15, Sched. A, s. 55 (2).

Capacity

(3) The Financial Corporation has the capacity and the rights, powers and privileges of a natural person. 1998, c. 15, Sched. A, s. 55 (3); 2002, c. 1, Sched. A, s. 12 (2).

Crown agent

56. The Financial Corporation is an agent of Her Majesty for all purposes. 1998, c. 15, Sched. A, s. 56.

57. REPEALED. See: Table of Public Statute Provisions Repealed Under Section 10.1 of the *Legislation Act, 2006* – December 31, 2011.

Board of directors

58. (1) The Financial Corporation's board of directors shall manage or supervise the management of the Corporation's business and affairs. 1998, c. 15, Sched. A, s. 58 (1).

Composition

(2) The board of directors shall be composed of at least two and not more than 12 directors appointed by the Lieutenant Governor in Council on the recommendation of the Minister of Finance. 1998, c. 15, Sched. A, s. 58 (2).

Term of office

(3) A director shall hold office at pleasure for a term not exceeding three years and may be reappointed for successive terms not exceeding three years each. 1998, c. 15, Sched. A, s. 58 (3).

Chair

(4) The Lieutenant Governor in Council, on the recommendation of the Minister of Finance, shall designate one of the directors as the chair of the board of directors. 1998, c. 15, Sched. A, s. 58 (4).

Vice-chairs

(5) The Lieutenant Governor in Council, on the recommendation of the Minister of Finance, may designate one or more of the directors as a vice-chair of the board of directors. 1998, c. 15, Sched. A, s. 58 (5).

Powers and duties of vice-chair

(6) If the office of chair is vacant or if the chair is absent or unable to act, a vice-chair shall exercise the powers and perform the duties of the chair. 1998, c. 15, Sched. A, s. 58 (6).

Former directors cease to hold office

(7) A person who was a member of the board of directors immediately before subsection (2) comes into force ceases to be a member of the board of directors when subsection (2) comes into force, but nothing in this subsection prevents the person from being reappointed. 1998, c. 15, Sched. A, s. 58 (7).

Chief executive officer

59. The Lieutenant Governor in Council, on the recommendation of the Minister of Finance, may appoint a chief executive officer of the Financial Corporation. 1998, c. 15, Sched. A, s. 59.

Delegation

60. (1) Subject to its by-laws, the board of directors of the Financial Corporation may delegate any of its powers or duties to a committee of the board or to any one or more of the directors, subject to such conditions and restrictions as may be specified by the board of directors. 1998, c. 15, Sched. A, s. 60 (1).

Exceptions

(2) Subsection (1) does not permit the board of directors to delegate its power to make by-laws or to approve the financial statements or annual report of the Financial Corporation. 1998, c. 15, Sched. A, s. 60 (2).

By-laws

61. (1) The board of directors of the Financial Corporation may make by-laws regulating the business and affairs of the Corporation. 1998, c. 15, Sched. A, s. 61 (1).

Approval

(2) A by-law is not effective unless it has been approved in writing by the Minister of Finance. 1998, c. 15, Sched. A, s. 61 (2).

Investment powers

(3) The power of the Financial Corporation to borrow, invest funds and manage financial risks may only be exercised under the authority of a by-law. 1998, c. 15, Sched. A, s. 61 (3).

***Legislation Act, 2006*, Part III**

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to by-laws made under this section. 1998, c. 15, Sched. A, s. 61 (4); 2006, c. 21, Sched. F, s. 136 (1).

Use of revenues

62. Despite the *Financial Administration Act*, the revenues received by the Financial Corporation do not form part of the Consolidated Revenue Fund and shall be used by the Corporation for the purpose of carrying out its objects. 1998, c. 15, Sched. A, s. 62.

Special purpose account

63. (1) If the Lieutenant Governor in Council authorizes Her Majesty in right of Ontario to assume obligations under clause 122 (1) (a), the Minister of Finance shall establish a special purpose account in the Consolidated Revenue Fund for the purposes of this section. 1998, c. 15, Sched. A, s. 63 (1).

Dividends

(2) Dividends paid to Her Majesty in right of Ontario in respect of shares of Hydro One Inc. and Ontario Power Generation Inc. shall be paid into the account, less any amount that the Minister of Finance considers is required to pay obligations assumed by Her Majesty under clause 122 (1) (a). 1998, c. 15, Sched. A, s. 63 (2); 2002, c. 1, Sched. A, s. 13.

Payment to Financial Corporation

(3) Money paid into the account shall be paid out, at such times as the Minister of Finance may direct, to the Financial Corporation. 1998, c. 15, Sched. A, s. 63 (3).

Closure of account

(4) Before this Part is repealed under section 84.1, the special purpose account shall be closed and any money remaining in the special purpose account shall be paid out to the Financial Corporation. 1998, c. 15, Sched. A, s. 63 (4); 2000, c. 42, s. 22.

64. REPEALED: 2002, c. 1, Sched. A, s. 14.

Limitation on borrowing

65. The Financial Corporation shall not borrow money except as authorized under this or any other Act. 1998, c. 15, Sched. A, s. 65.

Authorization to borrow

66. (1) The Lieutenant Governor in Council may by order authorize the Financial Corporation to borrow such sums of money as the Corporation considers necessary for the purpose of carrying out its objects. 1998, c. 15, Sched. A, s. 66 (1).

Methods of borrowing

(2) The Financial Corporation may exercise the authority referred to in subsection (1) by the issuance of notes, bonds, debentures, deposit receipts, securities or other evidences of indebtedness, by giving short term security, by loan agreement or in any other manner approved by the Lieutenant Governor in Council. 1998, c. 15, Sched. A, s. 66 (2).

Approval by Minister of Finance

(3) The Lieutenant Governor in Council may authorize the Minister of Finance to approve the terms and conditions of the exercise by the Financial Corporation of the authority referred to in subsection (1), subject to the maximum principal amount and to any other terms and conditions that are specified by the Lieutenant Governor in Council. 1998, c. 15, Sched. A, s. 66 (3).

Short term securities

(4) If an order of the Lieutenant Governor in Council under subsection (1) expressly refers to this subsection and authorizes the Financial Corporation to borrow a maximum principal amount of money by the issue and sale of short term securities during a specified period not exceeding 25 years, the following terms and conditions apply:

1. Throughout the specified period, the Financial Corporation may issue, reissue, renew or replace securities issued under the order during the period if the maximum aggregate principal amount of the securities issued under the order and outstanding from time to time does not at any time exceed the maximum principal amount specified in the order.
2. Every security issued under the authority of the order shall bear a date of maturity not later than five years from its date of issue. 1998, c. 15, Sched. A, s. 66 (4).

Loans

(5) If an order of the Lieutenant Governor in Council under subsection (1) expressly refers to this subsection and authorizes the Financial Corporation to borrow a maximum principal amount of money for a period not exceeding five years from any bank, corporation, government, person or authority, the Financial Corporation may borrow from time to time such sums not exceeding at any one time the maximum principal amount specified by the Lieutenant Governor in Council. 1998, c. 15, Sched. A, s. 66 (5).

Application

(6) This section does not apply to money borrowed by the Financial Corporation pursuant to section 67 or 68. 1998, c. 15, Sched. A, s. 66 (6).

Province may purchase securities, etc.

67. (1) The Lieutenant Governor in Council may by order authorize the Minister of Finance to purchase securities of or make loans to the Financial Corporation at such times and on such terms and conditions as the Minister may determine, subject to,

(a) the maximum principal amount specified by the Lieutenant Governor in Council that may be purchased or advanced or that may be outstanding at any time; and

(b) any other terms and conditions that are specified by the Lieutenant Governor in Council. 1998, c. 15, Sched. A, s. 67 (1).

Payment from C.R.F.

(2) The Minister of Finance may pay out of the Consolidated Revenue Fund any amount required for the purposes of subsection (1). 1998, c. 15, Sched. A, s. 67 (2).

Province may raise funds

68. The Lieutenant Governor in Council may raise by way of loan in the manner provided by the *Financial Administration Act* such sums as the Lieutenant Governor in Council considers necessary for the purposes of the Financial Corporation, and the sums so raised shall be used to make advances to the Corporation by way of loan or to purchase securities issued by the Corporation on such terms and conditions as the Minister of Finance may determine. 1998, c. 15, Sched. A, s. 68.

Guarantee and indemnity

69. (1) The Lieutenant Governor in Council may by order authorize the Minister of Finance, on behalf of Ontario, to agree to guarantee or indemnify,

(a) any debts, obligations, securities or undertakings of the Financial Corporation or a subsidiary of the Financial Corporation; or

(b) any debts, obligations, costs or undertakings of any other person arising in connection with a guarantee or indemnity given under clause (a). 1998, c. 15, Sched. A, s. 69 (1).

Terms and conditions

(2) In respect of a guarantee or indemnity authorized under subsection (1), the Lieutenant Governor in Council may fix such terms and conditions as are considered advisable or may authorize the Minister of Finance, subject to any maximum

liability specified for the guarantee or indemnity by the Lieutenant Governor in Council, to determine the terms, conditions and amount on which the guarantee or indemnity will be given. 1998, c. 15, Sched. A, s. 69 (2).

Delegation, order under ss. 66 to 69

70. In an order under section 66, 67, 68 or 69, the Lieutenant Governor in Council may delegate to an officer or employee of the Crown or an agency of the Crown or to a solicitor engaged to act for the Minister of Finance, any or all of the powers of the Minister of Finance under that section. 1998, c. 15, Sched. A, s. 70.

Fees payable to Minister of Finance

71. (1) The Financial Corporation shall pay to the Minister of Finance such fees as are prescribed by the regulations,

(a) in respect of securities purchased and sums loaned under section 67;

(b) in respect of sums advanced or securities purchased under section 68; and

(c) in respect of guarantees and indemnities given under section 69. 1998, c. 15, Sched. A, s. 71 (1).

Application

(2) Subsection (1) applies in respect of sums advanced or applied and guarantees and indemnities given before or after the coming into force of this section. 1998, c. 15, Sched. A, s. 71 (2).

Subsidiaries

72. (1) The Financial Corporation may establish a subsidiary in Ontario or elsewhere only with the approval of the Minister of Finance. 1998, c. 15, Sched. A, s. 72 (1).

Subsidiary may act otherwise than as agent of Crown

(2) A subsidiary of the Financial Corporation may declare in writing in any of its contracts, securities or instruments that it is not acting as an agent of Her Majesty for the purposes of the contract, security or instrument. 1998, c. 15, Sched. A, s. 72 (2).

Same

(3) If a subsidiary makes a declaration in accordance with subsection (2), it shall be deemed not to be an agent of Her Majesty for the purposes of the contract, security or instrument and Her Majesty is not liable for any liability or obligation of the subsidiary under the contract, security or instrument. 1998, c. 15, Sched. A, s. 72 (3).

Entities established for effecting financing

73. In addition to the restriction in subsection 72 (1) on establishing subsidiaries, the Financial Corporation may establish a trust, partnership or other entity in Ontario or elsewhere for the purpose of effecting a financing only with the approval of the Minister of Finance. 1998, c. 15, Sched. A, s. 73.

Directives

74. (1) The Minister of Finance may issue directives in writing to the Financial Corporation or any subsidiary of the Financial Corporation on matters relating to its exercise of powers and duties. 1998, c. 15, Sched. A, s. 74 (1).

Implementation

(2) The board of directors of the Financial Corporation or subsidiary shall ensure that directives under this section are implemented promptly and efficiently. 1998, c. 15, Sched. A, s. 74 (2).

Supervision

(3) A directive may, without limiting the generality of subsection (1), provide for the supervision, management and operation of the whole or any part of the business and affairs of the Financial Corporation or subsidiary by the Ontario Financing Authority or such other agency of the Crown as may be specified in the directive and may restrict, in whole or in part, the powers of the directors of the Financial Corporation or subsidiary to manage or supervise the management of the business and affairs of the Financial Corporation or subsidiary. 1998, c. 15, Sched. A, s. 74 (3).

Same

(4) An agency of the Crown specified in a directive referred to in subsection (3) has all the rights, powers, duties and liabilities of the board of directors of the Financial Corporation or subsidiary to the extent that the directive restricts the powers of the board of directors to manage or supervise the management of the business and affairs of the Financial Corporation or subsidiary and the directors of the Financial Corporation or subsidiary are relieved of their duties and liabilities to the same extent. 1998, c. 15, Sched. A, s. 74 (4).

Same

(5) Without limiting the powers and capacities of the Ontario Financing Authority, its objects shall include any activities described in a directive applicable to it under subsection (3). 1998, c. 15, Sched. A, s. 74 (5).

Subsidiaries

(6) Subsection (1) does not apply in respect of a contract, security or instrument with respect to which a subsidiary of the Financial Corporation has made a declaration in accordance with subsection 72 (2). 1998, c. 15, Sched. A, s. 74 (6).

Evidence of authority

75. A recital or declaration in any resolution of the Financial Corporation that a transaction is for the purpose of carrying out the Corporation's objects is conclusive evidence to that effect. 1998, c. 15, Sched. A, s. 75.

Employees

76. (1) Without limiting the power of the Financial Corporation to hire employees, such employees as are considered necessary for the proper conduct of the Corporation may be appointed under Part III of the *Public Service of Ontario Act, 2006*. 2006, c. 35, Sched. C, s. 31 (1).

(2) REPEALED: 2006, c. 35, Sched. C, s. 31 (1).

Agreements to provide services

(3) Any minister of the Crown may enter into agreements with the Financial Corporation for the provision by employees of the Crown or any agency of the Crown of any service required by the Corporation. 1998, c. 15, Sched. A, s. 76 (3).

Liability

77. (1) No action or other civil proceeding shall be commenced against a director, officer, employee or agent of the Financial Corporation or a subsidiary of the Financial Corporation, or of an agency of the Crown specified in a directive referred to in subsection 74 (3), for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Act, the regulations or the by-laws of the Corporation or subsidiary, or for any neglect or default in the exercise or performance in good faith of such a power or duty. 1998, c. 15, Sched. A, s. 77 (1).

Declaration under subs. 72 (2)

(2) Subsection (1) does not apply to any act, neglect or default in respect of a contract, security or instrument with respect to which a subsidiary of the Financial Corporation has made a declaration in accordance with subsection 72 (2). 1998, c. 15, Sched. A, s. 77 (2).

Actions against Crown

(3) No action or other civil proceeding shall be commenced against the Crown for any act, neglect or default by a person referred to in subsection (1) or for any act, neglect or default of the Financial Corporation, a subsidiary of the Financial Corporation or an agency of the Crown specified in a directive referred to in subsection 74 (3). 1998, c. 15, Sched. A, s. 77 (3).

Same

(4) Subsections (1) and (3) do not relieve the Financial Corporation, a subsidiary of the Financial Corporation or an agency of the Crown specified in a directive referred to in subsection 74 (3) of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1). 1998, c. 15, Sched. A, s. 77 (4).

Same

(5) Subsection (3) does not relieve the Crown of any liability pursuant to a guarantee or indemnity under section 69 or a guarantee referred to in clause 130 (a). 1998, c. 15, Sched. A, s. 77 (5).

Definition

(6) In this section,

"employee" includes an employee employed under Part III of the *Public Service of Ontario Act, 2006*. 1998, c. 15, Sched. A, s. 77 (6); 2006, c. 35, Sched. C, s. 31 (2).

Waiver of immunity

78. The Financial Corporation or any of its subsidiaries may waive any immunity to which it may be entitled outside Ontario as an agent of Her Majesty and may submit to the jurisdiction of a court outside Ontario. 1998, c. 15, Sched. A, s. 78.

Judgments against Financial Corporation

79. (1) The Minister of Finance shall pay from the Consolidated Revenue Fund the amount of any judgment against the Financial Corporation or a subsidiary of the Corporation that remains unpaid after it has made reasonable efforts, including liquidating its assets, to pay the amount of the judgment. 1998, c. 15, Sched. A, s. 79 (1).

Application

(2) Subsection (1) does not apply to a judgment in respect of a matter that arose before this section comes into force. 1998, c. 15, Sched. A, s. 79 (2).

Subsidiaries

(3) Subsection (1) does not apply to a judgment arising from a contract, security or instrument in respect of which a subsidiary has made a declaration in accordance with subsection 72 (2). 1998, c. 15, Sched. A, s. 79 (3).

Audits

80. The accounts and financial transactions of the Financial Corporation shall be audited annually by the Auditor General. 1998, c. 15, Sched. A, s. 80; 2004, c. 17, s. 32.

Annual report

81. (1) The Financial Corporation shall, within 90 days after the end of every fiscal year, submit to the Minister of Finance an annual report on its affairs during that fiscal year, signed by the chair of its board of directors. 1998, c. 15, Sched. A, s. 81 (1).

Extension of time

(1.1) The Minister of Finance may extend the time for the Financial Corporation to submit its annual report for a fiscal year to a day that is not later than the day the Public Accounts for the fiscal year are submitted to the Lieutenant Governor in Council in accordance with Part 0.1 of the *Financial Administration Act.* 2008, c. 19, Sched. E, s. 1; 2009, c. 34, Sched. J, s. 28.

Financial statements

(2) The audited financial statements of the Financial Corporation shall be included in the annual report. 1998, c. 15, Sched. A, s. 81 (2).

Tabling

(3) The Minister of Finance shall submit the annual report to the Lieutenant Governor in Council and shall then table the report in the Assembly. 1998, c. 15, Sched. A, s. 81 (3).

Other persons

(4) The Financial Corporation may give its annual report to other persons before the Minister of Finance complies with subsection (3). 1998, c. 15, Sched. A, s. 81 (4).

Other reports

82. The Financial Corporation shall submit such other reports and information to the Minister of Finance as he or she may require from time to time. 1998, c. 15, Sched. A, s. 82.

Application of corporations statutes

83. Except as otherwise provided by the regulations, the *Corporations Act* and the *Corporations Information Act* do not apply to the Financial Corporation. 1998, c. 15, Sched. A, s. 83.

Tax exemption

84. (1) Despite the *Assessment Act* or any other general or special Act, the Financial Corporation and its property are not subject to taxation for municipal or school purposes, except for local improvements. 1998, c. 15, Sched. A, s. 84 (1).

Annual payments to municipalities

(2) The Financial Corporation shall pay in each year to any municipality in which are situated lands owned by the Financial Corporation or buildings used exclusively for executive, administrative or commercial purposes and owned by the Financial Corporation or buildings owned by the Financial Corporation and rented by it to other persons, an amount equal to the taxes for municipal and school purposes that would be payable if the lands and buildings were taxable. 1998, c. 15, Sched. A, s. 84 (2).

Same

(3) In addition to the amounts payable under subsection (2), the Financial Corporation shall pay in each year to any municipality in which are situated generating station buildings or structures or transformer station buildings or structures owned by the Financial Corporation, an amount equal to the taxes for municipal and school purposes that would be payable if the buildings or structures were taxable and the assessed value were determined on the basis of $86.11 for each square metre of inside ground floor area of the actual building or structure housing the generating, transforming and auxiliary equipment and machinery. 1998, c. 15, Sched. A, s. 84 (3).

Same

(4) In addition to the amounts payable under subsections (2) and (3), the Financial Corporation shall pay in each year, to any municipality in which land owned by it and described in paragraph 2 of subsection 315 (1) of the *Municipal Act, 2001* or paragraph 2 of subsection 280 (1) of the *City of Toronto Act, 2006*, as the case may be, is situate, an amount equal to the tax that would be imposed under section 315 of the *Municipal Act, 2001* or section 280 of the *City of Toronto Act, 2006*, as the case may be, on that land if the land were taxable. 2006, c. 32, Sched. C, s. 16 (2).

Same

(5) The Financial Corporation shall pay in each year to any municipality in which is situated land owned by it and used as a transmission or distribution corridor and leased to another person for rent or other valuable consideration, an amount equal to the taxes for municipal and school purposes that would be payable if the land were taxable and subsection (2) does not apply with respect to the land. 1998, c. 15, Sched. A, s. 84 (5).

Limitation

(6) Despite subsections (2) and (3), the total amount payable thereunder by the Financial Corporation to any municipality in any year shall not exceed 50 per cent of the total of the amounts required for the purposes of the municipality and of all of its local boards being raised by the imposition, rating and levying of all rates, assessments and taxation, except local improvement rates, upon rateable property in the municipality in that year. 1998, c. 15, Sched. A, s. 84 (6).

Use of valuations for computing rates

(7) The valuations made under this section shall be used for the purpose of computing upper-tier municipality rates, school rates and legislative grants in all respects as though the properties valued were not exempt from taxation for such purposes. 1998, c. 15, Sched. A, s. 84 (7); 2002, c. 17, Sched. F, Table.

Valuation

(8) The assessments and assessed values referred to in this section are valuations made in each year for the purposes of this section by the Municipal Property Assessment Corporation, and subject to subsections (2), (3) and (14), the valuation shall be made on the same basis as real property liable to municipal taxation in the municipality. 1998, c. 15, Sched. A, s. 84 (8); 2001, c. 8, s. 205 (1).

Minister of Finance's decision

(9) The decision of the Minister of Finance as to whether this section applies to any property of the Financial Corporation is final. 1998, c. 15, Sched. A, s. 84 (9).

Valuation notice

(10) The Municipal Property Assessment Corporation shall, on completion of the valuation of the Financial Corporation's property in a municipality, deliver or mail to the clerk of the municipality and to the Financial Corporation a notice setting out the valuations referred to in subsection (8). 1998, c. 15, Sched. A, s. 84 (10); 2001, c. 8, s. 205 (1).

Appeals

(11) The municipality or the Financial Corporation may appeal to the Assessment Review Board against the valuation and a notice of appeal to the Board under this subsection shall be sent by the party appealing, by registered mail, to the secretary of the Board within 90 days after the notice of the valuation has been delivered or mailed under subsection (10). 1998, c. 15, Sched. A, s. 84 (11).

Hearing

(12) Upon receipt of a notice of appeal under this section, the secretary of the Assessment Review Board shall arrange a time and place for hearing the appeal and shall send notice thereof to all parties concerned in the appeal at least 14 days before the hearing. 1998, c. 15, Sched. A, s. 84 (12).

Jurisdiction on appeal

(13) The Assessment Review Board upon appeal shall determine the amount at which the property in question shall be valued and its decision is final and binding and there is no appeal therefrom. 1998, c. 15, Sched. A, s. 84 (13).

Exemptions

(14) In making the valuations referred to in subsection (8), there shall be no value included for machinery whether fixed or not nor for the foundation on which it rests, works, structures other than buildings or structures referred to in subsection (2) or (3), substructures, superstructures, rails, ties, poles, towers, lines nor any of the things excepted from exemption from taxation by paragraph 17 of section 3 of the *Assessment Act*, nor for other property, works or improvements not referred to in subsection (2) or (3), nor for an easement or the right or use of occupation or other interest in land not owned by the Financial Corporation. 1998, c. 15, Sched. A, s. 84 (14).

(15) REPEALED: 2001, c. 8, s. 205 (2).

Repeal, Part V

84.1 (1) This Part is repealed on a day to be named by proclamation of the Lieutenant Governor. 2000, c. 42, s. 23.

Dissolution of Financial Corporation

(2) On the day this Part is repealed, the Financial Corporation is dissolved and its assets and liabilities are transferred to Her Majesty in right of Ontario. 2000, c. 42, s. 23.

Restriction on proclamation

(3) No proclamation shall be issued under this section unless, in the opinion of the Minister of Finance, substantially all the debts and other liabilities of the Financial Corporation have been retired or defeased. 2000, c. 42, s. 23.

Determination final

(4) The determination of the Minister of Finance that substantially all the debts and other liabilities of the Financial Corporation have been retired or defeased is final and conclusive and shall not be stayed, varied or set aside by any court. 2000, c. 42, s. 23.

PART V.1
DEBT RETIREMENT CHARGE

THE RESIDUAL STRANDED DEBT AND THE DEBT RETIREMENT CHARGE

Charges to retire debt

85. (1) In this Part,

"collector" means a person appointed as a collector under subsection 85.3 (1); ("percepteur")

"debt retirement charge" means, with respect to a user, the debt retirement charge payable by the user under subsection 85 (4); ("redevance de liquidation de la dette")

"inspector" means a person appointed as an inspector under subsection 85.28 (1); ("inspecteur")

"person" includes Her Majesty in right of Ontario, a partnership, a municipal corporation, a local board as defined in the *Municipal Affairs Act*, a police village, or a board, commission or authority established under an Act of the Assembly; ("personne")

"residual stranded debt" means the stranded debt, reduced by,

(a) the amounts that, in the opinion of the Minister of Finance, will be paid under sections 89, 90, 91, 92, 93 and 94, and

(b) other amounts prescribed by the regulations; ("reliquat de la dette insurmontable")

"self-generating user" means a person who generates electricity for his, her or its own consumption or for consumption by another person at the expense of the person who generates it; ("usager autoproducteur")

"stranded debt" means the amount of the debts and other liabilities of the Financial Corporation that, in the opinion of the Minister of Finance, cannot reasonably be serviced and retired in a competitive electricity market; ("dette insurmontable")

"user" means,

(a) a person who purchases or acquires electricity for his, her or its own consumption or for consumption by another person at the expense of the person who purchases or acquires it,

(b) a person who purchases or acquires electricity on behalf of, or as agent for, a principal who wishes to acquire electricity for consumption by the principal or by other persons at the principal's expense, and

(c) a self-generating user. ("usager") 1998, c. 15, Sched. A, s. 85 (1); 2000, c. 42, s. 25 (1); 2002, c. 17, Sched. F, Table.

Determinations

(2) The Minister of Finance shall determine the stranded debt and shall from time to time determine the residual stranded debt in accordance with the regulations. 1998, c. 15, Sched. A, s. 85 (2).

Reporting

(3) The determinations made by the Minister under subsection (2) shall be subject to such reporting requirements as are prescribed by the regulations. 1998, c. 15, Sched. A, s. 85 (3).

Duty to pay debt retirement charge

(4) Every user shall pay to the Financial Corporation a debt retirement charge in respect of the amount of electricity consumed in Ontario, to be calculated at the prescribed rate or rates. 2000, c. 42, s. 25 (2).

Determination re amount consumed

(4.1) For the purposes of subsection (4), the amount of electricity consumed in Ontario is to be determined in accordance with the regulations. 2000, c. 42, s. 25 (2).

Time and manner of payment

(5) The user shall pay the debt retirement charge at the time and in the manner specified by the regulations. 2000, c. 42, s. 25 (2).

Exemption from payment

(5.1) Such users or classes of users as may be prescribed are exempted from paying the debt retirement charge in such circumstances as may be prescribed. 2000, c. 42, s. 25 (2).

Same, under other Acts

(5.2) No person otherwise subject to the debt retirement charge is exempt from paying it by reason of an exemption granted to the person, or granted in respect of the personal or real property of the person, by or under any other Act unless the other Act expressly mentions this Act. 2000, c. 42, s. 25 (2).

Retirement of residual stranded debt

(6) When the Minister of Finance determines that the residual stranded debt has been retired, the Minister of Finance shall publish notice of that fact in *The Ontario Gazette*. 1998, c. 15, Sched. A, s. 85 (6).

Determination final

(7) The determination of the Minister of Finance that the residual stranded debt has been retired is final and conclusive and shall not be stayed, varied or set aside by any court. 1998, c. 15, Sched. A, s. 85 (7).

Application

(8) Subsections (2) to (6) do not apply after the Minister of Finance publishes notice under subsection (6) that the residual stranded debt has been retired. 1998, c. 15, Sched. A, s. 85 (8).

Duty to meter consumption

85.1 Such users or classes of users as may be prescribed shall meter their consumption of electricity and shall do so in accordance with the regulations. 2000, c. 42, s. 26.

Exemptions

85.2 Such users or classes of users as may be prescribed are exempted from such obligations as are specified in the regulation in the circumstances described in the regulation. 2000, c. 42, s. 26.

REGISTRATION

Collectors of debt retirement charge

85.3 (1) Such persons as may be prescribed are appointed as collectors of the debt retirement charge. 2000, c. 42, s. 26.

Registration of collectors

(2) Every collector shall register with the Minister of Finance in accordance with the prescribed requirements and shall maintain his, her or its registration. 2000, c. 42, s. 26.

Duties of collectors

(3) Every collector shall do the following:

1. Levy and collect the debt retirement charge in accordance with the regulations.
2. Remit, in accordance with the regulations, the debt retirement charge collectable and payable by the collector.
3. Keep the prescribed records in accordance with the prescribed requirements.
4. Submit returns to the Minister of Finance in accordance with the prescribed requirements. 2000, c. 42, s. 26.

Status

(4) Every collector is an agent of the Financial Corporation for the purpose of levying and collecting the debt retirement charge. 2000, c. 42, s. 26.

Registration of self-generating users

85.4 (1) Every self-generating user shall register with the Minister of Finance in accordance with the prescribed requirements and shall maintain his, her or its registration. 2000, c. 42, s. 26.

Duties

(2) Every self-generating user shall do the following:

1. Remit, in accordance with the regulations, the debt retirement charge payable by the self-generating user.
2. Keep the prescribed records in accordance with the prescribed requirements.
3. Submit returns to the Minister of Finance in accordance with the prescribed requirements. 2000, c. 42, s. 26.

ASSESSMENT AND REASSESSMENT OF AMOUNTS OWING

Assessment payable by collector

85.5 (1) At any time the Minister of Finance considers reasonable, he or she may assess or reassess the debt retirement charge collected by a collector for which the collector has not accounted,

(a) if the collector fails to submit a return or remittance as required by this Part; or

(b) if the collector's returns are not substantiated by the collector's records. 2000, c. 42, s. 27.

Assessment upon inspection

(2) If it appears to an inspector that a collector has not complied with this Part, the Minister of Finance may assess or reassess the amount of the debt retirement charge collected by the collector or the amount of the penalty authorized by subsection 85.6 (4), based on the inspector's calculation that is described in subsection (3). 2000, c. 42, s. 27.

Calculation of amount

(3) For the purposes of an assessment or reassessment under subsection (2), the inspector shall calculate the amount of the debt retirement charge or the amount of the penalty and shall make the calculation in the manner and form and using such procedures as the Minister of Finance considers adequate and expedient. 2000, c. 42, s. 27.

Deemed charge

(4) The amount assessed or reassessed by the Minister of Finance under this section shall be deemed to be a debt retirement charge collected by the collector. 2000, c. 42, s. 27.

Administrative penalties, collectors

85.6 (1) If a collector fails to submit a return to the Minister of Finance as required under this Part, the Minister of Finance may assess a penalty against the collector in an amount equal to the sum of 10 per cent of the amount collectable by the collector in respect of the period for which the return should have been submitted and 5 per cent of the amount payable by the collector in respect of that period. 2000, c. 42, s. 27.

Same, failure to pay

(2) If a collector submits a return to the Minister of Finance as required under this Part but fails to remit the full amount shown on the return as collectable or payable by the collector, the Minister of Finance may assess a penalty against the collector in an amount equal to the sum of 10 per cent of the amount collectable and not remitted by the collector and 5 per cent of the amount payable and not remitted by the collector. 2000, c. 42, s. 27.

Same, wilful non-compliance

(3) If the Minister of Finance makes an assessment or reassessment under subsection 85.5 (1) or (2) and if the Minister of Finance is satisfied that the non-compliance that gave rise to the assessment or reassessment was attributable to neglect, carelessness, wilful default or fraud, the Minister of Finance may assess a penalty against the collector equal to the greater of,

(a) $100; or

(b) 25 per cent of the amount assessed or reassessed under subsection 85.5 (1) or (2), as the case may be. 2000, c. 42, s. 27.

Same, failure to collect

(4) If a collector fails to collect a debt retirement charge that the collector is required under this Part to collect, the Minister of Finance may assess a penalty against the collector in an amount equal to the amount that should have been collected. 2000, c. 42, s. 27.

Exception

(5) The Minister of Finance shall not assess a penalty under subsection (4) against the collector if the Minister of Finance has made an assessment or reassessment under section 85.7 against the user from whom the collector should have collected the amount. 2000, c. 42, s. 27.

Time limit

(6) The Minister of Finance shall not assess a penalty under subsection (4) with respect to an amount that should have been collected by the collector more than four years before the date of the assessment. 2000, c. 42, s. 27.

Exception, where misrepresentation, etc.

(7) Subsection (6) does not apply if the Minister of Finance establishes that the collector has made a misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in making a return or supplying information under this Part or in omitting to disclose information. 2000, c. 42, s. 27.

Administrative penalty, wilful failure to collect

(8) If a collector fails to collect a debt retirement charge that the collector is required under this Part to collect and if the Minister of Finance is satisfied that the failure is attributable to neglect, carelessness, wilful default or fraud, the Minister of Finance may assess a penalty against the collector,

(a) in an amount equal to the greater of $25 and 25 per cent of the amount that should have been collected, if a penalty has been assessed against the collector under subsection (4) for the failure to collect; or

(b) in an amount equal to the greater of $25 and 125 per cent of the amount that should have been collected, if no penalty has been assessed against the collector under subsection (4) for the failure to collect. 2000, c. 42, s. 27.

Assessments payable by users

85.7 (1) The Minister of Finance may assess or reassess any debt retirement charge payable by a user. 2000, c. 42, s. 27.

Time limit

(2) The assessment or reassessment under subsection (1) must be made,

(a) in the case of a user that is not a self-generating user, within four years after the date on which the debt retirement charge became payable; and

(b) in the case of a self-generating user, within four years after the end of the calendar year during which the debt retirement charge became payable. 2000, c. 42, s. 27.

Exception, where misrepresentation, etc.

(3) Subsection (2) does not apply if the Minister of Finance establishes that the user has made any misrepresentation that is attributable to neglect, carelessness or wilful default or has committed any fraud in making a return or supplying information under this Part or in omitting to disclose information. 2000, c. 42, s. 27.

Assessment upon inspection

(4) If it appears to an inspector that a user has not complied with this Part, the Minister of Finance may assess or reassess the amount of the debt retirement charge payable by the user, based on the inspector's calculation that is described in subsection (5). 2000, c. 42, s. 27.

Calculation of amount

(5) For the purposes of an assessment or reassessment under subsection (4), the inspector shall calculate the amount payable by the user and shall make the calculation in the manner and form and using such procedures as the Minister of Finance considers adequate and expedient. 2000, c. 42, s. 27.

Administrative penalties, users

85.8 If the Minister of Finance makes an assessment or reassessment under section 85.7 and if the Minister of Finance is satisfied that the non-compliance that gave rise to the assessment or reassessment was attributable to neglect, carelessness, wilful default or fraud, the Minister of Finance may assess a penalty against the user equal to the greater of,

(a) $100; or

(b) 25 per cent of the amount assessed or reassessed under section 85.7. 2000, c. 42, s. 27.

Administrative penalty, self-generating user

85.9 (1) If a self-generating user fails to submit a return to the Minister of Finance as required under this Part, the Minister of Finance may assess a penalty against the user in an amount equal to 5 per cent of the debt retirement charge payable by the user in respect of the period for which the return should have been submitted. 2000, c. 42, s. 27.

Same, failure to remit payment

(2) If a self-generating user submits a return to the Minister of Finance but fails to remit the full amount shown on the return as payable by the user, the Minister of Finance may assess a penalty against the user in an amount equal to 5 per cent of the amount payable and not remitted. 2000, c. 42, s. 27.

Liability of corporate directors

85.10 (1) This section applies if a corporation fails to collect a debt retirement charge, fails to remit a debt retirement charge that it has collected or fails to pay any interest or penalty under this Part relating to such a charge. 2000, c. 42, s. 27.

Same

(2) The individuals who were directors of the corporation when the corporation failed to collect or remit the debt retirement charge or failed to pay the interest or penalty are jointly and severally liable, together with the corporation, to pay the charge, interest or penalty to the Financial Corporation. 2000, c. 42, s. 27.

Assessment

(3) The Minister of Finance may assess or reassess any individual for any amount payable by him or her under subsection (2). 2000, c. 42, s. 27.

Same

(4) Section 43 of the *Retail Sales Tax Act* applies, with necessary modifications, with respect to the liability of individuals under subsection (2), assessments or reassessments by the Minister of Finance under this section and the collection of amounts payable. 2000, c. 42, s. 27.

Assessment of interest payable

85.11 (1) The Minister of Finance may assess interest that is payable on a debt owing to the Financial Corporation under this Part and interest that is payable on a penalty imposed under this Part. 2000, c. 42, s. 27.

Calculation, re debt

(2) The interest on a debt is payable from the date on which the debt is due to the date on which the amount of the debt plus the interest is received by the Financial Corporation and it is to be calculated at the prescribed rate and in the prescribed manner. 2000, c. 42, s. 27.

Same, re penalty

(3) The interest on a penalty is payable from the date of the default to which the penalty relates to the date on which the amount of the penalty plus the interest is received by the Financial Corporation and it is to be calculated at the prescribed rate and in the prescribed manner. 2000, c. 42, s. 27.

Calculation of debt owing

(4) For the purposes of subsection (1), the amount of a debt owing by a person to the Financial Corporation on a particular date is the amount by which "A" exceeds "B" where,

"A" is the aggregate of,

(a) the amount of the debt retirement charge collectable by the person as a collector or payable by the person as a user under this Part before that date,

(b) all amounts or penalties or both assessed under this Part against the person before that date, and

(c) the total of all amounts of interest assessed and payable under this section against the person in respect of a period of time before that date, and

"B" is the aggregate of,

(a) the amount of the debt retirement charge remitted or paid by the person under this Part before that date,

(b) all amounts or penalties or both assessed under this Part and paid by the person before that date, and

(c) the total of all amounts of interest credited to the person in respect of a period of time before that date. 2000, c. 42, s. 27.

Notice of assessment

85.12 The Minister of Finance shall give a written notice of assessment or reassessment to a user, collector or individual who is assessed or reassessed under this Part. 2000, c. 42, s. 27.

Effect of information and returns

85.13 (1) The Minister of Finance is not bound by information given or by a return made by or on behalf of a person under this Part and may make assessments under this Part even though no information is given or return is made or even though the information or return is incomplete or incorrect. 2000, c. 42, s. 27.

Liability

(2) A person's liability to pay a debt retirement charge is not affected by an incorrect or incomplete assessment or by the fact that no assessment has been made. 2000, c. 42, s. 27.

PAYMENTS, REFUNDS AND REBATES

Payment of assessed amounts

85.14 (1) Every person against whom an assessment is made under this Part shall pay to the Financial Corporation the amount assessed, whether or not an objection to the assessment or an appeal from the assessment is outstanding. 2000, c. 42, s. 27.

Status of assessment

(2) An assessment by the Minister of Finance under this Part shall be deemed to be valid and binding despite any error, defect or omission either in the assessment or in any proceeding under this Part relating to the assessment and the amount assessed shall be deemed to be conclusively established as a debt owing to the Financial Corporation. 2000, c. 42, s. 27.

Same

(3) Subsection (2) does not prevent the assessment from being varied or vacated on an objection or an appeal and does not prevent a reassessment being made. 2000, c. 42, s. 27.

Penalty

(4) If a person purports to pay or remit an amount owing under this Part by delivering anything other than legal tender within the meaning of subsection 8 (1) of the *Currency Act* (Canada) and if, as a result, the Financial Corporation fails to receive full and unconditional payment or settlement, the person is liable to pay to the Financial Corporation the additional fee that is prescribed and the Minister of Finance may assess the additional fee as a penalty. 2000, c. 42, s. 27.

Same

(5) A penalty assessed under subsection (4) cannot be appealed under this Part and an objection to it cannot be initiated under this Part. 2000, c. 42, s. 27.

Refunds and rebates

85.15 (1) An amount paid under this Part that is not payable as a debt retirement charge and that was not paid to discharge a liability under an assessment made under this Part shall be refunded. 2000, c. 42, s. 27.

Rebate

(2) A rebate of a debt retirement charge shall be paid in such circumstances and in accordance with such requirements as may be prescribed. 2000, c. 42, s. 27.

Interest on refund or rebate

(3) Interest is payable on the amount refunded or the amount of the rebate and shall be calculated at the prescribed rate and in the prescribed manner for the period beginning 21 days after the date on which the Minister of Finance receives the application for the refund or rebate to the date of the refund or rebate. 2000, c. 42, s. 27.

Time limit for refund

(4) A person is not entitled to a refund under subsection (1) unless application for the refund is made to the Minister of Finance within four years after the date on which the person paid the amount to be refunded or within such longer period as may be permitted by regulation. 2000, c. 42, s. 27.

Disallowance

(5) If an application for a refund or rebate is made in accordance with this Part and if the application is refused, in whole or in part, the Minister of Finance shall give the applicant a written statement of disallowance specifying the amount that is disallowed and the reasons for disallowing it. 2000, c. 42, s. 27.

Refund by collector

(6) A collector may refund to a user, in accordance with the regulations, all or part of a debt retirement charge collected from the user by the collector if the user was not required to pay the debt retirement charge and if the refund is made within four years after the user paid it. 2000, c. 42, s. 27.

Same

(7) The collector may deduct from subsequent remittances under this Part any amount refunded under subsection (6), if the collector makes the deduction within four years after making the refund to the user. 2000, c. 42, s. 27.

Refund by the Financial Corporation

(7.1) The Minister of Finance may authorize the Financial Corporation to make a refund under subsection (1) to a person if the Minister is satisfied that the amount to be refunded was wrongly paid and that it has not been refunded by a collector. 2002, c. 22, s. 61.

Error in refund or rebate

(8) If a person receives a refund or rebate to which the person is not entitled under this Part, the Minister of Finance may assess or reassess the amount to which the person was not entitled and shall give the person a written statement describing the reasons that the person was not entitled to the amount assessed or reassessed. 2000, c. 42, s. 27.

Refund of overpayment

85.16 (1) If it is established in a manner described in subsection (2) that a person has paid more than the person is required to pay as or on account of the debt retirement charge under this Part, the amount of the overpayment shall be refunded together with interest calculated at the prescribed rate and in the prescribed manner from the date on which the overpayment arose. 2000, c. 42, s. 27.

Same

(2) An overpayment may be established as a consequence of an assessment or reassessment under this Part or as a consequence of a final decision of a court in proceedings commenced as a result of an appeal under this Part. 2000, c. 42, s. 27.

Refund by the Financial Corporation

(3) The Financial Corporation shall refund the amount described in subsection (1) to the person described in that subsection. 2002, c. 22, s. 62.

OBJECTIONS AND APPEALS

Objections and appeals

85.17 (1) Any of the following persons may object to, or appeal from, an assessment or a reassessment made under this Part, a statement of disallowance given under this Part or a penalty imposed under this Part:

1. A collector.
2. A user.
3. An individual against whom an assessment has been made under section 85.10. 2000, c. 42, s. 27.

Same

(2) Sections 24 to 30 of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to objections and appeals under this section. 2000, c. 42, s. 27; 2011, c. 9, Sched. 12, s. 1.

COLLECTION OF AMOUNTS OWING

Funds held in trust

85.18 (1) An amount collectable or collected by a collector as a debt retirement charge or on account of such a charge shall be deemed, despite any security interest in the amount,

(a) to be held in trust for the Financial Corporation;

(b) to be held separate and apart from the collector's property; and

(c) to be held separate and apart from property held by any secured creditor that, but for any security interest, would be the collector's property. 2000, c. 42, s. 27.

Same

(2) Section 22 of the *Retail Sales Tax Act* applies, with necessary modifications, with respect to an amount described in subsection (1). 2000, c. 42, s. 27.

Method of collection

85.19 Any amount payable to the Financial Corporation under this Part that remains unpaid after it becomes due and payable may be collected by the Minister of Finance on behalf of the Financial Corporation and, for that purpose, sections 23 and 36, subsections 37 (1), (1.1) and (2) and sections 37.1, 38 and 39 of the *Retail Sales Tax Act* apply, with necessary modifications. 2000, c. 42, s. 27; 2011, c. 9, Sched. 12, s. 2.

OFFENCES

Offences

85.20 (1) Every person who contravenes or fails to comply with any of the following provisions is guilty of an offence and, on conviction, is liable to a fine of not less than $100 for each day during which the offence continues:

1. Section 85.1 (duty to meter consumption).
2. Subsection 85.3 (2) (registration of collectors) or paragraph 4 of subsection 85.3 (3) (duty to submit returns, collectors).
3. Subsection 85.4 (1) (registration of self-generating users) or paragraph 3 of subsection 85.4 (2) (duty to submit returns, self-generating users).
4. Subsection 85.28 (3) (prohibition re inspection). 2000, c. 42, s. 27.

Same, re failure to collect

(2) Every collector who is required by paragraph 1 of subsection 85.3 (3) to levy and collect a debt retirement charge and who fails to do so is guilty of an offence and, on conviction, is liable to a fine equal to the sum of,

(a) the amount of the debt retirement charge that should have been collected, as determined under subsection (3); and

(b) an amount that is not less than $50 and not more than $2,000. 2000, c. 42, s. 27.

Determination of amount

(3) For the purposes of clause (2) (a), the Minister of Finance shall determine the amount of the debt retirement charge that should have been collected and shall issue a certificate setting out that amount. 2000, c. 42, s. 27.

Same

(4) The determination made under subsection (3) shall be based upon such information as is available to the Minister of Finance and, unless he or she considers that the collector has engaged in deliberate evasion of this Part, the Minister of Finance shall not consider information respecting a period of more than four years in making the determination. 2000, c. 42, s. 27.

Effect of certificate

(5) A certificate issued under subsection (3) is proof, in the absence of evidence to the contrary, of the amount of the debt retirement charge that should have been collected and of the authority of the person signing the certificate without any proof of appointment or signature. 2000, c. 42, s. 27.

Offence, re failure to remit

(6) Every collector who fails to remit an amount collected as, or on account of, a debt retirement charge as required by paragraph 2 of subsection 85.3 (3) is guilty of an offence and, on conviction, is liable to either or both of the following penalties in addition to any other penalty imposed under this Part:

1. A fine in an amount that is,
   i. not less than the greater of $100 and 25 per cent of the amount collected and not remitted, and
   ii. not more than the greater of $100 and double the amount collected and not remitted.
2. Imprisonment for a term of not more than two years. 2000, c. 42, s. 27.

Offence, re records

(7) Every collector who is required by paragraph 3 of subsection 85.3 (3) to keep records and who fails to do so in accordance with the regulations is guilty of an offence and on conviction is liable to a fine of not less than $50 and not more than $5,000. 2000, c. 42, s. 27.

Same, self-generating user

(8) Every self-generating user who is required by paragraph 2 of subsection 85.4 (2) to keep records and who fails to do so in accordance with the regulations is guilty of an offence and on conviction is liable to a fine of not less than $50 and not more than $5,000. 2000, c. 42, s. 27.

Offence, directors of a corporation

85.21 (1) Any officer, director or agent of a corporation or any other person who directs, authorizes, assents to, acquiesces in or participates in an action or omission by the corporation that is an offence under this Part is guilty of an offence. 2000, c. 42, s. 27.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to the penalty provided for the offence by the corporation, whether or not the corporation has been prosecuted for or convicted of the offence. 2000, c. 42, s. 27.

Offence, confidentiality

85.22 Every person who contravenes subsection 85.29 (1), (2), (5) or (6) is guilty of an offence and on conviction is liable to a fine of not more than $2,000. 2000, c. 42, s. 27.

Offences, false statements, etc., and fraud

85.23 (1) Every person who engages in any of the following acts or omissions is guilty of an offence:

1. Making, participating in, assenting to or acquiescing in the making of a false or deceptive statement in a return, statement or other document or in an answer required or submitted under this Part.
2. Destroying, altering, mutilating, hiding or otherwise disposing of information or records of a user or collector, for the purpose of evading payment of an amount under this Part.
3. Making, assenting to or acquiescing in the making of a false or deceptive entry of a material particular in a record of a user or collector.
4. Omitting to make or assenting to or acquiescing in the omission of an entry of a material particular in a record of a user or collector.
5. For the purpose of evading a payment under this Part, destroying, altering or otherwise causing a meter to inaccurately measure the consumption of electricity or to cease measuring the consumption of electricity or replacing a meter with another meter that is calculated to mislead.
6. Wilfully evading or attempting to evade, in any manner, payment of an amount under this Part or compliance with an obligation under this Part. 2000, c. 42, s. 27.

Penalty upon conviction

(2) A person convicted of an offence under subsection (1) is liable to either or both of the following penalties in addition to any other penalty imposed under this Part:

1. A fine in an amount that is,

i. not less than the greater of $1,000 and 50 per cent of the amount that should have been remitted or that the person sought to evade, and

ii. not more than the greater of $1,000 and double the amount that should have been remitted or that the person sought to evade.

2. Imprisonment for a term of not more than two years. 2000, c. 42, s. 27.

Offence, obtaining refund or rebate by fraud

(3) Every person who, by deceit, falsehood or any other fraudulent means, obtains or attempts to obtain a refund or rebate under this Part to which the person is not entitled is guilty of an offence and, on conviction, is liable to either or both of the following penalties:

1. A fine of not less than $500 and not more than double the amount of the refund or rebate sought.

2. Imprisonment for a term of not more than two years. 2000, c. 42, s. 27.

General offence

85.24 Every person who contravenes, by any act or omission, a requirement imposed under this Part is guilty of an offence and, on conviction, is liable, where no other penalty is provided for the offence, to a fine of not less than $50 and not more than $5,000. 2000, c. 42, s. 27.

Imprisonment, failure to pay fine

85.25 If a fine is imposed on an individual under section 85.20, 85.21, 85.22, 85.23 or 85.24 as a result of his or her conviction of an offence under this Part, a sentence of imprisonment for not more than one year in default of payment of the fine may also be imposed on the individual. 2000, c. 42, s. 27.

Limitation period and onus of proof

85.26 (1) A proceeding to prosecute an offence under this Part must be commenced within six years after the date on which the matter of the offence arose. 2000, c. 42, s. 27.

Onus of proof

(2) In a prosecution for a failure to pay, collect or remit a debt retirement charge, as the case may be, the accused has the onus of proving that the debt retirement charge was paid, collected or remitted. 2000, c. 42, s. 27.

Payment of fines

85.27 Fines imposed under sections 85.20, 85.21, 85.22, 85.23 and 85.24 are payable to the Minister of Finance on behalf of the Crown in right of Ontario. 2000, c. 42, s. 27.

ADMINISTRATION

Inspection

85.28 (1) The Minister of Finance may appoint one or more inspectors who are authorized to exercise any of the powers and perform any of the duties of a person authorized by the Minister of Finance under subsection 31 (1) of the *Retail Sales Tax Act* for any purpose related to the administration and enforcement of this Part. 2000, c. 42, s. 27.

Same

(2) Subsections 31 (1), (2), (2.1) and (2.2) of the *Retail Sales Tax Act* apply, with necessary modifications, with respect to the administration and enforcement of this Part. 2000, c. 42, s. 27; 2011, c. 9, Sched. 12, s. 3.

Interference with inspection

(3) No person shall prevent or interfere with, or attempt to prevent or interfere with, an inspector doing anything that he or she is authorized to do under this section. 2000, c. 42, s. 27.

Confidentiality

85.29 (1) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Finance for the purposes of this Part; or

(b) knowingly allow any person to inspect or have access to any record or thing obtained by or on behalf of the Minister of Finance for the purposes of this Part. 2000, c. 42, s. 27.

Testimony

(2) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Finance for the purposes of this Part; or

(b) to produce any record or thing obtained by or on behalf of the Minister of Finance for the purposes of this Part. 2000, c. 42, s. 27.

Exception

(3) Subsections (1) and (2) do not apply in respect of,

(a) criminal proceedings under an Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the collection of the debt retirement charge under this Part. 2000, c. 42, s. 27.

Communication

(4) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of this Part,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law, information obtained by or on behalf of the Minister of Finance for the purposes of this Part; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law, to inspect or have access to any record or thing obtained by or on behalf of the Minister of Finance for the purposes of this Part. 2000, c. 42, s. 27.

Reciprocal communication

(5) A person who receives information or obtains access to any record or thing under subsection (4) has a duty to communicate or furnish to the Minister of Finance on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this Part. 2000, c. 42, s. 27.

Use of information

(6) Any information, record or thing communicated or furnished under this Part may be used only for the administration or enforcement of this Part or an Act that is administered or enforced by the person receiving the information, record or thing. 2000, c. 42, s. 27.

Methods of giving notice

85.30 (1) When the Minister of Finance is required under this Part to give a person a document or to give notice to a person, he or she may do so by sending the document or notice by prepaid mail to the person at the person's last known address or by serving the document or notice on the person. 2000, c. 42, s. 27.

Same, partnership

(2) If the document or notice is to be given to a partnership, the document or notice may be sent to or served on a partner, manager, agent or representative of the partnership. 2000, c. 42, s. 27.

Same, corporation

(3) If the document or notice is to be given to a corporation, the document or notice may be sent to or served on the president, secretary or another director or on a manager, agent or representative of the corporation. 2000, c. 42, s. 27.

Proof of compliance

85.31 (1) An affidavit of the Minister of Finance, a person employed in the Ministry of Finance or a person employed by the Financial Corporation about whether this Part has, or has not, been complied with is proof in the absence of evidence to the contrary of the facts set out in the affidavit, without proof of the signature or office of the person making the affidavit. 2000, c. 42, s. 27.

Status

(2) An affidavit described in subsection (1) may be introduced into evidence without notice, despite section 35 of the *Evidence Act*. 2000, c. 42, s. 27.

Right to cross-examine

(3) A party against whom an affidavit described in subsection (1) is adduced may, with the leave of the court, require the deponent to attend court to be cross-examined. 2000, c. 42, s. 27.

Evidence re collectors

85.32 (1) A copy of a person's application for registration as a collector that is filed with the Minister of Finance under this Part is proof, in the absence of evidence to the contrary, that the person is a collector and is required to remit to the Minister of Finance the debt retirement charge under this Part. 2000, c. 42, s. 27.

Same

(2) Subject to subsection (4), if a collector is described as a partnership on an application for registration as a collector that is filed with the Minister of Finance under this Part, a copy of the application is proof, in the absence of evidence to the contrary, that the persons named in it are members of the partnership. 2000, c. 42, s. 27.

Same

(3) Subject to subsection (4), a copy of a return filed by a person or a partnership as a collector is proof, in the absence of evidence to the contrary, that the person or partnership collected the debt retirement charge specified in the return. 2000, c. 42, s. 27.

Certification

(4) The copy of the application or return must be certified by an official of the Ministry of Finance who has access to the records that are maintained by the Ministry of Finance about the collector, and it may be a copy of an application or return made electronically and reproduced from original data stored electronically. 2000, c. 42, s. 27.

Evidence re self-generating users

(5) Subsections (1), (2) and (4) apply, with necessary modifications, with respect to applications and returns of a self-generating user. 2000, c. 42, s. 27.

Evidence re other documents

85.33 (1) For any purpose relating to the administration or enforcement of this Part, the Minister of Finance or a person authorized by him or her may reproduce from original data stored electronically any document previously issued under this Part or any information previously submitted in any form by a collector or a self-generating user, and the reproduction is admissible in evidence and has the same probative force as the original document or information would have had if it had been proved in the ordinary way. 2000, c. 42, s. 27.

Same

(2) If a book, record or other document is examined or produced under section 85.28 (inspection), the person by whom it is examined or to whom it is produced may make (or cause to be made) one or more copies of it, and a document purporting to be certified by the person to be a copy made under the authority of this subsection is admissible in evidence and has the same probative force as the original document would have had if it had been proved in the ordinary way. 2000, c. 42, s. 27.

Affidavits, etc.

85.34 (1) Any of the following documents may be sworn by any person who has authority to administer an oath or any person authorized for the purposes of this section by the Lieutenant Governor in Council:

1. A declaration or affidavit relating to a return made under this Part.
2. A statement of information given under section 85.28 (inspection). 2000, c. 42, s. 27.

Same

(2) A person authorized for the purposes of this section by the Lieutenant Governor in Council shall not charge a fee for swearing a document described in subsection (1). 2000, c. 42, s. 27.

Forms

85.35 The Minister of Finance may approve the use of forms for any purpose of this Part and the forms may provide for such information to be furnished as the Minister of Finance may require. 2000, c. 42, s. 27.

Regulations, Parts V and V.I

86. (1) The Lieutenant Governor in Council may make regulations,

(a) respecting the calculation of the fees referred to in subsection 71 (1) and respecting the manner in which, and the time at which, they are to be paid;

(b) prescribing provisions of the *Business Corporations Act*, the *Corporations Act* or the *Corporations Information Act* that apply, with necessary modifications, to the Financial Corporation;

(c) prescribing other amounts for the purpose of clause (b) of the definition of "residual stranded debt" in subsection 85 (1);

(d) governing determinations of the stranded debt and the residual stranded debt for the purpose of section 85, including the time period over which the residual stranded debt should be retired, and prescribing reporting requirements applicable to the determinations;

(e) prescribing one or more rates for the purposes of subsections 85 (4) and 85 (4.1), including rates applicable to particular users, classes of users or uses of electricity, prescribing the amount of electricity with respect to which a rate is applied and prescribing one or more methods for determining the amount of electricity consumed;

(f) exempting particular users or classes of users from paying a debt retirement charge, specifying the circumstances in which the exemption applies and imposing conditions or restrictions with respect to an exemption;

(g) providing for the rebate of the debt retirement charge in whole or in part, prescribing the circumstances in which and conditions under which rebates may be made and prescribing the method of determining the amount of a rebate;

(h) respecting any other matter that the Lieutenant Governor in Council considers necessary or advisable in connection with this Part.

(i) REPEALED: 2000, c. 42, s. 28 (1).

(j) REPEALED: 2000, c. 42, s. 28 (1).

(k) REPEALED: 2000, c. 42, s. 28 (1).

(l) REPEALED: 2000, c. 42, s. 28 (1).

1998, c. 15, Sched. A, s. 86 (1); 2000, c. 42, s. 28 (1).

Regulations, Minister of Finance

(1.1) The Minister of Finance may make regulations,

(a) determining anything that the Minister of Finance is permitted or required by this Part to determine;

(b) defining, for the purposes of this Part, any word or expression used in this Part;

(c) exempting particular users or classes of users from one or more obligations under this Part, other than the obligation to pay a debt retirement charge, specifying the circumstances in which the exemption applies and imposing conditions or restrictions with respect to an exemption;

(d) prescribing the time or times at which a particular user or class of users is required to pay a debt retirement charge;

(e) prescribing, for the purpose of section 85.1, the users or classes of users that are required to meter the consumption of electricity and prescribing methods, procedures and requirements with respect to the metering of electricity;

(f) governing the appointment, registration and duties of collectors;

(g) governing the registration and duties of self-generating users;

(h) prescribing methods of collecting and remitting a debt retirement charge and establishing requirements relating to the collection and remittance, including requirements about invoicing;

(i) requiring the debt retirement charge to be paid or remitted in instalments, specifying when the instalments are to be paid or remitted, and requiring the payment of interest or administrative penalties or both for late payments;

(j) prescribing the additional fee referred to in subsection 85.14 (4);

(k) governing refunds by collectors;

(l) prescribing procedures to be followed by collectors and users in connection with refunds and rebates under this Part;

(m) prescribing, for the purpose of subsection 85.15 (4), a time limit for applying for a refund;

(n) governing payments to a collector when the collector pays a debt retirement charge on behalf of a user and the user then defaults on paying the debt retirement charge to the collector;

(o) prescribing a rate of interest or a method of determining a rate of interest for debts owing under this Part to the Financial Corporation and for amounts owing to a person as a refund or rebate under this Part;

(p) prescribing the records to be kept by a collector or a self-generating user for the purposes of this Part. 2000, c. 42, s. 28 (2).

General or particular

(2) A regulation made under this section may be general or particular in its application. 1998, c. 15, Sched. A, s. 86 (2).

Retroactivity

(3) A regulation is, if it so provides, effective with reference to a period before it was filed. 2000, c. 42, s. 28 (2).

Repeal

87. (1) This Part is repealed on a day to be named by proclamation of the Lieutenant Governor. 1998, c. 15, Sched. A, s. 87 (1).

(2) REPEALED: 2000, c. 42, s. 29.

(3) REPEALED: 2000, c. 42, s. 29.

(4) REPEALED: 2000, c. 42, s. 29.

PART VI
SPECIAL PAYMENTS

Definitions, Part VI

88. In this Part,

"municipal electricity utility" means,

(a) a municipal corporation that generates, transmits, distributes or retails electricity directly,

(b) a commission established under the *Public Utilities Act* or any other general or special Act through which a municipal corporation generates, transmits, distributes or retails electricity,

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

(d) a corporation established pursuant to section 142 or a subsidiary of such a corporation, if a municipal corporation holds an interest, directly or indirectly, in one or more shares of such a corporation or subsidiary,

(d.1) a corporation established after May 1, 2003 under sections 9, 10 and 11 of the *Municipal Act, 2001* in accordance with section 203 of that Act or established under sections 7 and 8 of the *City of Toronto Act, 2006* in accordance with sections 148 and 154 of that Act or a predecessor of those sections in either Act, for the purpose of acquiring, holding, disposing of and otherwise dealing with shares of a corporation incorporated by the municipal corporation under section 142 of this Act,

(d.2) any corporation or other entity through which, pursuant to subsection 144 (2), a municipal corporation, municipal service board, a city board or municipal services corporation generates electricity,

(e) a police village that generates, transmits, distributes or retails electricity directly or indirectly, or a corporation or other entity owned by the members of a police village for the purpose of generating, transmitting, distributing or retailing electricity, or

(f) a person or entity prescribed by the regulations; ("service municipal d'électricité")

"taxation year" has the same meaning as in the *Income Tax Act* (Canada). ("année d'imposition") 1998, c. 15, Sched. A, s. 88; 2000, c. 42, s. 30; 2004, c. 16, Sched. D, Table; 2004, c. 31, Sched. 11, s. 1; 2006, c. 32, Sched. C, s. 16 (3); 2007, c. 7, Sched. 12, s. 1; 2009, c. 12, Sched. B, s. 13.

Payments in lieu of federal corporate tax

89. (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that Act if it were a corporation to which that subsection did not apply. 1998, c. 15, Sched. A, s. 89 (1); 2002, c. 1, Sched. A, s. 15 (1); 2007, c. 7, Sched. 12, s. 2.

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 15 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 89 (2); 2000, c. 42, s. 31.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 89 (3).

Payments in lieu of provincial corporate tax

90. (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 57 (1) of the *Corporations Tax Act* from the payment of tax under that Act for a taxation year that ends before January 1, 2009, it shall pay to the Financial Corporation in respect of each taxation year ending before that day an amount equal to the total amount of tax that it would be liable to pay under Parts II, II.1 and III of that Act for that year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Same

(1.0.1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 27 (2) of the *Taxation Act, 2007* from the payment of tax under that Act for a taxation year that ends after December 31, 2008, it shall pay to the Financial Corporation in respect of each taxation year ending after that day an amount equal to the total amount of tax that it would be liable to pay under Divisions B, C and E of Part III of that Act for the taxation year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (3).

Corridor land

(1.1) The amount payable under subsection (1) by a person or entity from whom corridor land is transferred by section 114.2 shall be determined, for the taxation year in which the transfer occurs and for subsequent taxation years, as if the transfer did not occur. 2002, c. 1, Sched. A, s. 16 (2).

Payments to Minister of Finance

(2) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 90 (2); 2000, c. 42, s. 32.

Commencement of new taxation year

(3) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 90 (3).

Other payments

91. (1) If Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. is exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act, the Lieutenant Governor in Council may from time to time order it to pay to the Financial Corporation an amount specified by the Lieutenant Governor in Council. 1998, c. 15, Sched. A, s. 91 (1); 2002, c. 1, Sched. A, s. 17 (1).

Restriction

(2) No payment may be required under subsection (1) if the payment would impair the ability of Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. to meet its financial liabilities or obligations as they come due or to fulfil its contractual commitments. 1998, c. 15, Sched. A, s. 91 (2); 2002, c. 1, Sched. A, s. 17 (2).

Payments to Minister of Finance

(3) After Part V is repealed under section 84.1, any order made under this section shall require payments to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 91 (3); 2000, c. 42, s. 33.

Allocation of Federal tax

91.1 (1) This section applies to any of the following corporations, if the corporation ceases at any time to be exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act:

1. Hydro One Inc.
2. A subsidiary of Hydro One Inc.
3. A municipal electricity utility.
4. A successor of any of them. 2002, c. 1, Sched. A, s. 18.

Payment

(2) Her Majesty in right of Ontario shall pay to the Financial Corporation from the Consolidated Revenue Fund the amount, if any, that meets both of the following criteria:

1. The corporation is liable to pay the amount under the *Income Tax Act* (Canada) after ceasing to be exempt under subsection 149 (1) of that Act.
2. Her Majesty in right of Ontario receives the amount from, or is credited with the amount by, Her Majesty in right of Canada in respect of the liability described in paragraph 1. 2002, c. 1, Sched. A, s. 18.

Same, by corporation

(3) The specified corporation shall pay to the Financial Corporation the amount, if any, that meets all of the following criteria:

1. The corporation is liable to pay the amount under the *Income Tax Act* (Canada) after ceasing to be exempt under subsection 149 (1) of that Act.
2. The corporation receives the amount from, or is credited with the amount by, Her Majesty in right of Canada in respect of the liability described in paragraph 1.
3. Her Majesty in right of Canada intends that the corporation shall pay the amount to the Financial Corporation for the repayment of the debt of the Financial Corporation. 2002, c. 1, Sched. A, s. 18.

Payments in lieu of additional municipal and school taxes

92. (1) Hydro One Inc. and each of its subsidiaries, Ontario Power Generation Inc. and each of its subsidiaries and every municipal electricity utility shall pay to the Financial Corporation in each year the difference between,

(a) the amount of taxes that it would be liable to pay in the year for municipal and school purposes if the assessed value of land owned by it on which are situated generating station buildings or structures or transformer station buildings or structures were determined on the basis of the amount prescribed by the regulations for each square metre of inside ground floor area of the actual building or structure housing the generating, transforming and auxiliary equipment and machinery; and

(b) the amount of taxes that it is liable to pay in the year for municipal and school purposes in respect of land owned by it on which are situated generating station buildings or structures or transformer station buildings or structures. 1998, c. 15, Sched. A, s. 92 (1); 2002, c. 1, Sched. A, s. 19 (1).

Subsequent owners

(1.1) If a generating station building or structure is owned by one of the persons referred to in subsection (1) on January 1, 2000 and is subsequently disposed of by that person, this section continues to apply to any subsequent owner. 2000, c. 25, s. 46 (1).

Notice to Financial Corporation

(2) When a notice of assessment is delivered under section 31 of the *Assessment Act* in respect of land described in subsection (1), the Municipal Property Assessment Corporation shall send a copy of the notice to the Financial Corporation. 1998, c. 15, Sched. A, s. 92 (2); 2001, c. 8, s. 205 (3).

Payments after Part V repealed

(3) After Part V is repealed under section 84.1, all payments required to be made under this section to the Financial Corporation by Hydro One Inc., a subsidiary of Hydro One Inc., Ontario Power Generation Inc. or a subsidiary of Ontario Power Generation Inc. shall instead be paid to,

(a) one or more municipalities in the manner specified by the Minister of Finance, in respect of land located in a municipality; and

(b) Her Majesty in right of Ontario, in respect of land located in territory without municipal organization. 2006, c. 33, Sched. Z.3, s. 9 (1).

Payments after retirement of residual stranded debt

(4) After the Minister of Finance publishes notice under subsection 85 (6) that the residual stranded debt has been retired, all payments that a municipal electricity utility is required to make under this section shall be paid to one or more municipalities in the manner specified by the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 92 (4).

(5) REPEALED: 2004, c. 31, Sched. 11, s. 2 (1).

Payments under the *Assessment Act* and *Provincial Land Tax Act, 2006*

(6) The references in subsection (1) to taxes for municipal and school purposes shall be deemed to include payments under section 27 of the *Assessment Act* and taxes under the *Provincial Land Tax Act, 2006*. 2006, c. 33, Sched. Z.3, s. 9 (2).

(7) REPEALED: 2001, c. 8, s. 205 (4).

(8) REPEALED: 2004, c. 31, Sched. 11, s. 2 (2).

Non-application

(9) This section, other than this subsection, does not apply to the following:

1. A hydro-electric generating station, as defined in subsection 92.1 (24), after December 31, 2000.
2. A wind turbine tower, as defined in subsection 45.4 (5) of Ontario Regulation 282/98 (General) made under the *Assessment Act*, after December 31, 2004. 2004, c. 31, Sched. 11, s. 2 (3).

Tax and charges on hydro-electric stations

92.1 (1) The owner of a hydro-electric generating station shall pay in each year to Her Majesty in right of Ontario a tax computed at the rates specified in subsection (4) on the gross revenue from the generation of electricity. 2000, c. 25, s. 46 (2).

Payment to the Financial Corporation

(2) Despite subsection (1), the owner of a hydro-electric generating station shall pay to the Financial Corporation a charge computed at the rates specified in subsection (4) on the gross revenue from annual generation from the hydro-electric generating station if the hydro-electric generating station is owned by a person referred to in subsection 92 (1) or was owned at any time after March 31, 1999 by a person referred to in subsection 92 (1). 2004, c. 31, Sched. 11, s. 3 (1).

(2.1) REPEALED: 2006, c. 33, Sched. Z.3, s. 9 (3).

Payment to Ontario

(3) After Part V is repealed under section 84.1, all payments under subsection (2) are payable to Her Majesty in right of Ontario instead of to the Financial Corporation. 2000, c. 25, s. 46 (2); 2001, c. 9, Sched. F, s. 1 (3).

Rates

(4) For the purpose of subsections (1) and (2), the rates shall be calculated as follows:

1. 2.5 per cent on gross revenue from the first 50 gigawatt hours of annual generation from the generating station.
2. 4.5 per cent on gross revenue from annual generation from the generating station above 50 gigawatt hours up to and including 400 gigawatt hours.
3. 6.0 per cent on gross revenue from annual generation from the generating station above 400 gigawatt hours up to and including 700 gigawatt hours.
4. 26.5 per cent on gross revenue from annual generation from the generating station above 700 gigawatt hours. 2000, c. 25, s. 46 (2).

Additional charge

(5) In addition to the taxes or charges under subsection (1) or (2), the holder of a water power lease shall pay a water rental charge to Her Majesty in right of Ontario calculated at 9.5 per cent on gross revenue from annual generation from the hydro-electric generating station, and the holder's lease is hereby amended to substitute this charge for any water rental charge set out in the lease. 2000, c. 25, s. 46 (2).

Exception, water power lease under *Niagara Parks Act*

(5.1) Each prescribed holder of a water power lease under the *Niagara Parks Act* shall make such payments as may be prescribed to The Niagara Parks Commission, in the time and manner prescribed by regulation, and those payments reduce the amount of the charge payable by the holder under subsection (5). 2001, c. 23, s. 68 (1).

Exception

(6) There may be deducted, in determining the amount of gross revenue referred to in subsections (4) and (5), the amount of gross revenue resulting from the generation of electricity from eligible capacity, as determined by regulation, for the time period that is the longer of,

(a) the first 120 months after the eligible capacity is put in service, as determined by regulation; and

(b) such length of time, after the eligible capacity is first put in service, as the Minister of Finance may prescribe in the regulations. 2002, c. 23, s. 3 (22).

(7) REPEALED: 2009, c. 33, Sched. 16, s. 4.

Payment of taxes and charges

(8) The taxes and charges payable under this section shall be paid at the times and in the manner prescribed by regulation. 2000, c. 25, s. 46 (2).

(9) REPEALED: 2004, c. 31, Sched. 11, s. 3 (3).

Demand for information

(10) The Minister of Finance may, for any purpose related to the administration or enforcement of this section, by registered letter or by a demand served personally or delivered by courier service, require any person to provide any information or records to the Minister within such reasonable time as is stipulated in the letter or demand. 2000, c. 25, s. 46 (2).

Deemed receipt of registered letter

(10.1) A registered letter sent to a person under subsection (10) is deemed to have been received on the fifth day after the day of mailing unless the person establishes that, although acting in good faith, the person did not receive it or did not receive it until a later date. 2011, c. 9, Sched. 12, s. 4.

Offence

(11) Any person who fails to provide the information or records as required under subsection (10) is guilty of an offence and is on conviction liable to a fine of not more than $100 for each day during which the default continues. 2000, c. 25, s. 46 (2).

Confidentiality

(12) Except as authorized by this section, no person employed by the Government of Ontario shall,

(a) knowingly communicate or knowingly allow to be communicated to any person any information obtained by or on behalf of the Minister of Finance for the purposes of this section; or

(b) knowingly allow any person to inspect or to have access to any record or thing obtained by or on behalf of the Minister of Finance for the purposes of this section. 2000, c. 25, s. 46 (2).

Testimony

(13) No person employed by the Government of Ontario shall be required, in connection with any legal proceedings,

(a) to give evidence relating to any information obtained by or on behalf of the Minister of Finance for the purposes of this section; or

(b) to produce any record or thing obtained by or on behalf of the Minister of Finance for the purposes of this section. 2000, c. 25, s. 46 (2).

Exception

(14) Subsections (12) and (13) do not apply in respect of,

(a) criminal proceedings under an Act of the Parliament of Canada;

(b) proceedings in respect of the trial of any person for an offence under an Act of the Legislature; or

(c) proceedings relating to the collection of taxes or charges under this section. 2000, c. 25, s. 46 (2).

Communication

(15) A person employed by the Government of Ontario may, in the course of duties in connection with the administration or enforcement of this section,

(a) communicate or allow to be communicated to another person employed by the Government of Ontario in the administration or enforcement of any law, information obtained by or on behalf of the Minister of Finance for the purposes of this section; and

(b) allow another person employed by the Government of Ontario in the administration or enforcement of any law, to inspect or have access to any record or thing obtained by or on behalf of the Minister of Finance for the purposes of this section. 2000, c. 25, s. 46 (2).

Reciprocal communication

(16) A person who receives information or obtains access to any record or thing under subsection (15) has a duty to communicate or furnish to the Minister of Finance on a reciprocal basis any information, record or thing obtained by the person that affects the administration or enforcement of this section. 2000, c. 25, s. 46 (2).

Use of information

(17) Any information, record or thing communicated or furnished under this section may be used only for the administration or enforcement of this section or an Act that is administered or enforced by the person receiving the information, record or thing. 2000, c. 25, s. 46 (2).

Offence

(18) Every person who contravenes subsection (12), (13), (14), (15), (16) or (17) is guilty of an offence and on conviction is liable to a fine of not more than $2,000. 2000, c. 25, s. 46 (2).

Gross lease recovery

(19) If the owner of the hydro-electric generating station is not the person who generates electricity from that facility and is unable to recover the liability imposed under this section under the terms of its contract or sublease with the person who generates electricity, the amount of such liability may be recovered from the person generating the electricity. 2000, c. 25, s. 46 (2).

Section 444.1 to apply

(20) The amount specified under subsection (19) may be recovered in the same manner as amounts are recovered under subsection 444.1 (2) of the *Municipal Act*, as that Act read immediately before its repeal by the *Municipal Act, 2001*, and subsections 444.1 (5), (6) and (8) of that Act apply in respect of the amount. 2000, c. 25, s. 46 (2); 2002, c. 17, Sched. F, Table.

Regulations

(21) The Minister of Finance may make regulations,

(a) determining eligibility for a deduction under subsection (6);

(b) prescribing one or more methods for determining gross revenue for the purposes of this section;

(c) REPEALED: 2004, c. 31, Sched. 11, s. 3 (4).

(d) providing for lower rates to be applied to specified hydro-electric generating stations for the purposes of subsections (4) and (5);

(e) determining the annual generation for the purposes of subsections (4) and (5) pursuant to energy transfers or water transfers between a hydro-electric generating station in Ontario and a hydro-electric generating station in Ontario or in another jurisdiction;

(e.1) prescribing a length of time longer than 120 months that applies to one or more hydro-electric generating stations for the purposes of subsection (6);

(f) exempting any hydro-electric generating station from the tax or charge or a portion of the tax or charge under subsection (1), (2) or (5);

(f.1) prescribing water power lease holders for the purposes of subsection (5.1), specifying the amount of the payments to be made under that subsection and the time and manner in which the payments are to be made;

(g) defining any word or expression used in this section that is not already defined;

(h) providing for compensation to be paid to municipalities in which a hydro-electric generating station is located in respect of revenues foregone as a result of the enactment of paragraph 28 of subsection 3 (1) of the *Assessment Act*. 2000, c. 25, s. 46 (2); 2001, c. 23, s. 68 (2); 2002, c. 23, s. 3 (23); 2004, c. 31, Sched. 11, s. 3 (4).

General or specific

(22) A regulation under subsection (21) may be general or specific and may apply to different hydro-electric generating stations and different owners differently. 2000, c. 25, s. 46 (2).

Retroactive

(23) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed. 2000, c. 25, s. 46 (2).

Definitions

(24) In this section,

"holder of a water power lease" means a person who has entered into an agreement, lease or other writing respecting the use of water under subsection 42 (2) of the *Public Lands Act* or under the *Niagara Parks Act* or the *The St. Lawrence Development Act, 1952 (No. 2)* or who is required to enter into such agreement, lease or other writing in order to be entitled to occupy public lands; ("titulaire d'un bail pour l'exploitation de ressources hydro-électriques")

"hydro-electric generating station" includes any building or structure in which electricity is generated through the use of water power or from the movement of water; ("centrale hydro-électrique")

"owner" includes a tenant of land owned by the Crown or a municipality on which a hydro-electric generating station is located or a tenant of land owned by any other person if the tenant is the generator of electricity from the hydro-electric generating station. ("propriétaire") 2000, c. 25, s. 46 (2).

Municipal electricity utilities

Payments in lieu of federal corporate tax

93. (1) If a municipal electricity utility is exempt under subsection 149 (1) of the *Income Tax Act* (Canada) from the payment of tax under that Act, it shall pay to the Financial Corporation in respect of each taxation year an amount equal to the amount of the tax that it would be liable to pay under that Act if it were not exempt. 1998, c. 15, Sched. A, s. 93 (1).

Same: payments in lieu of provincial corporate tax

(2) If a municipal electricity utility is exempt under subsection 57 (1) of the *Corporations Tax Act* from the payment of tax under that Act in respect of a taxation year ending before January 1, 2009, it shall pay to the Financial Corporation in respect of each taxation year ending before that day an amount equal to the total amount of tax that it would be liable to pay under Parts II, II.1 and III of that Act for the year if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (4).

Same

(2.1) If a municipal electricity utility is exempt under subsection 27 (2) of the *Taxation Act, 2007* from the payment of tax under that Act for a taxation year ending after December 31, 2008, it shall pay to the Financial Corporation in respect of each taxation year ending after that day an amount equal to the total amount of tax that it would be liable to pay for the taxation year under Divisions B, C and E of Part III of that Act if it were a corporation to which that subsection did not apply. 2007, c. 7, Sched. 12, s. 3 (4).

Payments to Minister of Finance

(3) After Part V is repealed under section 84.1, all payments required by this section shall be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 93 (3); 2000, c. 42, s. 35.

Commencement of new taxation year

(4) A corporation that is required to make payments under this section shall be deemed, for the purposes of this section, to commence a new taxation year on the day this section comes into force. 1998, c. 15, Sched. A, s. 93 (4).

Municipal electricity property: transfer tax

94. (1) A municipal corporation or municipal electricity utility shall not transfer to any person any interest in real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity unless, before the transfer takes effect, it pays to the Financial Corporation the amount determined by multiplying the fair market value of the interest by the prescribed percentage or furnishes security in that amount to the Financial Corporation that meets such requirements as may be prescribed and that is satisfactory to the Financial Corporation. 2000, c. 42, s. 36 (1).

Forms of property

(1.1) For the purposes of subsection (1), real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity includes cash, amounts receivable, investments, customer lists, licences, goodwill and other intangible property used in connection with those activities. 2000, c. 42, s. 36 (1).

Same

(2) For the purpose of subsection (1), an interest in real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity shall be deemed to include any interest in a corporation, partnership or other entity that derives its value in whole or in part from real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity. 1998, c. 15, Sched. A, s. 94 (2).

Deductions from amount payable

(3) Subject to subsection (5), the amount payable under subsection (1) in a taxation year by a municipal electricity utility may be reduced by the following amounts:

1. Any amount payable and paid by the municipal electricity utility under section 93 in respect of the part of the taxation year up to and including the date of the transfer or in respect of a previous taxation year.
2. Any amount payable and paid by the municipal electricity utility under Part II, II.1 or III of the *Corporations Tax Act* or Part III of the *Taxation Act, 2007* in respect of the part of the taxation year up to and including the date of the transfer or in respect of a previous taxation year.
3. Any amount that the municipal electricity utility would be liable to pay as tax under Part I of the *Income Tax Act* (Canada) in respect of the taxation year if that tax were computed on the basis that the municipal electricity utility had no income during the taxation year other than the capital gain realized on the transfer of its interest in the property.
4. Any amount that the municipal electricity utility would be liable to pay as tax under Part I of the *Income Tax Act* (Canada) in respect of the taxation year if that tax were computed on the basis that the municipal electricity utility had no income during the taxation year other than an amount included in income under paragraph 14 (1) (b) of the *Income Tax Act* (Canada) in respect of the transfer of its interest in the property. 1998, c. 15, Sched. A, s. 94 (3); 2000, c. 42, s. 36 (2); 2002, c. 22, s. 63 (1, 2); 2004, c. 16, Sched. D, Table; 2004, c. 31, Sched. 11, s. 4 (1); 2007, c. 7, Sched. 12, s. 3 (5).

Same

(4) Subject to subsections (5) and (6.1), the amount payable under subsection (1) in a taxation year by a municipal corporation may be reduced by the following amounts:

1. Any amount payable and paid by a municipal electricity utility under section 93 in respect of the part of the taxation year up to and including the date of the transfer or in respect of a previous taxation year, but only if the municipal electricity utility is related to the municipal corporation immediately before the transfer.
2. Any amount payable and paid by a municipal electricity utility under Part II, II.1 or III of the *Corporations Tax Act* or Part III of the *Taxation Act, 2007* in respect of the part of the taxation year up to and including the date of the transfer or in respect of a previous taxation year, but only if the municipal electricity utility is related to the municipal corporation immediately before the transfer. 2000, c. 42, s. 36 (3); 2002, c. 22, s. 63 (3, 4); 2004, c. 16, Sched. D, Table; 2007, c. 7, Sched. 12, s. 3 (5).

Same

(5) An amount referred to in paragraph 1, 2, 3 or 4 of subsection (3) or paragraph 1 or 2 of subsection (4) may be applied under those subsections to reduce the amount payable by a municipal corporation or municipal electricity utility under subsection (1) only to the extent that it has not previously been applied to reduce an amount payable by a municipal corporation or municipal electricity utility under subsection (1). 1998, c. 15, Sched. A, s. 94 (5); 2005, c. 31, Sched. 6, s. 2 (1).

Same

(6) A municipal electricity utility shall be deemed to be related to a municipal corporation for the purpose of subsection (4) if they are related persons within the meaning of section 251 of the *Income Tax Act* (Canada). 1998, c. 15, Sched. A, s. 94 (6).

Exception

(6.1) Despite subsection (6), if two or more municipal corporations hold an interest in a municipal electricity utility at the time of the transfer, the amount determined under paragraphs 1 and 2 of subsection (4) in respect of the transfer is the amount calculated in respect of each corporation using the formula,

$$A \times B/C$$

in which,

"A" is the total of the amounts,

(a) that are payable and paid by the municipal electricity utility under section 93 in respect of the part of the taxation year up to and including the date of the transfer or in respect of a previous taxation year, and

(b) that are payable and paid by the municipal electricity utility under Part II, II.1 or III of the *Corporations Tax Act* or Part III of the *Taxation Act, 2007* in respect of the part of the taxation year up to and including the date of the transfer or in respect of a previous taxation year,

"B" is the fair market value of the municipal corporation's interest in shares of the municipal electricity utility at the time of the transfer, and

"C" is the aggregate fair market value of all issued and outstanding shares of the municipal electricity utility at the time of the transfer.

2000, c. 42, s. 36 (4); 2002, c. 22, s. 63 (5); 2004, c. 16, Sched. D, Table; 2007, c. 7, Sched. 12, s. 3 (5).

Refund

(7) Amounts paid under this section in respect of a transfer may be refunded in accordance with the regulations if the proceeds of the transfer are reinvested in the prescribed manner. 2004, c. 31, Sched. 11, s. 4 (2).

Same

(7.1) In such circumstances as may be prescribed, a municipal corporation or municipal electricity utility shall repay an amount refunded to it under subsection (7). 2004, c. 31, Sched. 11, s. 4 (2).

Same

(8) Subsection (1) does not apply to transfers prescribed by the regulations. 1998, c. 15, Sched. A, s. 94 (8).

(9) REPEALED: 2005, c. 31, Sched. 6, s. 2 (2).

(9.1) REPEALED: 2005, c. 31, Sched. 6, s. 2 (3).

Payments to Minister of Finance

(10) After Part V is repealed under section 84.1, payments referred to in subsection (1) must be paid to the Minister of Finance, instead of to the Financial Corporation. 1998, c. 15, Sched. A, s. 94 (10); 2000, c. 42, s. 36 (5).

Status of police village

(10.1) A police village shall be deemed to be a municipal corporation for the purposes of this section. 2000, c. 42, s. 36 (6).

(11) SPENT: 1998, c. 15, Sched. A, s. 94 (11).

Application of *Corporations Tax Act*

95. (1) Except as otherwise prescribed by the regulations, the Minister of Finance is responsible for enforcing the payment of amounts payable under this Part, including amounts payable under regulations made under this Part, and, for the purposes of this Part,

(a) Parts V and VI of the *Corporations Tax Act* apply with necessary modifications and with such changes as may be prescribed by the regulations to amounts payable under this Part after November 6, 1998, other than amounts payable under section 92 or 92.1;

(b) Divisions C, D, E and F of Part V and Part VI of the *Corporations Tax Act* apply with necessary modifications and with such changes as may be prescribed by the regulations to amounts payable under section 92 or 92.1 after November 6, 1998, including any penalties and interest on late payments;

(c) any amount payable under this Part after November 6, 1998, other than under section 94, that remains unpaid after it becomes due, including any penalties and interest on late payments, may be collected as if it were tax payable under the *Corporations Tax Act*. 2004, c. 31, Sched. 11, s. 5; 2007, c. 11, Sched. B, s. 3 (1, 2).

Collection of amounts payable under s. 94

(2) In the application of Parts V and VI of the *Corporations Tax Act* for the purposes of enforcing the payment of any amount under section 94,

(a) a reference to "a taxation year" or "the taxation year" shall be read as a reference to a transfer or a particular transfer, as the case may be;

(b) a reference to a return shall be read as a reference to any notice given to the Minister for the purposes of section 94; and

(c) a reference to a notice of assessment or reassessment shall be read as including a reference to correspondence prescribed by the regulations that is issued by the Minister for the purposes of section 94. 2004, c. 31, Sched. 11, s. 5.

Order to remit, Financial Corporation

95.1 (1) On the recommendation of the Minister of Finance, the Lieutenant Governor in Council may order the Financial Corporation to remit an amount payable under Part V.1 or VI or under section 83.1 of the *Corporations Tax Act* if the Lieutenant Governor in Council considers it to be in the public interest to do so. 2000, c. 42, s. 37; 2002, c. 1, Sched. A, s. 20 (1); 2004, c. 16, Sched. D, Table.

Scope of remission

(2) A remission ordered under subsection (1) may be total or partial, conditional or unconditional and may be made,

(a) before, after or pending any suit or proceeding for the recovery of the amount in respect of which the remission is granted;

(b) before or after any payment of the amount payable under Part V.1 or VI or under section 83.1 of the *Corporations Tax Act* has been made or enforced by process or execution; or

(c) in any particular case or class of cases and before the liability to pay arises. 2000, c. 42, s. 37; 2002, c. 1, Sched. A, s. 20 (2); 2004, c. 16, Sched. D, Table.

Form of remission

(3) A remission ordered under subsection (1) may be made,

(a) by forbearing to institute a suit or proceeding for the recovery of the amount in respect of which remission is granted;

(b) by delaying, staying or discontinuing any suit or proceeding already instituted;

(c) by forbearing to enforce, staying or abandoning any execution or process upon any judgment;

(d) by the entry of satisfaction upon any judgment; or

(e) by repaying any sum of money paid to or recovered by the Financial Corporation. 2000, c. 42, s. 37.

Conditional remission

(4) If a remission ordered under subsection (1) is made subject to a condition and the condition is not performed, the amount remitted or to be remitted may be collected or all proceedings may be had as if there had been no remission. 2000, c. 42, s. 37.

Effect of remission

(5) An unconditional remission and, upon performance of the condition, a conditional remission have effect as if the remission was made after the amount in respect of which it was granted had been sued for and recovered. 2000, c. 42, s. 37.

Regulations, Part VI

96. (1) The Minister of Finance may make regulations,

(0.a) prescribing persons and entities for the purposes of clause (f) of the definition of "municipal electricity utility" in section 88;

(a) prescribing modifications to the method of calculating the amount of any payment required by section 89, 90 or 93;

(b) prescribing amounts for the purpose of clause 92 (1) (a);

(c) prescribing percentages for the purpose of subsection 94 (1) and prescribing modifications to the method of calculating the amount of the payment required by section 94;

(d) deeming a transaction or series of transactions, for the purpose of section 94, to be a transfer to a person of an interest in real or personal property that has been used in connection with generating, transmitting, distributing or retailing electricity;

(e) prescribing transfers to which subsection 94 (1) does not apply, subject to such conditions or restrictions as may be specified in the regulations;

(e.1) prescribing requirements relating to security for the purposes of subsection 94 (1);

(e.2) governing refunds authorized by subsection 94 (7);

(e.3) prescribing circumstances for the purposes of subsection 94 (7.1);

(e.4) REPEALED: 2005, c. 31, Sched. 6, s. 3.

(f) requiring payments under this Part to be paid in instalments, prescribing the times when the payments or instalments are required to be paid and requiring the payment of interest or penalties on late payments;

(f.1) prescribing one or more provisions of Part V or VI of the *Corporations Tax Act* that do not apply in respect of an amount payable under one or more sections in this Part that are prescribed in the regulation;

(f.2) prescribing changes to provisions in Part V or VI of the *Corporations Tax Act* that apply in respect of an amount payable under one or more sections in this Part that are prescribed in the regulation, including,

(i) prescribing a change to a time limit for issuing an assessment or reassessment in respect of an amount payable under this Part after November 6, 1998, and

(ii) prescribing a change to a time limit for the payment of a refund of an overpayment in respect of a period after November 6, 1998;

(f.3) prescribing rules governing the application of one or more provisions of Part VIII of the *Taxation Act, 2007* with respect to an amount payable under one or more provisions of this Part that are prescribed by the rules;

(g) prescribing procedures that must be followed in connection with any payment required by this Part;

(h) respecting any other matter that the Minister of Finance considers necessary or advisable in connection with this Part. 1998, c. 15, Sched. A, s. 96 (1); 2000, c. 42, s. 38; 2004, c. 31, Sched. 11, s. 6; 2005, c. 31, Sched. 6, s. 3; 2007, c. 11, Sched. B, s. 3 (3).

General or particular

(2) A regulation made under this section may be general or particular in its application. 1998, c. 15, Sched. A, s. 96 (2).

Retroactivity

(3) A regulation made under this section is, if it so provides, effective with reference to a period before it is filed. 1999, c. 9, s. 104.

cl. (1) (f), previous payments

(4) In a regulation made under clause (1) (f), the Minister may provide that payments made in 1999 before the regulation is made have been properly made under that regulation. 1999, c. 9, s. 104.

PART VII
PENSION PLANS

Interpretation, Part VII

97. (1) In this Part,

"changeover date" means the date prescribed under subsection (3); ("date du changement")

"commencement date" means, in relation to a successor pension plan, the date prescribed under subsection 102 (6); ("date d'effet")

"FCPP" means the Ontario Hydro Financial Corporation Pension Plan; ("RRSF")

Note: Effective April 1, 1999, the name of the Ontario Hydro Financial Corporation Pension Plan has been changed by regulation to Ontario Electricity Financial Corporation Pension Plan in English and Régime de retraite de la Société financière de l'industrie de l'électricité de l'Ontario in French. See: O. Reg. 115/99, s. 2 (1).

"former member" means a person who is a former member of a pension plan within the meaning of the *Pension Benefits Act* and includes any other person who is entitled to receive or is receiving a payment from the pension fund by virtue of the person's relationship to the former member; ("ancien participant")

"successor employer" means a person who is required to establish a pension plan under subsection 102 (1); ("employeur subséquent")

"successor pension plan" means a pension plan established in accordance with section 102. ("régime de retraite subséquent") 1998, c. 15, Sched. A, s. 97 (1).

Pension plans

(2) Expressions in this Part relating to pension plans have the same meaning as under the *Pension Benefits Act* unless the context requires otherwise. 1998, c. 15, Sched. A, s. 97 (2).

Changeover date

(3) The Lieutenant Governor in Council may, by regulation, prescribe the changeover date for the purposes of this Part and may do so after the date has passed. 1998, c. 15, Sched. A, s. 97 (3).

Financial Corporation Pension Plan

98. (1) The Ontario Hydro Pension and Insurance Plan is continued under the name Ontario Hydro Financial Corporation Pension Plan in English and Régime de retraite de la Société financière Ontario Hydro in French. 1998, c. 15, Sched. A, s. 98 (1).

Note: Effective April 1, 1999, the name of the Ontario Hydro Financial Corporation Pension Plan has been changed by regulation to Ontario Electricity Financial Corporation Pension Plan in English and Régime de retraite de la Société financière de l'industrie de l'électricité de l'Ontario in French. See: O. Reg. 115/99, s. 2 (1).

Fund continued

(2) The Pension and Insurance Fund of Ontario Hydro is continued as the pension fund for the FCPP under the name Ontario Hydro Financial Corporation Pension Fund in English and Caisse de retraite de la Société financière Ontario Hydro in French. 1998, c. 15, Sched. A, s. 98 (2).

Note: Effective April 1, 1999, the name of the Ontario Hydro Financial Corporation Pension Fund has been changed by regulation to Ontario Electricity Financial Corporation Pension Fund in English and Caisse de retraite de la Société financière de l'industrie de l'électricité de l'Ontario in French. See: O. Reg. 115/99, s. 2 (2).

Change of name

(3) The Lieutenant Governor in Council may, by regulation, change the name of the FCPP and the name of the pension fund for the FCPP. 1998, c. 15, Sched. A, s. 98 (3).

Status of plan

(4) The FCPP shall be deemed not to be a multi-employer pension plan for the purposes of the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 98 (4).

Administrator

(5) The Financial Corporation is the administrator of the FCPP. 1998, c. 15, Sched. A, s. 98 (5).

(6) REPEALED: 1998, c. 15, Sched. A, s. 98 (9).

Certain benefits

(7) On the day this section comes into force, the FCPP ceases to provide,

(a) disability benefits that are being provided under a contract between the Financial Corporation and an insurer or a subsidiary of an insurer immediately before this section comes into force; and

(b) life insurance that is being provided under an insurance contract between the Financial Corporation and an insurer or a subsidiary of an insurer immediately before this section comes into force. 1998, c. 15, Sched. A, s. 98 (7).

Same

(8) The amount held by the Pension and Insurance Fund of Ontario Hydro immediately before this section comes into force that was allocated for the provision of the benefits and insurance described in subsection (7) is payable to the Financial Corporation in trust for the provision of those benefits and that insurance. 1998, c. 15, Sched. A, s. 98 (8).

(9) SPENT: 1998, c. 15, Sched. A, s. 98 (9).

Employer contributions to FCPP

99. (1) The Financial Corporation shall contribute to the pension fund for the FCPP for a year the amount by which the normal cost of the FCPP exceeds the contributions to the pension fund made by the members, as determined by the FCPP actuary. 1998, c. 15, Sched. A, s. 99 (1).

Same

(2) If the FCPP has a surplus or a prior year credit balance or both, the Financial Corporation, in its sole discretion acting in its capacity as employer, may reduce or suspend the Corporation's contributions to the pension fund to the extent permitted under the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 99 (2).

Refund of contributions

(3) Despite subsection 78 (1) of the *Pension Benefits Act*, the administrator of the FCPP shall refund to the Financial Corporation, without interest, the contributions made by Ontario Hydro that were required to pay the normal cost of the pension plan in respect of service after March 31, 1998 and before the day that subsection (2) comes into force. 1998, c. 15, Sched. A, s. 99 (3).

Unfunded liability or solvency deficiency

(4) If a report on the FCPP filed with the Superintendent reveals a going concern unfunded liability or solvency deficiency or both, each successor employer shall pay to the pension fund for the FCPP, as its share of the total amount of each monthly special payment required as a result of the report, the amount determined by the plan actuary in accordance with the following formula:

$$(A/B) \times C$$

in which,

"A" is the total of the actuarial liabilities of the FCPP for the pension benefits and ancillary benefits of members and former members of the FCPP who will become members or former members of the successor plan established by the successor employer;

"B" is the total of the actuarial liabilities of the FCPP for the pension benefits and ancillary benefits of members and former members of the FCPP; and

"C" is the total amount of the monthly special payment required as a result of the report. 1998, c. 15, Sched. A, s. 99 (4).

Definition

(5) In subsection (4),

"actuarial liabilities" means,

(a) in the case of a going concern valuation, the going concern liabilities, and

(b) in the case of a solvency valuation, the solvency liabilities. 1998, c. 15, Sched. A, s. 99 (5).

Administrative costs of FCPP

100. The costs of administering the FCPP (including the costs of administering and investing the pension fund) are payable out of the pension fund. 1998, c. 15, Sched. A, s. 100.

Additional pension plans of Financial Corporation

101. (1) This section applies if the Financial Corporation establishes another pension plan in the circumstances described in section 80 or 81 of the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 101 (1).

Transfer of assets

(2) The Financial Corporation, in its sole discretion acting in its capacity as employer, may decide whether to transfer assets from the FCPP to the other pension plan and may decide upon all matters relating to the transfer, subject to the consent of the Superintendent of Financial Services as required under the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 101 (2).

Requirements continued

(3) Subsections 98 (5) and 99 (2) and section 100 apply with respect to the other pension plan. 1998, c. 15, Sched. A, s. 101 (3).

Successor pension plans

102. (1) The IESO, Hydro One Inc., Ontario Power Generation Inc. and the Electrical Safety Authority shall each establish a pension plan to provide pension benefits and ancillary benefits for the following persons:

1. Its employees whose employment is transferred to it by or pursuant to an order made under section 116 and who are, or are entitled to be, members of the FCPP before their employment is transferred.
2. Such other employees as it considers appropriate.
3. Such former members of the FCPP as the Financial Corporation, in its sole discretion acting in its capacity as employer, designates for transfer to the pension plan.
4. Such other persons as this Part may require. 1998, c. 15, Sched. A, s. 102 (1); 2002, c. 1, Sched. A, s. 21 (1); 2004, c. 23, Sched. A, s. 52.

Selection of former members

(2) In determining which former members of the FCPP are to be transferred to a successor pension plan, the Financial Corporation shall comply with the following rules:

1. All former members of the FCPP must be transferred to the successor pension plans.
2. The Financial Corporation shall consider which successor employer, if any, would most likely have become the employer of each former employee of Ontario Hydro (assuming, only for the purposes of this rule, that the former employee had been employed by Ontario Hydro immediately before the date on which employees of Ontario Hydro are transferred to the successor employers by or pursuant to orders made under section 116).
3. If the Financial Corporation concludes that a former employee would most likely have remained an employee of the Financial Corporation or a subsidiary of the Financial Corporation, the Financial Corporation shall transfer the former member to the successor pension plan established by Ontario Power Generation Inc. 1998, c. 15, Sched. A, s. 102 (2); 2002, c. 1, Sched. A, s. 21 (2).

Status of plan

(3) During the period that employees of the subsidiary of the Financial Corporation established under section 110 are members of the pension plan established under subsection (1) by Ontario Power Generation Inc., that plan shall be deemed not to be a multi-employer pension plan for the purposes of the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 102 (3); 2002, c. 1, Sched. A, s. 21 (3).

Administrator

(4) The successor employer is the administrator of the applicable successor pension plan. 1998, c. 15, Sched. A, s. 102 (4).

Commencement date

(5) Each successor pension plan comes into effect as of the prescribed commencement date for the plan. 1998, c. 15, Sched. A, s. 102 (5).

Regulation

(6) The Lieutenant Governor in Council may, by regulation, prescribe a commencement date for each successor pension plan. 1998, c. 15, Sched. A, s. 102 (6).

Members of successor plans

103. (1) An employee of a successor employer who has established a successor pension plan becomes a member of the successor pension plan on the following date:

1. If the employee was a member of the FCPP immediately before becoming employed by the successor employer, the later of the following dates:
    i. The date on which he or she becomes employed by the successor employer.
    ii. The commencement date for the plan.
2. If, under the terms of the successor pension plan, the employee is required to be a member of the plan, the latest of the following dates:
    i. The date on which he or she becomes employed by the successor employer.
    ii. The date on which, under the terms of the successor pension plan, he or she is required to become a member of the plan.

iii. The commencement date for the plan.

3. If, under the terms of the successor pension plan, the employee is required to become a member of the plan after meeting certain conditions, the later of the following dates:
   i. The date on which he or she meets those conditions.
   ii. The commencement date for the plan.
4. If, under the terms of the successor pension plan, the employee is entitled, but not required, to become a member of the plan after meeting certain conditions, the later of the following dates:
   i. The date on which he or she becomes a member of the plan.
   ii. The commencement date for the plan. 1998, c. 15, Sched. A, s. 103 (1).

Former members

(2) The former members described in paragraph 3 of subsection 102 (1) become former members of the successor pension plan on the changeover date. 1998, c. 15, Sched. A, s. 103 (2).

Employer contributions to successor plans

104. (1) A successor employer shall contribute to the pension fund for the applicable successor pension plan for a year the amount by which the normal cost of the plan exceeds the contributions to the pension fund made by the members, as determined by the plan actuary. 1998, c. 15, Sched. A, s. 104 (1).

Same

(2) If the plan has a surplus or a prior year credit balance or both, the successor employer, in its sole discretion acting in its capacity as employer, may reduce or suspend the employer's contributions to the pension fund to the extent permitted under the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 104 (2).

Participation by affiliates in successor pension plans

104.1 (1) A successor employer may permit an affiliate to be a participating employer under a successor pension plan with respect to such employees of the affiliate, for such period and on such terms as the successor employer determines in its sole discretion acting in its capacity as an employer. 2000, c. 42, s. 39.

Contributions by participating affiliates

(2) The participating affiliate shall contribute to the pension fund for the plan for a year the amount determined by multiplying the rate described in subsection (4) by the pensionable earnings of the members of the plan who are employees of the affiliate, other than their pensionable earnings, if any, as employees of the successor employer. 2000, c. 42, s. 39.

Reduction in contributions of successor employer

(3) Despite subsection 104 (1), a successor employer who permits an affiliate to be a participating employer under the plan shall contribute to the pension fund for the plan for a year the amount determined by multiplying the rate described in subsection (4) by the pensionable earnings of the members of the plan who are employees of the successor employer, other than their pensionable earnings, if any, as employees of a participating affiliate. 2000, c. 42, s. 39.

Rate for employer contributions

(4) The rate for a year is determined by calculating the amount by which the normal cost in respect of all members of the plan exceeds the contributions made for the year to the pension fund for the plan by all members and dividing that amount by the pensionable earnings of all members of the plan for the year, as determined by the actuary of the plan. 2000, c. 42, s. 39.

Reduction, etc., in contributions

(5) If the plan has a surplus or a prior year credit balance or both, the successor employer, in its sole discretion acting in its capacity as an employer, may permit the participating affiliate to reduce or suspend its contributions to the pension fund to the extent permitted under the *Pension Benefits Act*, and the affiliate, in its sole discretion acting as employer, may do so. 2000, c. 42, s. 39.

Status of plan

(6) The plan shall be deemed not to be a multi-employer pension plan for the purposes of the *Pension Benefits Act*. 2000, c. 42, s. 39.

Definitions

(7) In this section,

"affiliate" means, in relation to a successor employer,

(a) a corporation that is a subsidiary of the successor employer within the meaning of the *Business Corporations Act*, or

(b) a corporation or partnership that is controlled by the successor employer, by the person who controls the successor employer or by a person who is controlled by the successor employer, as described in subsection (8); ("membre du même groupe")

"participating affiliate" means, with respect to a successor employer and a successor pension plan, an affiliate permitted under subsection (1) to be a participating employer under the plan. ("membre du même groupe participant") 2000, c. 42, s. 39.

Interpretation, control

(8) For the purposes of clause (b) of the definition of "affiliate" in subsection (7), a corporation or partnership is controlled by another person or by the successor employer if the person or successor employer holds the following, directly or indirectly, other than by way of security:

1. Voting securities carrying more than 50 per cent of the votes for the election of directors of the corporation.

2. An ownership or other interest that confers on the holder more than 50 per cent of the voting interest or other governance rights in the partnership or more than 50 per cent of the income of the partnership. 2000, c. 42, s. 39.

Administrative costs of successor plans

105. The costs of administering a successor pension plan (including the costs of administering and investing the pension fund) are payable out of the pension fund. 1998, c. 15, Sched. A, s. 105.

Additional pension plans of successor employers

106. (1) This section applies if a successor employer establishes another pension plan in the circumstances described in section 80 or 81 of the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 106 (1).

Transfer of assets

(2) The successor employer, in its sole discretion acting in its capacity as employer, may decide whether to transfer assets from the successor pension plan to the other pension plan and may decide upon all matters relating to the transfer, subject to the consent of the Superintendent of Financial Services as required under the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 106 (2).

Requirements continued

(3) Subsections 102 (4) and 104 (2) and sections 104.1 and 105 apply with respect to the other pension plan. 1998, c. 15, Sched. A, s. 106 (3); 2000, c. 42, s. 40.

Reciprocal transfer agreements

107. (1) This section applies with respect to the pension plans referred to in subsections 101 (1), 102 (1) and 106 (1). 1998, c. 15, Sched. A, s. 107 (1).

Same

(2) The administrators shall ensure that reciprocal transfer agreements between each of the pension plans are entered into and filed under the *Pension Benefits Act*. 1998, c. 15, Sched. A, s. 107 (2).

Same

(3) The reciprocal transfer agreements may be bilateral or multilateral. 1998, c. 15, Sched. A, s. 107 (3).

Dispute resolution

(4) If the administrator of a pension plan fails to enter into a reciprocal transfer agreement with the administrator of another pension plan before the prescribed date, the matters remaining in dispute between them shall be resolved in accordance with such requirements as may be prescribed. 1998, c. 15, Sched. A, s. 107 (4).

Regulations

(5) The Lieutenant Governor in Council may make regulations,

(a) prescribing, for the purpose of subsection (4), dates applicable to pension plans that are specified by the regulations;

(b) governing the resolution of matters remaining in dispute between the administrators of specified pension plans after the prescribed date. 1998, c. 15, Sched. A, s. 107 (5).

Costs

(6) The costs of dispute resolution after the prescribed date shall be borne equally by the applicable pension plans and are payable out of the pension funds of those plans. 1998, c. 15, Sched. A, s. 107 (6).

FCPP membership temporarily extended

108. (1) In any of the following circumstances, an employee of a successor employer is a member of the FCPP until the commencement date for the applicable successor plan:

1. The employee was a member of the FCPP immediately before becoming employed by the successor employer.
2. The employee would be required to be a member of the FCPP, if the employee were employed by the Financial Corporation.
3. The employee would be required to be a member of the FCPP after meeting certain conditions, if the employee were employed by the Financial Corporation. The employee meets those conditions before the commencement date.
4. The employee would be entitled, but not required, to become a member of the FCPP after meeting certain conditions, if the employee were employed by the Financial Corporation. The employee becomes a member of the FCPP before the commencement date. 1998, c. 15, Sched. A, s. 108 (1).

Employee contributions

(2) An employee who is a member of the FCPP shall make employee contributions to the pension fund for the FCPP until the commencement date. 1998, c. 15, Sched. A, s. 108 (2).

Employer contributions re temporary members

109. (1) This section applies with respect to each year or part thereof in which employees of any successor employer are members of the FCPP under section 108. 1998, c. 15, Sched. A, s. 109 (1).

Obligation, successor employers

(2) Each successor employer shall contribute to the pension fund for the FCPP for a year the amount determined by multiplying the rate described in subsection (4) by the pensionable earnings of the members of the FCPP who are its employees, other than their pensionable earnings, if any, as employees of the Financial Corporation. 1998, c. 15, Sched. A, s. 109 (2).

Same, Financial Corporation

(3) Despite subsection 99 (1), the Financial Corporation shall contribute to the pension fund for the FCPP for a year the amount determined by multiplying the rate described in subsection (4) by the pensionable earnings of the members of the FCPP who are its employees, other than their pensionable earnings, if any, as employees of a successor employer. 1998, c. 15, Sched. A, s. 109 (3).

Rate

(4) The rate for a year is determined by calculating the amount by which the normal cost in respect of all members of the FCPP exceeds the contributions made to the pension fund for the FCPP by all members for the year and dividing this amount by the pensionable earnings of all members of the FCPP for the year, as determined by the FCPP actuary. 1998, c. 15, Sched. A, s. 109 (4).

Reductions

(5) Subsection 99 (2) applies, with necessary modifications, to the Financial Corporation and to each successor employer. 1998, c. 15, Sched. A, s. 109 (5).

Administrator

(6) Despite subsection 8 (1) of the *Pension Benefits Act*, the Financial Corporation is the sole administrator of the FCPP while the successor employers are required to make contributions under this section. 1998, c. 15, Sched. A, s. 109 (6).

Subsidiary to act as agent of Financial Corporation

110. (1) The Financial Corporation shall establish a subsidiary and shall retain the subsidiary to act as the agent of the Financial Corporation in its capacity as administrator of the FCPP. 1998, c. 15, Sched. A, s. 110 (1).

Application of s. 72

(2) Section 72 does not apply to the subsidiary established under subsection (1). 1998, c. 15, Sched. A, s. 110 (2).

Not an employee of the Crown

(3) An employee of the subsidiary is not and shall not be deemed to be an employee of the Crown. 2006, c. 35, Sched. C, s. 31 (3).

Application of subss. (5) and (6)

(4) Subsections (5) and (6) cease to apply when the subsidiary is no longer retained for the purpose referred to in subsection (1). 1998, c. 15, Sched. A, s. 110 (4).

Participation in FCPP

(5) The following rules apply until the commencement date for the successor pension plan established by the Generation Corporation:

1. The employees of the subsidiary are, or are entitled to be, members of the FCPP on the same basis as employees of the Financial Corporation.
2. The subsidiary is an employer who is required to make contributions to the pension fund for the FCPP.
3. Section 109 applies, with necessary modifications, with respect to the rights and duties of the Financial Corporation and the subsidiary. 1998, c. 15, Sched. A, s. 110 (5).

Participation in successor pension plan

(6) The following rules apply on and after the commencement date for the successor pension plan established by Ontario Power Generation Inc.:

1. The employees of the subsidiary are, or are entitled to be, members of the successor pension plan established by Ontario Power Generation Inc.
2. Section 103 applies, with necessary modifications, with respect to the employees of the subsidiary.
3. The subsidiary is an employer who is required to make contributions to the pension fund for the successor pension plan.
4. Section 109 applies, with necessary modifications, with respect to the rights and duties of Ontario Power Generation Inc. and the subsidiary. 1998, c. 15, Sched. A, s. 110 (6); 2002, c. 1, Sched. A, s. 22.

Transfer agreements for successor plans

111. (1) The administrator of the FCPP and the administrator of each successor pension plan shall enter into an agreement governing the division and transfer of assets and liabilities from the FCPP to the successor pension plan. 1998, c. 15, Sched. A, s. 111 (1).

Transfer of assets

(2) The administrator of the FCPP shall transfer assets and liabilities from the FCPP to a successor pension plan in accordance with the transfer agreement relating to the successor pension plan. 1998, c. 15, Sched. A, s. 111 (2).

Value of assets

(3) Subject to subsection (4), the value of the assets to be transferred to a successor pension plan is calculated as of the changeover date using the formula,

$$[(A + B)/C] \times D$$

in which,

"A" is the total of the actuarial liabilities of the FCPP for the pension benefits and ancillary benefits of members of the FCPP who, on or after the commencement date and before the changeover date, become members of the successor pension plan and who, on the changeover date, become entitled to accrued pension benefits under the successor pension plan in respect of their employment before becoming members of the successor pension plan;

"B" is the total of the actuarial liabilities of the FCPP for the pension benefits and ancillary benefits of former members of the FCPP who, on the changeover date, become former members of the successor pension plan;

"C" is the total of the actuarial liabilities of the FCPP for the pension benefits and ancillary benefits of persons who, immediately before the changeover date, are members and former members of the FCPP; and

"D" is the value of the assets held in the pension fund of the FCPP.

1998, c. 15, Sched. A, s. 111 (3).

Same

(4) The amount calculated under subsection (3) is subject to such adjustments as the transfer agreement may permit. 1998, c. 15, Sched. A, s. 111 (4).

Same

(5) Subsections 80 (5) to (7) of the *Pension Benefits Act* apply with respect to the transfer of assets. 1998, c. 15, Sched. A, s. 111 (5).

Tax exemption

(5.1) The *Land Transfer Tax Act* and the *Retail Sales Tax Act* do not apply with respect to the transfer of assets. 2000, c. 42, s. 41.

Dispute resolution

(6) If the administrators do not enter into a transfer agreement before the prescribed date, the matters remaining in dispute between them shall be resolved in accordance with such requirements as may be prescribed. 1998, c. 15, Sched. A, s. 111 (6).

Regulations

(7) The Lieutenant Governor in Council may make regulations,

(a) prescribing, for the purpose of subsection (6), dates applicable to pension plans that are specified by the regulations;

(b) governing the resolution of matters remaining in dispute after the prescribed date. 1998, c. 15, Sched. A, s. 111 (7).

Costs

(8) The costs of dispute resolution after the prescribed date are payable out of the pension fund for the FCPP. 1998, c. 15, Sched. A, s. 111 (8).

Transfer of benefits to successor plans

112. (1) This section applies if the Superintendent of Financial Services consents to the transfer of assets described in section 111 from the FCPP to a successor pension plan. 1998, c. 15, Sched. A, s. 112 (1).

Same

(2) The following changes occur as of the changeover date:

1. Members of the FCPP who become members of the successor pension plan on or after the commencement date and before the changeover date become entitled to pension benefits under the successor pension plan in respect of their employment before becoming members of the successor pension plan and they cease to be entitled to those benefits under the FCPP.
2. Former members of the FCPP who become former members of the successor pension plan on the changeover date become entitled to pension benefits under the successor pension plan in respect of the applicable person's employment before the changeover date.
3. Those former members cease to be former members of the FCPP.
4. Those members and former members become entitled to credit in the successor pension plan for the period of membership of the member or the applicable former member in the FCPP, for the purpose of determining entitlement to ancillary benefits under the successor pension plan. 1998, c. 15, Sched. A, s. 112 (2).

Transfer of responsibility

(3) As of the changeover date, the successor employer assumes responsibility for the accrued pension benefits under the FCPP of the members and former members described in subsection (2), and the Financial Corporation ceases to be responsible for those accrued pension benefits. 1998, c. 15, Sched. A, s. 112 (3).

PART VIII
ELECTRICAL SAFETY

Definitions

112.1 In this Part,

"Authority" means the Electrical Safety Authority; ("Office")

"authorization" means a licence, certificate or registration issued under this Part, despite the definition of "licence" in subsection 2 (1); ("autorisation")

"Director" means a person appointed as a Director under this Part; ("directeur")

"inspector" means an inspector appointed under this Part; ("inspecteur")

"investigator" means an investigator appointed under this Part; ("enquêteur")

"person" means an individual, a corporation, an association, a partnership or any other entity; ("personne")

"regulations" means the regulations made under this Part, despite the definition of "regulations" in subsection 2 (1). ("règlements") 2004, c. 19, s. 12 (2); 2006, c. 34, s. 12 (1).

Electrical Safety

Regulations, LG in C

113. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing the design, construction, installation, protection, use, maintenance, repair, extension, alteration, connection and disconnection of all works, matters and things used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario;

(b) prohibiting the use, advertising, display, offering for sale, or other disposal, and the sale or other disposal, publicly or privately, in Ontario, of any such works, matters and things unless and until they have been inspected and approved, or deemed approved;

(c) prescribing the precautions to be taken in the sale or other disposal of such works, matters and things and the warnings and instructions to be given to purchasers and others in advertisements, by circular, labelling, including by tag, seal or other form of labelling, or otherwise, to prevent their use in such manner or under such conditions as may be likely to result in undue hazard to persons or property;

(d) providing for the inspection, test and approval of such works, matters and things before being used in the generation, transmission, distribution, retail or use of electricity in Ontario, and for a process for granting, renewing, suspending, revoking and reinstating approvals for the works, matters and things before they are used for any of those purposes;

(e) requiring compliance with any code, standard, guideline or procedure under a rule of a person retailing electricity to such works, matters and things. 2006, c. 34, s. 12 (2).

Regulations, Minister

(2) The Minister may make regulations,

(a) adopting by reference, in whole or in part, with such changes as the Minister considers necessary or advisable, any code or standard that governs any matter set out in subsection (1) and requiring compliance with any code or standard that is so adopted;

(b) establishing a code of ethics and a committee for the purpose of governing the conduct of authorization holders. 2006, c. 34, s. 12 (2).

Rolling incorporation

(3) If a regulation under clause (2) (a) so provides, a code or standard adopted by reference shall be a reference to it, as amended from time to time, whether before or after the regulation is made. 2006, c. 34, s. 12 (2); 2009, c. 33, Sched. 10, s. 6.

Delegation

(4) Despite subsection 3 (4) of the *Safety and Consumer Statutes Administration Act, 1996*, the Minister may, by regulation, delegate to the Authority the power to make some or all of the regulations under clause (2) (a) or (b). 2006, c. 34, s. 12 (2).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (4) is repealed. See: 2012, c. 8, Sched. 11, ss. 46 (1), 54 (1).

Temporary codes, testing organizations, variations

(5) A director may, in writing,

(a) authorize, subject to such conditions as may be specified and for a limited time, the use of codes, standards, guidelines, plans, specifications and procedures or changes to codes, standards, guidelines, plans, specifications and procedures necessary to accommodate new developments or technological advances and require compliance with them and permit, subject to such conditions as may be specified, variances from them;

(b) designate organizations to test any thing for which standards, plans or specifications are established under this Part and provide for and require the placing of the organization's label on the thing or any parts of the thing that conform to the standards, plans or specifications;

(c) subject to such conditions as he or she may specify, allow a variance from any regulation made by the Minister under clause (2) (a) if, in his or her opinion, the variance would not detrimentally affect the safe use of the thing to which the regulation applies or the health or safety of any person. 2006, c. 34, s. 12 (2).

***Legislation Act, 2006*, Part III**

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to subsection (5). 2006, c. 34, s. 12 (2, 19).

Issuing of plans and specifications

(7) The Authority may, in accordance with the regulations, prepare and issue plans and specifications governing the design, construction and test of works, matters and things used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario, and may alter such plans and specifications. 2006, c. 34, s. 12 (2).

Appointment of persons to inspect and test

(8) The Authority may appoint persons, associations or organizations having, in the opinion of the Authority, special knowledge and facilities to inspect, test and report on any works, matters and things mentioned in subsection (1). 2006, c. 34, s. 12 (2).

Prohibition on holding out

(9) No person shall hold themself out as a person who has been appointed under subsection (8) if the person has not been so appointed. 2006, c. 34, s. 12 (2).

Approval by adoption of report

(10) The Authority may approve any work, matter and thing mentioned in subsection (1) by adopting a report made under subsection (8), or otherwise, as the Authority considers advisable. 2006, c. 34, s. 12 (2).

Orders relating to installations, alterations, etc.

(11) The Authority may issue such orders relating to work to be done, or the removal of things used, in the installation, removal, alteration, repair, protection, connection or disconnection of any of the works, matters and things mentioned in subsection (1) as the Authority considers necessary or advisable for the safety of persons or the protection of property and, in any such order or after having made it, the Authority may order any person to cease and desist from doing anything intended or likely to interfere with the terms of the order. 2006, c. 34, s. 12 (2).

Offences

(12) Every person,

(a) disturbing or interfering with an inspector or other officer in the performance of the inspector's or officer's duty under this section is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both;

(b) refusing or neglecting to comply with this section, or with any regulation, plan or specification made under its authority, is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both;

(c) refusing or neglecting to comply with an order issued by the Authority under subsection (11) is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than $5,000 for each day upon which such refusal or neglect is repeated or continued. 2006, c. 34, s. 12 (2).

Same, corporation

(13) A corporation that is guilty of an offence described in subsection (12) is liable, on conviction, to a fine of not more than $1,000,000. 2006, c. 34, s. 12 (2).

Section not to apply to mines

(14) This section does not apply to a mine as defined in the *Mining Act*, save only as regards any dwelling house or other building not connected with or required for mining operations or purposes or used for the treatment of ore or mineral. 2006, c. 34, s. 12 (2).

Prohibitions

Causing damage

113.0.1 (1) No person shall damage or cause any damage to any work, matter or thing used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario. 2006, c. 34, s. 12 (3).

Interference

(2) No person shall interfere with any work, matter or thing used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario in the course of alterations or repairs to non-electrical equipment or structures except where it is necessary to disconnect or move components of an electrical installation, in which event it shall be the responsibility of the person carrying out the alterations or repairs to ensure that the electrical installation is restored to a safe operating condition as soon as the progress of the alterations or repairs permits. 2006, c. 34, s. 12 (3).

Removal of labels

(3) No person shall, without the consent of the Director, remove any label, tag, seal or warning, as prescribed by the regulations, applied by the Authority to any work, matter or thing used or to be used in the generation, transmission, distribution, retail or use of electricity in Ontario. 2006, c. 34, s. 12 (3).

Director

113.1 (1) The Authority may appoint one or more Directors for the purposes of this Part. 2004, c. 19, s. 12 (5).

Restrictions

(2) An appointment is subject to the restrictions, limitations and conditions that the Authority sets out in it. 2004, c. 19, s. 12 (5).

Powers

(3) Unless otherwise stated in the appointment, a Director,

(a) may supervise and direct inspectors and other persons responsible for administering or enforcing this Part, the regulations or an order of the Authority; and

(b) is an inspector and may exercise any of the powers and perform any of the duties of an inspector. 2004, c. 19, s. 12 (5).

Delegation

(4) A Director may delegate in writing any of his or her powers or duties to any person, subject to the restrictions, limitations and conditions that the Director sets out in the delegation. 2004, c. 19, s. 12 (5).

Document of appointment

(5) The Authority shall issue to each Director a document establishing his or her appointment, and the Director shall produce it on request. 2004, c. 19, s. 12 (5).

Authorization

113.2 (1) Except as provided in the regulations, no person shall carry out or propose to carry out, or permit or employ another person to carry out, an activity referred to in the regulations as requiring an authorization without first obtaining an authorization in accordance with this Part and the regulations. 2006, c. 34, s. 12 (4).

Refusal, suspension, etc.

(2) A Director may refuse to grant an applicant an authorization for the carrying out of activities or may refuse to renew, may suspend or may revoke an authorization holder's authorization for the carrying out of activities, if the Director has reason to believe that,

(a) the applicant or authorization holder will not carry out the activities in accordance with the law;

(b) the applicant or authorization holder will not carry out the activities safely;

(c) the applicant or authorization holder lacks the basic resources necessary to carry out the activities;

(d) the applicant or authorization holder will not conduct himself or herself with honesty and integrity or in accordance with the principle of protecting consumers;

(e) the applicant or authorization holder lacks the training, experience, qualifications or skills prescribed by the regulations;

(f) the applicant or authorization holder failed to comply with or to meet a requirement of this Part, the regulations or an order of the Authority;

(g) the authorization holder failed to comply with a restriction, limitation or condition of the authorization;

(h) the authorization holder obtained the authorization through misrepresentation or fraud; or

(i) the authorization holder permitted an unauthorized person to carry out the activities. 2004, c. 19, s. 12 (5).

Conditions

(3) An authorization is subject to,

(a) the restrictions, limitations and conditions that are prescribed by the regulations; and

(b) the restrictions, limitations and conditions that are imposed by a Director. 2004, c. 19, s. 12 (5).

Compliance with regulations

(4) In imposing a restriction, limitation or condition on an authorization, a Director shall comply with the rules prescribed by the regulations. 2004, c. 19, s. 12 (5).

Notice of proposal

113.3 (1) Subject to subsection (2), a Director who proposes any of the following shall serve notice of the proposal, together with written reasons, on the applicant or authorization holder:

1. To grant an authorization subject to restrictions, limitations or conditions imposed on it by the Director.
2. To renew an authorization subject to restrictions, limitations or conditions imposed on it by the Director.
3. To refuse to grant an authorization.
4. To refuse to renew an authorization.
5. To suspend an authorization.
6. To revoke an authorization. 2004, c. 19, s. 12 (5).

Exceptions

(2) A notice of proposal is not required,

(a) in the case of a provisional suspension of an authorization, or a provisional refusal to renew an authorization, under section 113.5;

(b) in the case of a refusal to grant or renew an authorization, or a suspension of an authorization, under section 113.6. 2004, c. 19, s. 12 (5).

Service of notice

(3) The Director may serve the notice of proposal personally or by registered mail addressed to the applicant or authorization holder at the last address known to the Director, by fax or by any other form of electronic transmission if there is a record that the notice has been sent. 2004, c. 19, s. 12 (5).

Deemed service, registered mail

(4) If registered mail is used, the notice shall be deemed to have been served on the third day after the day of mailing, unless the person on whom notice is being served satisfies the Director that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date. 2004, c. 19, s. 12 (5).

Deemed service, electronic transmission

(5) If a fax or any other form of electronic transmission is used, the notice shall be deemed to have been served on the day after the fax was sent or the other transmission was made, unless the person on whom notice is being served satisfies the Director that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice until a later date. 2004, c. 19, s. 12 (5).

Hearing

113.4 (1) A notice of proposal shall inform the applicant or authorization holder that the applicant or holder has a right to a hearing before the Director if the applicant or holder applies to the Director for the hearing within 15 days after being served with the notice. 2004, c. 19, s. 12 (5).

Extension of time

(2) The Director may extend the time for applying for a hearing, either before or after the 15-day period expires, if he or she is satisfied that,

(a) there are reasonable grounds for granting the extension; and

(b) there are apparent grounds for granting to the applicant or authorization holder the relief sought at the hearing. 2004, c. 19, s. 12 (5).

Directions

(3) In granting an extension, the Director may give any directions he or she considers appropriate. 2004, c. 19, s. 12 (5).

If no hearing requested

(4) If the applicant or authorization holder does not apply for a hearing in accordance with this section, the Director may carry out the proposal stated in the notice of proposal. 2004, c. 19, s. 12 (5).

If hearing requested

(5) If the applicant or authorization holder applies for a hearing in accordance with this section, the Director shall set a time for and hold the hearing, after issuing a notice of hearing to the applicant or authorization holder. 2004, c. 19, s. 12 (5).

Findings of fact

(6) The findings of fact made by the Director upon the hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15, 15.1, 15.2 and 16 of the *Statutory Powers Procedure Act*. 2004, c. 19, s. 12 (5).

Decision

(7) After the hearing, the Director may carry out the proposal stated in the notice of proposal if,

(a) in the case of a proposal mentioned in paragraph 3, 4, 5 or 6 of subsection 113.3 (1), the Director is satisfied that any of the grounds set out in subsection 113.2 (2) exists; or

(b) in the case of a proposal mentioned in paragraph 1 or 2 of subsection 113.3 (1), the Director is satisfied that the imposition of the restrictions, limitations and conditions complies with the rules mentioned in subsection 113.2 (4). 2004, c. 19, s. 12 (5).

Provisional suspension or refusal to renew if safety involved

113.5 (1) A Director may, by serving notice on an authorization holder and without a hearing, provisionally suspend or provisionally refuse to renew the holder's authorization if, in the Director's opinion, the carrying on of the activities under the authorization is an immediate threat to public safety or the safety of any person. 2004, c. 19, s. 12 (5).

Notice

(2) A notice under subsection (1) shall state the Director's reasons for the decision to provisionally suspend or provisionally refuse to renew the authorization and shall inform the authorization holder that the holder has a right to a hearing before the Director if the holder applies to the Director for the hearing within 15 days after being served with the notice. 2004, c. 19, s. 12 (5).

Application of provisions

(3) Subsections 113.3 (3), (4) and (5) apply with respect to a notice under this section and subsections 113.4 (2), (3), (5) and (6) apply for the purposes of a hearing under this section. 2004, c. 19, s. 12 (5).

Decision

(4) After the hearing,

(a) if the Director is satisfied that a ground set out in subsection 113.2 (2) exists, the Director may suspend, revoke or refuse to renew the authorization;

(b) if the Director is satisfied that no ground set out in subsection 113.2 (2) exists, the Director,

(i) shall reinstate the suspended authorization, or

(ii) shall renew the authorization and may impose restrictions, limitations or conditions on the authorization in accordance with subsection 113.2 (4). 2004, c. 19, s. 12 (5).

Default in payment

113.6 (1) A Director may refuse to grant or to renew an authorization or may suspend an authorization, if,

(a) the applicant or authorization holder is in default of the payment of a fee, an administrative penalty, a cost or another charge owing to the Authority; or

(b) the applicant or authorization holder is in default of the payment of a fine imposed on conviction for an offence under this Part. 2004, c. 19, s. 12 (5).

Notice and hearing not required

(2) A Director is not required to give notice or to hold a hearing before acting under subsection (1). 2004, c. 19, s. 12 (5).

Granting of authorization or renewal

(3) If an application for an authorization or for the renewal of an authorization is refused under subsection (1), the applicant is entitled to the authorization or renewal on providing proof to the Director that the applicant is no longer in default. 2004, c. 19, s. 12 (5).

Reinstatement of suspended authorization

(4) If an authorization is suspended under subsection (1), the authorization holder is entitled to have the authorization reinstated on providing proof to the Director that the authorization holder is no longer in default. 2004, c. 19, s. 12 (5).

Opportunities before hearing

113.7 (1) A notice of hearing issued by a Director under this Part shall afford to the applicant or authorization holder a reasonable opportunity to show or to achieve, before the hearing, compliance with all lawful requirements for the granting, retention or renewal of the authorization. 2004, c. 19, s. 12 (5).

Examination of documentary evidence

(2) The applicant or authorization holder shall be given an opportunity to examine, before a hearing by a Director under this Part, any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing. 2004, c. 19, s. 12 (5).

Recording of evidence

113.8 (1) The oral evidence taken before a Director at a hearing under this Part shall be recorded at the request of the applicant, the authorization holder or the Director, and the recording shall be at the cost of the person making the request. 2004, c. 19, s. 12 (5).

Transcript

(2) If copies of the transcript are requested, they shall be provided at the cost of the person making the request. 2004, c. 19, s. 12 (5).

Conflict

113.9 If, under the *Safety and Consumer Statutes Administration Act, 1996*, this Part is designated legislation to be administered by a designated administrative authority, and if a regulation made under clause 15 (1) (c) of that Act requires that, before an appeal to the Divisional Court is made under section 113.10 of this Act, a review panel must review the decision made by a Director after a hearing under this Act, that regulation prevails over this Part to the extent of any conflict. 2004, c. 19, s. 12 (5).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 113.9 is repealed and the following substituted:

Conflict

113.9 (1) A regulation made under clause 42 (1) (a) of the *Delegated Administrative Authorities Act, 2012*, requiring a review panel to review a Director's decision before the decision may be appealed to the Divisional Court under section 113.10 of this Act, prevails over this Part to the extent of any conflict. 2012, c. 8, Sched. 11, s. 46 (2).

Application of subs. (1)

(2) Subsection (1) applies only if this Part is delegated legislation to be administered by a delegated administrative authority under the *Delegated Administrative Authorities Act, 2012*. 2012, c. 8, Sched. 11, s. 46 (2).

See: 2012, c. 8, Sched. 11, ss. 46 (2), 54 (1).

Appeal after hearing

113.10 (1) An applicant or authorization holder may appeal to the Divisional Court if, after a hearing, a Director does any of the following:

1. Grants the authorization subject to restrictions, limitations or conditions imposed on it by the Director.
2. Renews the authorization subject to restrictions, limitations or conditions imposed on it by the Director.
3. Refuses to grant the authorization.

4. Refuses to renew the authorization.

5. Suspends the authorization.

6. Revokes the authorization. 2004, c. 19, s. 12 (5).

How to appeal

(2) To appeal under this section, the applicant or authorization holder must file a notice of appeal with the court within 30 days after receiving notice of the Director's decision. 2004, c. 19, s. 12 (5).

Director is party

(3) The Director is a party to the appeal. 2004, c. 19, s. 12 (5).

Decision

(4) In deciding the appeal, the court may order the Director to take such action as the court considers proper. 2004, c. 19, s. 12 (5).

Continuation of authorization

Continuation upon renewal application

113.11 (1) If, within the time prescribed by the regulations, or, if no time is prescribed, before the expiry of the authorization, an authorization holder applies to a Director for renewal of the authorization, the authorization continues to be valid,

(a) until the Director renews the authorization, unless clause (b), (c) or (d) applies;

(b) until the Director provisionally refuses to renew the authorization under subsection 113.5 (1);

(c) until the Director refuses to renew the authorization under subsection 113.6 (1);

(d) subject to subsection (3), if the authorization holder is served with a notice under section 113.3 that the Director proposes to refuse to renew the authorization, or if the Director refuses to renew the authorization under subsection 113.5 (4),

(i) until the time for applying for a hearing by the Director under section 113.4 or 113.5 expires, unless subclause (ii) applies,

(ii) if the holder applies for a hearing in accordance with section 113.4 or 113.5,

(A) until the Director renews the authorization following the hearing, or

(B) if the Director refuses to renew the authorization following the hearing,

(1) until the time for filing a notice of appeal with the Divisional Court under section 113.10 expires, unless sub-sub-subclause 2 applies,

(2) if the holder files a notice of appeal with the Divisional Court in accordance with section 113.10, until the final disposition of the appeal. 2004, c. 19, s. 12 (5).

Continuation after suspension, revocation

(2) Subject to subsection (3), if a Director suspends or revokes an authorization under subsection 113.4 (7) or 113.5 (4), the suspension or revocation does not take effect,

(a) until the time for filing a notice of appeal with the Divisional Court under section 113.10 expires, unless clause (b) applies;

(b) if a notice of appeal is filed with the Divisional Court in accordance with section 113.10, until the final disposition of the appeal. 2004, c. 19, s. 12 (5).

Threat to safety

(3) If, in a Director's opinion, there is or may be a threat to public safety or to the safety of any person, the Director may specify that,

(a) the authorization in respect of which the renewal application has been made ceases to be valid earlier than the time specified in clause (1) (d); or

(b) the suspension or revocation referred to in subsection (2) takes effect earlier than the time specified in subsection (2). 2004, c. 19, s. 12 (5).

Compliance order

113.12 (1) If it appears to a Director that a person is not complying with subsection 113.2 (1), with a regulation made under the authority of clause 113.22 (1) (e) or with a restriction, limitation or condition of an authorization, the Director may apply to a judge of the Superior Court of Justice for an order directing compliance. 2004, c. 19, s. 12 (5).

Same

(2) The judge may make any order he or she considers just. 2004, c. 19, s. 12 (5).

Clarification

(3) A Director may make an application under subsection (1) even if a penalty or another sanction has been applied against the person in respect of the failure to comply and regardless of any other rights the person may have. 2004, c. 19, s. 12 (5).

Appeal

(4) An appeal lies to the Divisional Court from an order made under subsection (2). 2004, c. 19, s. 12 (5).

Definition

113.12.1 In sections 113.13 to 113.14.3,

"electrical product or device" means any thing used or to be used in the generation, transmission, distribution, retail or use of electricity. 2006, c. 34, s. 12 (5).

Inspections

113.13 (1) The Authority or a person appointed as an inspector in writing by the Authority may conduct an inspection and may, as part of that inspection, enter and inspect at any reasonable time any land or premises, including the business premises of an authorization holder, for the purpose of,

(a) ensuring compliance with this Act and the regulations; or

(b) determining that the authorization holder remains entitled to the authorization. 2006, c. 34, s. 12 (6).

Limitations on power to enter

(2) An inspector shall not,

(a) use force to enter and inspect land and premises under this section; or

(b) enter any part of premises that are being used as a dwelling, except with the consent of the owner or occupier. 2006, c. 34, s. 12 (6).

Identification

(3) An inspector shall produce, on request, evidence of his or her appointment as an inspector. 2006, c. 34, s. 12 (6).

Powers on inspection

(4) An inspector conducting an inspection on any land or in any premises, including premises of an authorization holder, may,

(a) examine all documents, records, electrical products, devices and other things that are relevant to the inspection;

(b) require a person on the premises being inspected to produce a document, record or other thing that is relevant to the inspection;

(c) use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or a record that is relevant to the inspection and that is in any form; and

(d) subject to subsection (5), on giving a receipt for it, remove any thing relevant to the inspection, including a document, a record, a data storage disk or a retrieval device needed to produce information. 2006, c. 34, s. 12 (6).

Electrical product not included

(5) An electrical product or device may not be removed under clause (4) (d). 2006, c. 34, s. 12 (6).

Obligation to produce and assist

(6) A person who is required to produce a document, record, electrical product or device, or other thing under clause (4) (b) shall produce it and shall, on request by the inspector, provide any assistance that is reasonably necessary, including assistance in using any data storage, processing or retrieval device or system, to produce information or a record that is relevant to the inspection and that is in any form. 2006, c. 34, s. 12 (6).

Obstruction prohibited

(7) No person shall obstruct an inspector executing his or her duties or withhold from him or her or conceal, alter or destroy any document, record, electrical product or device or other thing that is relevant to the inspection. 2006, c. 34, s. 12 (6).

Copy and return of removed things

(8) An inspector who removes any document, record or other thing under clause (4) (d) may make a copy of it and shall promptly return it to the person being inspected. 2006, c. 34, s. 12 (6).

Admissibility of copies

(9) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 34, s. 12 (6).

Order to turn over or retain electrical product or device

113.13.1 (1) An inspector who is lawfully present in a place and who believes on reasonable grounds that an electrical product or device in the place is being sold or offered for sale in contravention of this Part or the regulations may order, orally or in writing, a person in the place,

(a) to turn the electrical product or device over to the inspector; or

(b) to retain and preserve the electrical product or device in accordance with the regulations. 2006, c. 34, s. 12 (6).

Obligation to retain electrical product or device

(2) A person who fails to immediately comply with an order to turn over the electrical product or device issued under subsection (1) shall retain and preserve the electrical product or device that was the subject of the order in accordance with the regulations. 2006, c. 34, s. 12 (6).

Inspector to inform director

(3) When an inspector issues an order under subsection (1), he or she shall promptly inform the director and, where the order is in writing, provide him or her with a copy of the order. 2006, c. 34, s. 12 (6).

Warrant to seize electrical product or device

113.13.2 (1) On application made without notice by an inspector appointed under subsection 113.13 (1), a justice of the peace may issue a warrant if he or she is satisfied on information under oath that there is reasonable ground for believing that,

(a) an inspector issued an order to turn over an electrical product or device or to retain and preserve such a product or device under subsection 113.13.1 (1);

(b) the person who was issued the order failed to comply with it; and

(c) the electrical product or device was being sold or offered for sale in contravention of this Part or the regulations. 2006, c. 34, s. 12 (6).

Powers under warrant

(2) Subject to any conditions contained in the warrant, a warrant issued under subsection (1) authorizes an inspector appointed under subsection 113.13 (1) to,

(a) enter or access the place in which a person is required to retain and preserve the electrical product or device under clause 113.13.1 (1) (b) and subsection 113.13.1 (2);

(b) require a person to produce the electrical product or device in question; and

(c) seize the electrical product or device in question. 2006, c. 34, s. 12 (6).

Obligation to produce and assist

(3) A person who is required to do so by an inspector under clause (2) (b) shall produce the electrical product or device in question. 2006, c. 34, s. 12 (6).

Entry of dwelling

(4) Despite subsection (2), an inspector shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling unless,

(a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and

(b) the justice of the peace authorizes the entry into the dwelling. 2006, c. 34, s. 12 (6).

Conditions on search warrant

(5) A warrant shall contain such conditions as the justice of the peace considers advisable to ensure that any entry and seizure authorized by the warrant is reasonable in the circumstances. 2006, c. 34, s. 12 (6).

Assistance

(6) A warrant may authorize persons who have special, expert or professional knowledge, and such other persons as may be necessary, to accompany and assist the inspector in respect of the execution of the warrant. 2006, c. 34, s. 12 (6).

Time of execution

(7) An entry or access under a warrant shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2006, c. 34, s. 12 (6).

Expiry of warrant

(8) A warrant shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may, on application without notice by the inspector, extend the date of expiry for an additional period of no more than 30 days. 2006, c. 34, s. 12 (6).

Use of force

(9) An inspector may call upon police officers for assistance in executing a warrant and the inspector may use whatever force is reasonably necessary to execute the warrant. 2006, c. 34, s. 12 (6).

Obstruction

(10) No person shall obstruct an inspector executing a warrant. 2006, c. 34, s. 12 (6).

Inspector to inform director

(11) When an inspector seizes an electrical product or device under this section, he or she shall promptly inform the director. 2006, c. 34, s. 12 (6).

RELEASE OR FORFEITURE OF ELECTRICAL PRODUCT OR DEVICE

Application of section

113.13.3 (1) This section applies in respect of an electrical product or device that,

(a) was turned over to an inspector in response to an order issued under subsection 113.13.1 (1);

(b) was retained and preserved in response to an order issued under subsection 113.13.1 (1), or in accordance with subsection 113.13.1 (2); or

(c) was seized by an inspector in accordance with the regulations under a warrant issued under subsection 113.13.2 (1). 2006, c. 34, s. 12 (6).

Application for release of electrical product or device

(2) Within 10 days of an electrical product or device being turned over or seized or ordered to be retained and preserved, a person who claims an interest in the electrical product or device may apply to the director for the release of the electrical product or device. 2006, c. 34, s. 12 (6).

Hearing

(3) Subject to subsection (4), a person who applies for the release of the electrical product or device within the time permitted under subsection (2) is entitled to a hearing before the Director. 2006, c. 34, s. 12 (6).

Director may refuse hearing

(4) The director may refuse to hold a hearing if the person who applies for the release of the electrical product or device is not the person who turned over the electrical product or device, who retained and preserved it or from whom it was seized and the director is not satisfied that the person has an interest in the electrical product or device. 2006, c. 34, s. 12 (6).

Director's determination

(5) After a hearing, the director may,

(a) release to the person the electrical product or device that he or she determines was not sold or offered for sale in contravention of this Part or the regulations; or

(b) direct that the electrical product or device that he or she determines was sold or offered for sale in contravention of this Part or the regulations is forfeited to the Crown. 2006, c. 34, s. 12 (6).

Forfeiture in other circumstances

(6) The director may direct that the electrical product or device is forfeited to the Crown if,

(a) no person applies for the release of the electrical product or device within the time permitted under subsection (2);

(b) the director refuses to hold a hearing under subsection (4); or

(c) the person who applied for the release of the electrical product or device does not appear at the hearing. 2006, c. 34, s. 12 (6).

Decision final

(7) Any determination or direction made by the director under this section is final. 2006, c. 34, s. 12 (6).

Appointment of investigators

113.14 (1) The Authority may appoint persons to be investigators for the purpose of conducting investigations. 2006, c. 34, s. 12 (6).

Identification

(2) An investigator shall produce, on request, evidence of his or her appointment as an investigator. 2006, c. 34, s. 12 (6).

Search warrant

113.14.1 (1) On application made without notice by an investigator, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath that there is reasonable ground for believing that,

(a) a person has contravened or is contravening this Part or the regulations or has committed an offence that is relevant to the person's fitness for holding an authorization under this Part; and

(b) there is,

(i) on any land or in any building, dwelling, container or place any thing relating to the contravention of this Part or the regulations or to the person's fitness for holding an authorizaton, or

(ii) information or evidence relating to the contravention of this Part or the regulations or the person's fitness for holding an authorization that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant. 2006, c. 34, s. 12 (6).

Powers under warrant

(2) Subject to any conditions contained in the warrant, a warrant issued under subsection (1) authorizes an investigator to,

(a) enter or access the land, building, dwelling, container or place specified in the warrant, and examine and seize any thing described in the warrant;

(b) use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form;

(c) require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant; and

(d) use any investigative technique or procedure described in the warrant or do anything described in the warrant. 2006, c. 34, s. 12 (6).

Obligation to produce and assist

(3) A person who is required to do so by an investigator under clause (2) (c) shall produce information or evidence described in the warrant and shall provide whatever assistance is reasonably necessary to produce the information or evidence in any form. 2006, c. 34, s. 12 (6).

Entry of dwelling

(4) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling unless,

(a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and

(b) the justice of the peace authorizes the entry into the dwelling. 2006, c. 34, s. 12 (6).

Conditions on search warrant

(5) A warrant shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances. 2006, c. 34, s. 12 (6).

Assistance

(6) A warrant may authorize persons who have special, expert or professional knowledge, and such other persons as may be necessary, to accompany and assist the investigator in respect of the execution of the warrant. 2006, c. 34, s. 12 (6).

Time of execution

(7) An entry or access under a warrant shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise. 2006, c. 34, s. 12 (6).

Expiry of warrant

(8) A warrant shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may, on application without notice by the investigator, extend the date of expiry for an additional period of no more than 30 days. 2006, c. 34, s. 12 (6).

Use of force

(9) An investigator may call upon police officers for assistance in executing a warrant and the investigator may use whatever force is reasonably necessary to execute the warrant. 2006, c. 34, s. 12 (6).

Obstruction

(10) No person shall obstruct an investigator executing a warrant or withhold from him or her or conceal, alter or destroy anything relevant to the investigation. 2006, c. 34, s. 12 (6).

Return of seized things

(11) Subject to subsection (12), an inspector who seizes any thing under this section may make a copy of it and shall return it within a reasonable time. 2006, c. 34, s. 12 (6).

Return of seized things not required

(12) An investigator is not required to return an electrical product or device seized under this section where the investigator believes on reasonable grounds that the electrical product or device was sold or offered for sale in contravention of this Part or the regulations. 2006, c. 34, s. 12 (6).

Admissibility of copies

(13) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value. 2006, c. 34, s. 12 (6).

No warrant required in exigent circumstances

113.14.2 (1) Although a warrant issued under subsection 113.14.1 (1) would otherwise be required, an investigator may exercise any of the powers described in subsection 113.14.1 (2) without a warrant if the conditions for obtaining the warrant exist but because of exigent circumstances it would be impracticable to obtain the warrant. 2006, c. 34, s. 12 (6).

Dwellings

(2) Subsection (1) does not apply to any part of a building that is being used as a dwelling. 2006, c. 34, s. 12 (6).

Use of force

(3) An investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary. 2006, c. 34, s. 12 (6).

Application of other provisions

(4) Subsections 113.14.1 (6), (10), (11), (12) and (13) apply, with necessary modifications, to the exercise of powers under this section. 2006, c. 34, s. 12 (6).

Seizure of things in plain view

113.14.3 (1) An investigator who is lawfully present in a place under a warrant may seize any thing that is in plain view if the investigator believes on reasonable grounds that the thing will afford evidence of a contravention of this Part or the regulations. 2006, c. 34, s. 12 (6).

Return of seized thing

(2) Subsections 113.14.1 (11), (12) and (13) apply, with necessary modifications, to any thing seized under this section. 2006, c. 34, s. 12 (6).

Information confidential

113.15 (1) This section applies to a document or information obtained in the course of an inspection conducted for a purpose set out in clause 113.13 (1) (a) or (b). 2004, c. 19, s. 12 (5); 2006, c. 34, s. 12 (7).

Disclosure prohibited

(2) Subject to subsection (3), an inspector shall not disclose any document or information obtained in the course of an inspection except,

(a) for the purposes of carrying out his or her duties under this Act; or

(b) as authorized under the *Regulatory Modernization Act, 2007*. 2007, c. 4, s. 29.

Compellability in civil proceeding

(3) Subject to subsection (4), an inspector is a compellable witness in a civil proceeding respecting any document or information obtained in the course of an inspection. 2004, c. 19, s. 12 (5).

Refusal or conditional permission

(4) A Director may,

(a) on reasonable grounds, refuse to permit an inspector to attend as a witness; or

(b) require that an inspector's attendance as a witness be subject to such conditions as are reasonable and necessary for the proper administration of this Part and the regulations. 2004, c. 19, s. 12 (5).

Limitation

(5) Subsection (4) does not apply if,

(a) the court orders that the inspector attend as a witness;

(b) the proceeding is a proceeding under the *Provincial Offences Act*; or

(c) the Authority is a party to the proceeding. 2004, c. 19, s. 12 (5).

Written decision

(6) A Director who makes a decision referred to in subsection (4) shall issue the decision in writing. 2004, c. 19, s. 12 (5).

Disclosure by Director

(7) A Director may publish or otherwise disclose documents or information obtained under the powers conferred on the Director under this Part. 2004, c. 19, s. 12 (5).

Director's confirmation

113.16 (1) A Director may issue a written confirmation with respect to,

(a) the granting or non-granting of an authorization, the renewal or non-renewal of an authorization, or the revocation or suspension of an authorization;

(b) the restrictions, limitations and conditions to which an authorization is subject;

(c) the filing or non-filing of any document or material required or permitted to be filed with the Director; or

(d) any other matter prescribed by the regulations. 2004, c. 19, s. 12 (5).

Effect of confirmation

(2) A confirmation that purports to have been issued by a Director is proof, in the absence of evidence to the contrary, of the facts stated in it, without any proof of appointment or signature. 2004, c. 19, s. 12 (5).

Fees, etc.

113.17 (1) If the Authority does so in accordance with the process and criteria that it establishes and that the Minister responsible for the administration of this Part has approved, the Authority may establish fees, administrative penalties, costs or other charges related to the administration of this Part and may require that such fees, administrative penalties, costs and other charges be paid at the times and in the manner directed by it. 2004, c. 19, s. 12 (5).

Collection and application of fees

(2) The Authority shall collect the fees, administrative penalties, costs and other charges that it requires to be paid under this section and shall apply them to the expenses incurred by the Authority in administering this Part. 2004, c. 19, s. 12 (5).

Agreement to exercise Authority's powers

113.18 The Authority may enter into agreements with any person or body prescribed by the regulations authorizing the person or body to exercise and perform any of the powers and duties of the Authority under subsection 113 (11) or section 113.13 or 113.17 and, for that purpose, a reference in section 113.19 or 113.20 to the Authority shall be deemed to be a reference to the person or body. 2004, c. 19, s. 12 (5); 2006, c. 34, s. 12 (8).

Liability

113.19 (1) No action or other civil proceeding shall be commenced against a director, an officer, an employee or an agent of the Authority, or a Director, an inspector or an officer appointed under this Part, for any act done in good faith in the exercise or performance or the intended exercise or performance of a power or duty under this Part, or for any neglect or default in the exercise or performance in good faith of such a power or duty. 2004, c. 19, s. 12 (5).

Same

(2) Subsection (1) does not relieve the Authority of any liability to which it would otherwise be subject in respect of a cause of action arising from any act, neglect or default referred to in subsection (1). 2004, c. 19, s. 12 (5).

Offences

113.20 (1) Every person,

(a) that refuses or neglects to comply with section 113 or with any regulation, plan or specification made under its authority is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both;

(b) that refuses or neglects to comply with an order issued by the Authority under subsection 113 (11) is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than $5,000 for each day upon which the refusal or neglect is repeated or continued;

(c) that refuses or neglects to comply with subsection 113.13 (6), 113.13.1 (2), 113.13.2 (3) or 113.14.1 (3) or (10) or disturbs or interferes with an inspector, investigator or other officer in the performance of a duty the inspector, investigator or officer was appointed to perform under this Part is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both;

(c.1) that contravenes or fails to comply with section 113.0.1 is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both;

(d) that contravenes or fails to comply with subsection 113.2 (1) is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than $5,000 for each day upon which the offence is repeated or continued;

(e) that contravenes or fails to comply with any regulation made under the authority of clause 113.22 (1) (a), (e), (e.1) or (j) is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than $5,000 for each day upon which the offence is repeated or continued;

(f) that contravenes or fails to comply with a restriction, limitation or condition of an authorization is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both, and a further fine of not more than $5,000 for each day upon which the offence is repeated or continued;

(g) that knowingly makes a false statement or furnishes false information to a Director under this Part is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both;

(h) that knowingly holds out as genuine any document, certificate, identification card or any other document issued under this Part or the regulations is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both;

(i) that holds themself out as a holder of an authorization, an inspector, investigator or other official under this Part is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both. 2005, c. 33, s. 7 (3); 2006, c. 34, s. 12 (9-13).

Same, corporations

(2) A corporation that is guilty of an offence described in subsection (1) is liable, on conviction, to a fine of not more than $1,000,000. 2005, c. 33, s. 7 (3).

Duty of director or officer

(3) Every director or officer of a corporation has a duty to take all reasonable care to prevent it from committing an offence under subsection (2). 2006, c. 34, s. 12 (14).

Offence

(4) Every director or officer who has a duty under subsection (3) and fails to carry out that duty is guilty of an offence and on conviction is liable to a fine of not more than $50,000 or to imprisonment for a term of not more than one year, or to both. 2006, c. 34, s. 12 (14).

Separate offence

(5) Where a person contravenes any of the provisions of this Part, the regulations or any notice or order made under them on more than one day, the continuance of the contravention on each day shall be deemed to constitute a separate offence. 2006, c. 34, s. 12 (14).

Administrative penalty

(6) A person against whom an administrative penalty has been levied by a designated administrative authority or, in the absence of such authority, by the Minister does not preclude a person from being charged with, and convicted of, an offence under this Part for the same matter. 2006, c. 34, s. 12 (14).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (6) is repealed and the following substituted:

Administrative penalty

(6) The fact that an administrative penalty has been levied against a person by a delegated administrative authority or, in the absence of such authority, by the Minister does not preclude the person from being charged with, and convicted of, an offence under this Part for the same matter. 2012, c. 8, Sched. 11, s. 46 (3).

See: 2012, c. 8, Sched. 11, ss. 46 (3), 54 (1).

Time limit

(7) No proceeding in respect of an alleged offence under this Part may be commenced after two years following the date on which the facts that gave rise to the alleged offence first came to the attention of the Director. 2006, c. 34, s. 12 (14).

Conflict

113.21 This Part and the regulations prevail over any municipal by-law. 2004, c. 19, s. 12 (5).

Regulations

113.22 (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing activities that require an authorization, classifying the activities, the persons who carry out the activities and the authorizations, and prescribing the classes of authorizations that are required for different classes of activities or for different classes of persons;

(b) prescribing the training, experience, qualifications or skills that persons must have and the other requirements that persons must meet in order to obtain and retain a class of authorization;

(c) prescribing the period, or the manner of determining the period, for which a class of authorization is valid;

(d) governing applications for authorization and applications for renewal of authorization, including prescribing procedures and timing requirements for making such applications;

(e) prescribing duties, powers and prohibitions that apply to holders of an authorization;

(e.1) governing the documents and records that must be kept by holders of authorizations, including the manner and location in which they are kept and the time periods for retaining such information and authorizing the Director to specify the location at which they must be kept;

(f) prescribing rules with which a Director must comply in imposing a restriction, limitation or condition on an authorization;

(g) prescribing anything that must or may by this Part be done in accordance with the regulations or that is referred to in this Part as prescribed by, required by, provided in or referred to in the regulations;

(h) exempting any person, work, matter or thing from any provision of this Part or the regulations;

(i) defining electrical incidents or accidents and classes of incidents or accidents;

(j) providing for the reporting to the Authority of the electrical incidents or accidents referred to in clause (i), including the manner and time for reporting, and prescribing classes of persons who are required to make such reports;

(k) respecting any matter necessary or advisable to carry out effectively the intent and purpose of this Part. 2004, c. 19, s. 12 (5); 2006, c. 34, s. 12 (15, 16).

General or particular

(2) A regulation made under subsection (1) may be general or particular in its application. 2004, c. 19, s. 12 (5).

PART IX
REGULATIONS

Regulations

114. (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing additional objects of the IESO;

(a.1) prescribing classes of persons for the purposes of subsection 7 (4);

(b) respecting the calculation of the fees referred to in subsection 17 (4) and respecting the manner in which, and the time at which, they are to be paid;

(c) prescribing provisions of the *Business Corporations Act*, the *Corporations Act* or the *Corporations Information Act* that apply, with necessary modifications, to the IESO;

(d) prescribing transmitters, distributors, generators, retailers and consumers or classes of transmitters, distributors, generators, retailers and consumers for the purpose of subsection 26 (2);

(d.1) governing renewable energy generation facilities including, but not limited to,

(i) the location of the facilities,

(ii) the generating capacity of such facilities,

(iii) the connection of such facilities to transmission systems and distribution systems, including technical specifications with respect to the connection, and

(iv) when such facilities must have commenced operation in order to be considered a renewable energy generation facility under this Act;

(e) prescribing contracts or classes of contracts to which subsection 26 (3), (4) or (6) does not apply, subject to such conditions or restrictions as may be specified in the regulations;

(f) prescribing the amount of electricity referred to in the definition of "low-volume consumer" in subsection 26 (10);

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

(f.0.1) for the purposes of section 28.1, prescribing the manner and the circumstances by which a distributor must connect a building to its distribution system;

(f.0.2) prescribing properties and classes of properties and consumers and classes of consumers for the purposes of section 28.1;

(f.0.3) prescribing consumers or classes of consumers for the purposes of section 30.1;

(f.0.4) prescribing the requirements where a distributor or suite meter provider must provide consumers or classes of consumers with specific arrangements in respect of security, including the type or kind of arrangements which the distributor or suite meter provider must accept and prescribing alternative arrangements in respect of security for the purposes of section 30.1;

(f.0.5) governing security, alternative security arrangements and the criteria that must be satisfied with respect to security or alternative security arrangements for the purposes of section 30.1;

(f.0.6) prescribing the meaning of "security" for the purposes of section 30.1;

See: 2010, c. 8, ss. 37 (11), 40.

(f.1) prescribing periods for the purpose of subsections 31 (4) and (5);

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (f.1) is repealed and the following substituted:

(f.1) for the purposes of section 31 (termination of service), governing all matters dealt with in that section that are required or permitted to be prescribed by regulation or that are required or permitted to be done in accordance with the regulations;

See: 2010, c. 8, ss. 37 (12), 40.

(g) respecting limits and criteria for the purposes of section 29.1;

(g.1) prescribing information for the purposes of subsections 33 (2) and 34 (2.1);

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (g.1) is repealed by the Statutes of Ontario, 2002, chapter 23, subsection 3 (25). See: 2002, c. 23, ss. 3 (25), 7 (2).

(g.2) prescribing reasons for the purpose of paragraph 5 of subsection 34 (1);

(h) prescribing an amount for the purpose of clause 36 (1) (a);

(h.0.1) respecting reliability standards;

(h.1) for the purpose of subsection 46.1 (2), prescribing types of fuel and, with respect to each type of fuel that is prescribed, prescribing one or more other types of fuel as substitute fuels;

(h.2) for the purpose of clause 46.2 (1) (a), prescribing types of fuel;

(i) designating a person or body as the Electrical Safety Authority for the purposes of this Act;

(j) prescribing persons or bodies or classes of persons or bodies with which the Electrical Safety Authority may enter into agreements under section 113.18;

(k) prescribing consumer protection requirements that apply to market participants;

(l) governing standards for and the use of electricity meters;

(l.1) requiring persons to offer, install or use electricity meters or other devices of a type specified by the regulations for the purpose of promoting energy conservation, energy efficiency or load management;

(m) exempting any person or class of persons from any provision of this Act, subject to such conditions or restrictions as may be prescribed by the regulations;

(n) defining any word or expression used in this Act that is not defined in this Act;

(o) deeming a reference in any Act to Ontario Hydro to be a reference to a person or other entity specified in the regulations, subject to such conditions as may be prescribed by the regulations;

(p) providing for such transitional matters as the Lieutenant Governor in Council considers necessary or advisable in connection with the implementation of this Act;

(q) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the purposes of this Act. 1998, c. 15, Sched. A, s. 114 (1); 2001, c. 23, s. 69; 2002, c. 23, s. 3 (24); 2004, c. 23, Sched. A, s. 53 (1-5); 2004, c. 19, s. 12 (6); 2008, c. 7, Sched. G, s. 5 (1); 2009, c. 12, Sched. B, s. 14 (1).

Regulations, Part I

(1.1) The Lieutenant Governor in Council may make regulations,

(a) prescribing energy sources and criteria for the purposes of the definition of "alternative energy source" in subsection 2 (1) and prescribing criteria relating to the generation of electricity from energy sources for the purposes of subsection 2 (1.1);

(a.1) prescribing criteria and associated or ancillary equipment, systems and technologies for the purposes of the definition of "renewable energy generation facility" in subsection 2 (1) and prescribing works for the purposes of the definition;

(b) prescribing energy sources and criteria for the purposes of the definition of "renewable energy source" in subsection 2 (1) and prescribing criteria relating to the generation of electricity from energy sources for the purposes of subsection 2 (1.2);

(c) designating an agency or body as a standards authority for the purpose of the definition of "standards authority" in subsection 2 (1). 2004, c. 23, Sched. A, s. 53 (6); 2008, c. 7, Sched. G, s. 5 (2); 2009, c. 12, Sched. B, s. 14 (2).

Regulations, Part II.1

(1.2) The Lieutenant Governor in Council may make regulations,

(a) prescribing additional objects of the OPA;

(b) governing the OPA's borrowing, investment of funds and the management of its financial assets, liabilities and risks including,

(i) prescribing rules and restrictions that apply to borrowing, investment and management of financial assets, liabilities and risks,

(ii) prescribing purposes for which the OPA may borrow, invest or manage its financial assets, liabilities and risks,

(iii) prescribing the types of debt instruments and financial obligations that the OPA can issue or enter into for or in relation to borrowing,

(iv) prescribing classes of securities, investment instruments and financial agreements that the OPA is authorized to invest in or enter into or is not authorized to invest in or enter into;

(c) prescribing classes of persons for the purposes of subsection 25.4 (4);

(d) governing activities of the Conservation Bureau established by the OPA;

(e) respecting the calculation of the fees referred to in subsection 25.17 (4) and respecting the manner in which, and the time at which, they are to be paid;

(f) prescribing the types of expenditures the OPA may recover through fees and charges and any restrictions and limitations in respect of the recovery of an expenditure;

(g) respecting the calculation of the fees and charges referred to in section 25.20 and respecting the manner in which, and the time at which, they are collected by the IESO and paid to the OPA;

(h) REPEALED: 2009, c. 33, Sched. 14, s. 2 (7).

(i) prescribing provisions of the *Business Corporations Act*, the *Corporations Act* or the *Corporations Information Act* that apply, with necessary modifications, to the OPA. 2004, c. 23, Sched. A, s. 53 (7); 2009, c. 33, Sched. 14, s. 2 (7).

Regulations, Part II.2

(1.3) The Lieutenant Governor in Council may make regulations,

(a) prescribing assessment periods for the purposes of section 25.29;

(b) governing integrated power system plans and procurement processes;

(c) prescribing principles to be applied in developing procurement processes and in evaluating proposals for reducing or managing electricity demand or for increasing electricity supply or capacity;

(d) prescribing conditions for the purposes of subsection 25.31 (2);

(e) governing procurement contracts;

(f) governing adjustments, payments, set-offs and credits for the purposes of section 25.33, including regulations,

(i) prescribing methods for determining the amounts of adjustments under subsection 25.33 (1), the classes of market participants and consumers to whom those adjustments apply, the time periods to which the adjustments apply and the time periods within which the adjustments must or may be made and the manner in which the amounts are paid to generators, distributors, the OPA and the Financial Corporation,

(ii) prescribing adjustments that must or may be made by distributors or retailers with respect to classes of consumers or other distributors or retailers, methods for determining the amount of the adjustments, the time periods to which the adjustments apply and the time periods within which the adjustments must or may be made and the manner in which the amounts are paid to generators, distributors, the OPA and the Financial Corporation,

(iii) prescribing classes of consumers for the purposes of paragraph 3 of subsection 25.33 (3),

(iv) governing the presentation of adjustments on invoices to consumers,

(v) requiring the OPA to make payments to the IESO, a distributor or a retailer and prescribing methods for determining the amounts payable,

(vi) requiring the IESO to make payments to the OPA, a distributor or a retailer and prescribing methods for determining the amounts payable,

(vii) requiring a distributor to make payments to the OPA, the IESO, another distributor or a retailer and prescribing methods for determining the amounts payable,

(viii) requiring a retailer to make payments to the OPA, the IESO or a distributor and prescribing methods for determining the amounts payable,

(ix) governing the calculation of the amounts of the payments required by regulations made under this clause, methods of payment and the times within which payments must or may be made,

(x) authorizing payments referred to in subclause (ix) to be made by way of set-offs and credits and prescribing conditions entitling or requiring amounts to be set off or credited,

(xi) governing methods for determining amounts to be set off or credited, and the times within which amounts must or may be set off or credited,

(xii) requiring a distributor, retailer or generator to provide information to the OPA, the IESO, a distributor or the Board for the purposes of section 25.33 or a regulation made under this clause,

(xiii) requiring the IESO to provide information to the OPA or the Board for the purposes of section 25.33 or a regulation made under this clause,

(xiv) requiring the Financial Corporation or the OPA to provide information to the IESO or the Board for the purposes of section 25.33 or a regulation made under this clause,

(xv) requiring a market participant or a consumer or a member of a class of market participants or consumers to meet specified requirements and to provide information to the IESO, a distributor or a retailer for the purpose of section 25.33 or a regulation made under this clause;

(g) governing the establishment and maintenance of variance accounts referred to in subsection 25.33 (5);

(g.1) prescribing locations or land or classes of locations or land where the OPA shall not provide for a procurement process or enter into a contract for energy from a prescribed renewable energy generation facility or a prescribed class of renewable energy generation facility;

(h) governing payments, set-offs and credits for the purposes of section 25.34, including,

(i) prescribing classes of contracts,

(ii) requiring the OPA to make payments to the IESO, a distributor or retailer and prescribing methods for determining the amounts payable,

(iii) requiring the IESO to make payments to the OPA, a distributor or a retailer and prescribing methods for determining the amounts payable,

(iv) requiring a distributor to make payments to the OPA, the IESO, another distributor or a retailer and prescribing methods for determining the amounts payable,

(v) requiring a retailer to make payments to the OPA, the IESO or a distributor and prescribing methods for determining the amounts payable,

(vi) governing the payments required under a regulation made under this clause, including methods of payment and the times within which payments must or may be made,

(vii) authorizing payments referred to in subclause (vi) to be made by way of set-offs and credits and prescribing conditions entitling or requiring amounts to be set off or credited,

(viii) governing methods for determining amounts to be set off or credited, and the times within which amounts must or may be set off or credited,

(ix) requiring a distributor or retailer to provide information to the OPA, the IESO, a distributor or the Board for the purposes of section 25.34 or a regulation made under this clause,

(x) requiring the IESO to provide information to the OPA or the Board for the purposes of section 25.34 or a regulation made under this clause. 2004, c. 23, Sched. A, s. 53 (8); 2009, c. 12, Sched. B, s. 14 (3-5).

Regulations, Part III

(1.4) The Lieutenant Governor in Council may make regulations,

(0.a) governing the connection of generation facilities to transmission systems and distribution systems for the purposes of section 25.36;

(0.a.1) governing information and reports with respect to a distribution system's or transmission system's ability to accommodate generation from a renewable energy generation facility for the purposes of section 25.37;

(a) prescribing any other information or material to be posted under subsection 36.2 (1);

(b) requiring additional notice for the purpose of subsection 36.2 (2) and prescribing any other information or material to be included with that notice and the manner and time or times of giving it;

(c) prescribing the period of time within which the Board may initiate a review of a reliability standard under subsection 36.2 (4);

(d) prescribing other matters to be considered for the purposes of subsection 36.2 (6);

(e) prescribing limitations for the purposes of subsection 36.3 (1). 2008, c. 7, Sched. G, s. 5 (3); 2009, c. 12, Sched. B, s. 14 (6).

General or particular

(2) A regulation made under subsection (1), (1.2) or (1.3) may be general or particular in its application. 1998, c. 15, Sched. A, s. 114 (2); 2004, c. 23, Sched. A, s. 53 (9).

(3) REPEALED: 2004, c. 23, Sched. A, s. 53 (10).

Transitional regulations

(4) A regulation made under clause (1) (p),

(a) may provide that it has retroactive application to a date not earlier than the day this section comes into force; and

(b) may provide that it applies despite this or any other general or special Act. 1998, c. 15, Sched. A, s. 114 (4).

Subdelegation

(5) A regulation under clause (1.2) (b) or (1.3) (f) or (h) may authorize a person to require, authorize, prescribe or otherwise determine any matter that may be required, authorized, prescribed or otherwise determined by the Lieutenant Governor in Council under that clause. 2004, c. 23, Sched. A, s. 53 (11).

Provision of information

(6) A person may do anything required by a regulation made under subclause (1.3) (f) (xii) or (xiii) or (h) (ix) or (x) despite any agreement to the contrary, the person is not liable for doing the thing in contravention of any agreement to the contrary, and doing the thing shall be deemed not to constitute a breach, termination, repudiation or frustration of any contract. 2004, c. 23, Sched. A, s. 53 (11).

Conflict with market rules

(7) In the event of a conflict, a regulation made under clause (1.3) (f) or (h) prevails over the market rules to the extent of the conflict. 2004, c. 23, Sched. A, s. 53 (11).

Transition, *Green Energy Act, 2009*

(8) The Lieutenant Governor in Council may make regulations governing transitional matters that, in the opinion of the Lieutenant Governor in Council, are necessary or desirable to facilitate the implementation of amendments to this Act arising from the enactment of the *Green Energy and Green Economy Act, 2009* and to facilitate the implementation of the *Green Energy Act, 2009*. 2009, c. 12, Sched. B, s. 14 (7).

PART IX.1
OWNERSHIP AND USE OF CORRIDOR LAND

INTERPRETATION

Definitions

114.1 In this Part,

"effective date" means the date on which section 23 of Schedule A to the *Reliable Energy and Consumer Protection Act, 2002* comes into force; ("date d'effet")

"Minister of Infrastructure" means the Minister of Infrastructure or such other member of the Executive Council as may be assigned under the *Executive Council Act* the powers and duties of the Minister of Infrastructure under this part; ("ministre de l'Infrastructure")

"statutory right to use corridor land" or "statutory right to use the land" means, in relation to corridor land, the right created by section 114.5 to use the land for a purpose described in that section. ("droit légal d'utiliser des biens-fonds réservés aux couloirs", "droit légal d'utiliser les biens-fonds") 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (2, 3).

OWNERSHIP AND USE

Transfer of corridor land to the Crown

114.2 (1) The fee simple interest in the following real property is hereby transferred to Her Majesty in right of Ontario:

1. All real property in Ontario that Hydro One Inc. or a subsidiary of Hydro One Inc. owned, directly or indirectly, in fee simple on the effective date that was used for the purposes of a transmission system on the effective date or was acquired before that date for the purposes of a transmission system.
2. All real property in Ontario that Hydro One Inc. or a subsidiary of Hydro One Inc. owned, directly or indirectly, in fee simple on the effective date that abuts real property described in paragraph 1. 2002, c. 1, Sched. A, s. 23.

Exceptions

(2) Buildings, structures and equipment on corridor land are not transferred to Her Majesty in right of Ontario by subsection (1). 2002, c. 1, Sched. A, s. 23.

Compensation

(3) No compensation of any kind is payable in respect of a transfer made by this section; however, the statutory right to use the land is given in exchange for the transfer. 2002, c. 1, Sched. A, s. 23.

Non-application of *Expropriations Act*

(4) The *Expropriations Act* does not apply with respect to a transfer made by this section or with respect to a subsequent transfer by Her Majesty in right of Ontario of the real property described in this section, despite section 2 of that Act. 2002, c. 1, Sched. A, s. 23.

Evidence of transfer

(5) In a document registered on title in a land titles office or registry office, a statement that real property described in the document was transferred to Her Majesty in right of Ontario by this section, and any other statement in the document relating to the transfer, shall be deemed to be conclusive evidence of the facts stated. 2002, c. 1, Sched. A, s. 23.

Effect of transfer to the Crown

114.3 (1) The transfer made by section 114.2 is binding on all persons and entities and,

(a) shall be deemed not to constitute a breach, termination, repudiation or frustration of any contract, including a contract of insurance;

(b) shall be deemed not to constitute an event of default or force majeure or a basis for any party to a contract to refuse to provide services under the contract;

(c) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(d) shall be deemed not to give rise to any right to terminate or repudiate a contract, licence, permit or other right; and

(e) shall be deemed not to give rise to any estoppel. 2002, c. 1, Sched. A, s. 23.

Same

(2) The transfer made by section 114.2 does not create any new cause of action in favour of,

(a) a holder of a debt instrument that was issued by Hydro One Inc. before the transfer; or

(b) a party to a contract with Hydro One Inc. or any of its subsidiaries that was entered into before the transfer. 2002, c. 1, Sched. A, s. 23.

Effect of transfer on leases, etc., affecting corridor land

114.4 (1) The transfer made by section 114.2 does not affect any right or interest of a person in the corridor land that is subordinate to the fee simple interest. 2002, c. 1, Sched. A, s. 23.

Same

(2) Despite the transfer made by section 114.2, Hydro One Inc. and its subsidiaries continue to have the benefit of, and be subject to all obligations under, any lease or agreement entered into or licence obtained before the effective date that affects corridor land or any easement or right created before the effective date with respect to corridor land. 2002, c. 1, Sched. A, s. 23.

Statutory right to use corridor land

114.5 (1) The person or entity from whom corridor land is transferred by section 114.2 has a right to use the land to operate a transmission system or distribution system. 2002, c. 1, Sched. A, s. 23.

Duty to maintain

(2) The person or entity who has the right created by subsection (1) has a duty to maintain the corridor land at his, her or its own expense, including repairing or replacing buildings, equipment and structures on the land that are used by the person or entity, or used with his, her or its permission, if a prudent person would repair or replace them. 2002, c. 1, Sched. A, s. 23.

Same

(3) The Minister of Infrastructure may direct the person or entity who has the right created by subsection (1) to engage in such additional activities to maintain the corridor land at his, her or its own expense as the Minister of Infrastructure considers appropriate. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Exception

(4) The person or entity who has the right created by subsection (1) is not required to maintain corridor land that is being used for a purpose other than the operation of a transmission system or distribution system, unless it is being used for that purpose with the permission of the person or entity. 2002, c. 1, Sched. A, s. 23.

Taxes, etc.

(5) The *Land Transfer Tax Act* and such other statutes or provisions of statutes or regulations as may be prescribed do not apply with respect to the right created by subsection (1). 2002, c. 1, Sched. A, s. 23.

Status of right

(6) The right created by subsection (1) is an easement. 2002, c. 1, Sched. A, s. 23.

Binding

(7) The right created by subsection (1) is binding on all persons and entities. 2002, c. 1, Sched. A, s. 23.

Evidence of right

(8) In a document registered on title in a land titles office or registry office, a statement that a person or entity has a right created by subsection (1) to use real property described in the document for the purposes described in subsection (1), and any other statement in the document relating to the right, shall be deemed to be conclusive evidence of the facts stated. 2002, c. 1, Sched. A, s. 23.

Payment to holder of right

(9) If Her Majesty in right of Ontario uses corridor land or if a person or entity to whom Her Majesty in right of Ontario transfers corridor land uses it, the Minister of Infrastructure shall make payments from the Consolidated Revenue Fund to the person or entity who has the right created by subsection (1) with respect to such incremental costs incurred by the person or entity in the operation of a transmission system or distribution system as may be prescribed by regulation. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Primacy of use for transmission or distribution system

114.6 (1) A person or entity who owns corridor land shall not use it in such a way that the level of service provided by a transmission or distribution system owned by the person or entity who has the statutory right to use the land is reduced. 2002, c. 1, Sched. A, s. 23.

Expansion of use for transmission system or distribution system

(2) If, under Part VI of the *Ontario Energy Board Act, 1998*, the Board authorizes a person or entity who has the statutory right to use corridor land to expand a transmission system or distribution system on the land, the Board may make an order described in this section if the Board considers it to be in the public interest to do so. 2002, c. 1, Sched. A, s. 23.

Order re other uses

(3) The Board may order the owner of the corridor land to restrict or discontinue any use of the land that interferes with the expansion of the transmission system or distribution system as authorized under Part VI of the *Ontario Energy Board Act, 1998*. 2002, c. 1, Sched. A, s. 23.

Restriction

(4) The Board shall not make an order under subsection (3) to restrict or discontinue a use of the land if the Board determines that the expansion of the transmission system or distribution system can be reasonably accommodated without the restriction or without discontinuing the use, as the case may be. 2002, c. 1, Sched. A, s. 23.

Order re incremental costs

(5) The Board may order the owner of the corridor land to reimburse the person or entity seeking the expansion of the transmission system or distribution system for such incremental costs as the Board considers appropriate that are incurred by the person or entity in order to accommodate the other uses of the land. 2002, c. 1, Sched. A, s. 23.

Effect of agreement

(6) If an owner of corridor land and the person or entity who has the statutory right to use the land enter into an agreement governing the expansion of a transmission system or distribution system on the land or the use of the land, the Board shall not make an order under this section that is inconsistent with the agreement. 2002, c. 1, Sched. A, s. 23.

Status of agreement

(7) An agreement described in subsection (6) may be registered on title in the applicable land titles office or registry office and, when it is registered, it is binding on all persons and entities. 2002, c. 1, Sched. A, s. 23.

Status of orders

(8) The *Ontario Energy Board Act, 1998* applies with respect to an order made under this section as if the order had been made under that Act. 2002, c. 1, Sched. A, s. 23.

Duty re use of corridor land

114.7 A person or entity who has the statutory right to use corridor land shall, to the extent practicable, ensure that the design and construction of any transmission system on the land maximizes the area available for other uses. 2002, c. 1, Sched. A, s. 23.

Directions re location of buildings, etc.

114.8 (1) The Minister of Infrastructure may give directions to a person or entity who has the statutory right to use corridor land in respect of the location on the land of any proposed building, structure or equipment or of any proposed expansion of a building, structure or equipment, and the person or entity shall comply with the directions. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Restriction

(2) The Minister of Infrastructure shall not give a direction under this section that would have the effect of reducing the level of service provided by a transmission or distribution system owned by the person or entity who has the statutory right to use the corridor land. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Duty to obtain authorizations, etc.

(3) A direction by the Minister of Infrastructure under this section does not relieve the person or entity from the obligation to obtain such authorizations and consents as may be required by law, and the person or entity shall make reasonable efforts to obtain them. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Compensation

(4) If the Minister of Infrastructure directs that the construction or expansion must be located in a different place than the person or entity proposed, the Minister of Infrastructure shall pay the reasonable incremental costs associated with the direction. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Procedural matters

(5) The person or entity who proposes to construct or expand a building, structure or equipment on corridor land shall comply with such requirements as may be prescribed concerning notice to the Minister of Infrastructure and information to be given to him or her. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Effect of non-compliance

(6) A person or entity who fails to comply with this section shall remove the building, structure or equipment when given notice to do so by the Minister of Infrastructure and shall do so at his, her or its own expense. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Relocation of buildings, etc.

114.9 (1) The Minister of Infrastructure may direct a person or entity who has the statutory right to use corridor land and who owns a building, structure or equipment located on the land to move it, and may impose conditions or restrictions with respect to the direction. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Restriction

(2) The Minister of Infrastructure shall not give a direction under this section that would have the effect of reducing the level of service provided by a transmission or distribution system owned by the person or entity who has the statutory right to use the corridor land. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Duty to obtain authorizations, etc.

(3) A direction by the Minister of Infrastructure under this section does not relieve the person or entity from the obligation to obtain such authorizations and consents as may be required by law to relocate the building, structure or equipment, and the person or entity shall make reasonable efforts to obtain them. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Compliance

(4) After obtaining all authorizations and consents otherwise required by law, the person or entity shall comply with the direction, and the Minister of Infrastructure shall pay the person's or entity's reasonable costs of complying with the direction. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Effect of non-compliance

(5) A person or entity who fails to comply with this section shall remove the building, structure or equipment when given notice to do so by the Minister of Infrastructure and shall do so at his, her or its own expense. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Cessation of use for transmission system, etc.

114.10 (1) This section applies if a person or entity who has the statutory right to use corridor land decides that the land is not needed for the purposes of a transmission system or distribution system. 2002, c. 1, Sched. A, s. 23.

Duty to notify

(2) The person or entity who has the statutory right to use the land shall give written notice to the Minister of Infrastructure that it is not needed for the purposes of a transmission system or distribution system. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Same

(3) The notice must contain such information as may be prescribed by regulation and must be given in a manner authorized by regulation. 2002, c. 1, Sched. A, s. 23.

Transfer of statutory right

(4) The Minister of Infrastructure may require the person or entity to transfer to Her Majesty in right of Ontario the statutory right to use the land described in the written notice. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Payment for transfer

(5) No amount is payable for the transfer of the statutory right required under subsection (4). 2002, c. 1, Sched. A, s. 23.

Taxes, etc.

(6) The *Land Transfer Tax Act* and such other statutes or provisions of statutes or regulations as may be prescribed do not apply with respect to a transfer required under subsection (4). 2002, c. 1, Sched. A, s. 23.

Disposition of statutory right

114.11 (1) A person or entity who has the statutory right to use corridor land may dispose of it and shall give prior written notice to the Minister of Infrastructure when disposing of the right. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Same

(2) The notice must contain such information as may be prescribed by regulation. 2002, c. 1, Sched. A, s. 23.

Restriction on expropriation by holder of statutory right

114.12 (1) A person or entity who has the statutory right to use corridor land is not permitted to expropriate the land under section 99 of the *Ontario Energy Board Act, 1998*. 2002, c. 1, Sched. A, s. 23.

Expropriation of statutory right

(2) Nothing in this Part restricts the expropriation under any Act of the statutory right to use corridor land. 2002, c. 1, Sched. A, s. 23.

Transfer of ownership by Crown to person with statutory right

114.13 (1) The Minister of Infrastructure, on behalf of Her Majesty in right of Ontario, may transfer the fee simple interest in all or any part of the corridor land to a person or entity who has the statutory right to use the land and the Minister of Infrastructure may do so with or without the consent of the person or entity. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Restriction re encumbrances

(2) The Minister of Infrastructure shall not make a transfer under subsection (1) if the corridor land is subject to encumbrances created with the consent of Her Majesty in right of Ontario that are greater than those to which it was subject on the effective date, unless the person or entity who has the statutory right to use the land consents to the transfer. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Restriction re condition of land

(3) The Minister of Infrastructure shall not make a transfer under subsection (1) if the condition of the corridor land has been significantly changed since the effective date with the consent of Her Majesty in right of Ontario, unless the person or entity who has the statutory right to use the land consents to the transfer. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Payment for transfer

(4) The amount payable by the person or entity for the transfer is the fair market value of the corridor land on the effective date. 2002, c. 1, Sched. A, s. 23.

Termination of right

(5) Immediately before the transfer, the statutory right of the person or entity under this Part to use the land is terminated. 2002, c. 1, Sched. A, s. 23.

Payment for termination of right

(6) The amount payable to the person or entity upon the termination of the statutory right is the fair market value of the corridor land on the effective date. 2002, c. 1, Sched. A, s. 23.

Taxes, etc.

(7) The *Land Transfer Tax Act* and such other statutes or provisions of statutes or regulations as may be prescribed do not apply with respect to the transfer described in subsection (1) or the termination of the right. 2002, c. 1, Sched. A, s. 23.

GENERAL

Duty to provide records, information and reports

114.14 (1) A person or entity who has an interest in, or has entered into an agreement to use, corridor land or a building, structure or equipment located on corridor land shall give the Minister of Infrastructure, upon request, such records, information and reports as he or she may specify with respect to the land and the use of the land, building, structure or equipment and shall do so within the time specified by the Minister of Infrastructure. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Use of records, information and reports

(2) The Minister of Infrastructure may use records, information and reports obtained under this section for the purpose of administering and enforcing this Part. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Residual power of the Crown

114.15 (1) This Part does not restrict the authority of Her Majesty in right of Ontario to acquire, hold, dispose of or otherwise deal with corridor land. 2002, c. 1, Sched. A, s. 23.

Exception

(2) Subsection (1) does not authorize Her Majesty in right of Ontario to deal with corridor land contrary to section 114.6. 2002, c. 1, Sched. A, s. 23.

Indemnity re corridor land

114.16 (1) Hydro One Inc. shall indemnify Her Majesty in right of Ontario for any losses, damages or costs incurred by Her Majesty in right of Ontario,

(a) that arise from an order, direction or award made under a statute of Ontario or Canada in respect of corridor land or that relate to a proceeding in respect of corridor land; and

(b) that are a direct or indirect result of an act or omission by any person before the effective date. 2002, c. 1, Sched. A, s. 23.

Same

(2) Hydro One Inc. shall indemnify a person or entity to whom Her Majesty in right of Ontario transfers corridor land for any losses, damages or costs incurred by the person or entity,

(a) that arise from an order, direction or award made under a statute of Ontario or Canada in respect of the land or that relate to a proceeding in respect of the land; and

(b) that are a direct or indirect result of an act or omission by any person before the effective date. 2002, c. 1, Sched. A, s. 23.

Same, by holder of statutory right

(3) A person or entity who has the statutory right to use corridor land shall indemnify the owner of the land for any losses, damages or costs incurred by the owner,

(a) that arise from an order, direction or award made under a statute of Ontario or Canada in respect of the land or that relate to a proceeding in respect of the land; and

(b) that are a direct or indirect result of an act or omission by,

(i) the person or entity,

(ii) an employee or agent of the person or entity,

(iii) a person or entity who previously held the statutory right to use the land, or

(iv) another person or entity who was invited or permitted to use the land by the person or entity who holds, or held, the statutory right to use it. 2002, c. 1, Sched. A, s. 23.

Delegation of powers and duties

114.17 (1) The Minister of Infrastructure may delegate his or her powers and duties under any of the following provisions to any person or entity, subject to such conditions as the Minister of Infrastructure may impose:

1. Subsection 114.5 (3).
2. Subsection 114.8 (1) or (6) or both.
3. Subsection 114.9 (1) or (5) or both.
4. Subsection 114.13 (1).
5. Section 114.14. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Assignment of powers and duties

(2) The Minister of Infrastructure may assign his or her powers and duties under any of the provisions listed in subsection (1) to any person or entity, subject to such conditions as the Minister of Infrastructure may impose. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Effect

(3) Despite the *Executive Council Act*, an agreement that is signed by a person or entity authorized to do so by a delegation or an assignment made under this section has the same effect as if the agreement had been signed by the Minister of Infrastructure. 2002, c. 1, Sched. A, s. 23; 2011, c. 9, Sched. 27, s. 23 (4).

Regulations

114.18 (1) The Lieutenant Governor in Council may make regulations,

(a) prescribing one or more statutes, provisions of statutes or regulations for the purposes of subsection 114.5 (5), 114.10 (6) or 114.13 (7);

(b) prescribing incremental costs for the purposes of subsection 114.5 (9);

(c) prescribing the information to be included in a notice given under subsection 114.10 (3) and prescribing the manner in which the notice must be given;

(d) prescribing the information to be included in a notice given under section 114.11. 2002, c. 1, Sched. A, s. 23.

General or particular

(2) A regulation may be general or particular. 2002, c. 1, Sched. A, s. 23.

PART X
TRANSITION — ONTARIO HYDRO

Definitions, Part X

115. In this Part,

"transfer order" means an order made under section 116; ("décret de transfert ou de mutation")

"transferee" means a person to whom officers, employees, assets, liabilities, rights or obligations are transferred by a transfer order. ("destinataire") 1998, c. 15, Sched. A, s. 115.

Transfer orders

116. (1) The Lieutenant Governor in Council may make orders transferring officers, employees, assets, liabilities, rights and obligations of Ontario Hydro to Hydro One Inc., Ontario Power Generation Inc., the IESO, the Board, the Electrical Safety Authority, the subsidiary of the Financial Corporation established under section 110, Her Majesty in right of Ontario or any other person. 1998, c. 15, Sched. A, s. 116 (1); 2002, c. 1, Sched. A, s. 24 (1); 2004, c. 23, Sched. A, s. 54 (1).

Binding on all persons

(2) A transfer order is binding on Ontario Hydro, the transferee and all other persons. 1998, c. 15, Sched. A, s. 116 (2).

Same

(3) Subsection (2) applies despite any general or special Act or any rule of law, including an Act or rule of law that requires notice or registration of transfers. 1998, c. 15, Sched. A, s. 116 (3).

No consent required

(4) A transfer order does not require the consent of Ontario Hydro, the transferee or any other person. 1998, c. 15, Sched. A, s. 116 (4).

Same

(5) Despite subsection (4), the consent of the transferee is required if the transferee is a person other than,

(a) Hydro One Inc. or a subsidiary of it;

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) is repealed by the Statutes of Ontario, 2002, chapter 1, Schedule A, subsection 24 (3). See: 2002, c. 1, Sched. A, ss. 24 (3), 31 (3).

(b) Ontario Power Generation Inc. or a subsidiary of it;

(c) the IESO;

(d) the Board;

(e) the Electrical Safety Authority;

(f) the subsidiary of the Financial Corporation established under section 110; or

(g) Her Majesty in right of Ontario. 1998, c. 15, Sched. A, s. 116 (5); 2002, c. 1, Sched. A, s. 24 (2); 2004, c. 23, Sched. A, s. 54 (2).

***Legislation Act, 2006*, Part III**

(6) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a transfer order. 1998, c. 15, Sched. A, s. 116 (6); 2006, c. 21, Sched. F, s. 136 (1).

Notice of date

117. (1) The Minister shall, within 90 days after the date that a transfer order is made or amended, publish notice of the date in *The Ontario Gazette*. 1998, c. 15, Sched. A, s. 117 (1).

Amendments

(2) Notice of the date that a transfer order was amended shall identify the transfer order that was amended. 1998, c. 15, Sched. A, s. 117 (2).

Non-compliance

(3) Non-compliance with this section does not affect the validity of a transfer order or any amendment to a transfer order. 1998, c. 15, Sched. A, s. 117 (3).

Description of things transferred

118. A transfer order may describe officers, employees, assets, liabilities, rights or obligations to be transferred,

(a) by reference to specific officers, employees, assets, liabilities, rights or obligations;

(b) by reference to any class of officers, employees, assets, liabilities, rights or obligations; or

(c) partly in accordance with clause (a) and partly in accordance with clause (b). 1998, c. 15, Sched. A, s. 118.

Approvals under the *Power Corporation Act*

119. If the approval of the Lieutenant Governor in Council was at any time required under the *Power Corporation Act* or a predecessor of that Act with respect to an asset, liability, right or obligation that is to be transferred by or pursuant to a transfer order, the approval shall be deemed to have been given. 1998, c. 15, Sched. A, s. 119.

Officers and employees

120. (1) The office or employment of an officer or employee who is transferred by or pursuant to a transfer order is not terminated by the transfer and shall be deemed to have been transferred to the transferee without interruption in service. 1998, c. 15, Sched. A, s. 120 (1).

Service

(2) Service with Ontario Hydro of an officer or employee who is transferred by or pursuant to a transfer order shall be deemed to be service with the transferee for the purpose of determining probationary periods, benefits or any other employment-related entitlements under the *Employment Standards Act* or any other Act or under any employment contract or collective agreement. 1998, c. 15, Sched. A, s. 120 (2).

No constructive dismissal

(3) An officer or employee who is transferred by or pursuant to a transfer order shall be deemed not to have been constructively dismissed. 1998, c. 15, Sched. A, s. 120 (3).

Future changes

(4) If an officer or employee is transferred by or pursuant to a transfer order, nothing in this Act,

(a) prevents the office or employment from being lawfully terminated after the transfer; or

(b) prevents any term or condition of the office or employment from being lawfully changed after the transfer. 1998, c. 15, Sched. A, s. 120 (4).

Payment for transfer

121. (1) A transfer order may require Ontario Hydro or the transferee to pay for anything transferred by or pursuant to the order and may specify to whom the payment shall be made. 1998, c. 15, Sched. A, s. 121 (1).

Amount of payment

(2) The transfer order may,

(a) fix the amount of the payment;

(b) specify a method for determining the amount of the payment; or

(c) provide that the amount of the payment be determined by the Minister of Finance or a person designated by the Minister of Finance. 1998, c. 15, Sched. A, s. 121 (2).

Form of payment

(3) The transfer order may require that the payment be made in cash, by set off, through the issuance of securities or in any other form specified by the order. 1998, c. 15, Sched. A, s. 121 (3).

Securities

(4) If the transfer order requires that the payment be made through the issuance of securities, it may specify the terms and conditions of the securities or may authorize the Minister of Finance or a person designated by the Minister of Finance to specify the terms and conditions. 1998, c. 15, Sched. A, s. 121 (4).

Valuations

(5) A transfer order may,

(a) fix the value of anything transferred by or pursuant to the order;

(b) specify a method for determining the value of anything transferred by or pursuant to the order; or

(c) provide that the value of anything transferred by or pursuant to the order be determined by the Minister of Finance or a person designated by the Minister of Finance. 1998, c. 15, Sched. A, s. 121 (5).

Province may assume obligations in return for securities

122. (1) If, pursuant to a transfer order, Hydro One Inc. or Ontario Power Generation Inc. issues securities to Ontario Hydro, the Lieutenant Governor in Council, by order,

(a) may authorize Her Majesty in right of Ontario or an agent of Her Majesty in right of Ontario to assume obligations of Hydro One Inc. or Ontario Power Generation Inc. under the securities; and

(b) may require Hydro One Inc. or Ontario Power Generation Inc. to issue, and may authorize Her Majesty in right of Ontario or an agent of Her Majesty in right of Ontario to acquire, additional securities in such amount as the Lieutenant Governor in Council may specify. 1998, c. 15, Sched. A, s. 122 (1); 2002, c. 1, Sched. A, s. 25 (1).

Exchange of securities

(2) The Lieutenant Governor in Council may by order require Hydro One Inc. or Ontario Power Generation Inc. to issue securities to Ontario Hydro in exchange for securities it previously issued to Ontario Hydro pursuant to a transfer order. 1998, c. 15, Sched. A, s. 122 (2); 2002, c. 1, Sched. A, s. 25 (2).

Application of s. 28 of the *Financial Administration Act*

(3) Section 28 of the *Financial Administration Act* does not apply to anything done pursuant to an order under subsection (1) or (2). 1998, c. 15, Sched. A, s. 122 (3).

Terms and conditions of securities

(4) An order under subsection (1) or (2) may specify the terms and conditions of the securities issued under clause (1) (b) or subsection (2) or may authorize the Minister of Finance or a person designated by the Minister of Finance to specify the terms and conditions. 1998, c. 15, Sched. A, s. 122 (4).

Money required

(5) Money required for the purpose of meeting obligations assumed by Her Majesty under clause (1) (a) may be paid out of the Consolidated Revenue Fund. 1998, c. 15, Sched. A, s. 122 (5).

Non-application

(6) Clause (1) (b) and subsection (2) cease to apply with respect to Hydro One Inc. on the date specified in the regulations. 2002, c. 1, Sched. A, s. 25 (3).

Effective date of transfer

123. (1) A transfer order may specify the date that a transfer takes effect and any interest in property that is transferred by the order vests in the transferee on that date. 1998, c. 15, Sched. A, s. 123 (1).

Effective on payment

(2) A transfer order may provide that a transfer not take effect until payment has been made for anything transferred by or pursuant to the order. 1998, c. 15, Sched. A, s. 123 (2).

Retroactive transfer

(3) A transfer order may provide that a transfer shall be deemed to have taken effect on a date earlier than the date the transfer order is made, but the effective date shall not be earlier than the day this section comes into force. 1998, c. 15, Sched. A, s. 123 (3).

Sequence of events

(4) A transfer order may provide that transfers specified in the order and other transactions associated with the transfers shall be deemed to have occurred in a sequence and at times specified in the order. 1998, c. 15, Sched. A, s. 123 (4).

Statements in registered documents

124. (1) A statement, in a registered document to which a person referred to in subsection (2) is a party, that land described in the document was transferred to the person from Ontario Hydro by or pursuant to a transfer order, and any other statement in the document relating to the transfer order, shall be deemed to be conclusive evidence of the facts stated. 1998, c. 15, Sched. A, s. 124 (1).

Persons referred to in subs. (1)

(2) The persons referred to in subsection (1) are:

1. Hydro One Inc. or a subsidiary of it.
2. Ontario Power Generation Inc. or a subsidiary of it.
3. The IESO.
4. The Board.
5. The subsidiary of the Financial Corporation established under section 110.
6. Her Majesty in right of Ontario.
7. The Electrical Safety Authority.
8. Any other person prescribed by the regulations. 1998, c. 15, Sched. A, s. 124 (2); 2002, c. 1, Sched. A, s. 26; 2004, c. 23, Sched. A, s. 55.

No new interest

(3) Subsection (1) does not give any person an interest in land that Ontario Hydro did not have. 1998, c. 15, Sched. A, s. 124 (3).

References to unregistered transfer orders

(4) A document that is otherwise capable of being registered or deposited under the *Registry Act* or registered under the *Land Titles Act* and that refers to an unregistered transfer order may be registered or deposited under the *Registry Act* or registered under the *Land Titles Act* despite any provision of those Acts. 1998, c. 15, Sched. A, s. 124 (4).

Definitions

(5) In this section,

"land" means land, tenements, hereditaments and appurtenances, or any estate or interest therein; ("bien-fonds")

"registered document" means a document registered or deposited under the *Registry Act* or registered under the *Land Titles Act*. ("document enregistré") 1998, c. 15, Sched. A, s. 124 (5).

Execution of agreements

125. (1) A transfer order may require Ontario Hydro or a transferee,

(a) to enter into any written agreement or execute any instrument specified in the order; and

(b) to register in accordance with the order any agreement or instrument entered into or executed under clause (a). 1998, c. 15, Sched. A, s. 125 (1).

Exception

(2) Subsection (1) does not apply to a transfer agreement referred to in subsection 111 (1). 1998, c. 15, Sched. A, s. 125 (2).

Enforcement of things transferred

126. (1) A transfer order may provide,

(a) that any liability or obligation that is transferred by the order may be enforced against Ontario Hydro, the transferee, or both of them;

(b) that any right that is transferred by the order may be enforced by Ontario Hydro, the transferee, or both of them;

(c) that any liability or obligation that is transferred by the order may be transferred to one or more transferees on a joint and several basis, as specified in the order; and

(d) that any liability or obligation that is transferred by the order may be allocated among two or more transferees on the basis set out in the order. 1998, c. 15, Sched. A, s. 126 (1); 2000, c. 42, s. 42.

Release of Ontario Hydro

(2) Subject to subsection (1), the transfer of a liability or obligation under this Part releases Ontario Hydro from the liability or obligation. 1998, c. 15, Sched. A, s. 126 (2).

Actions and other proceedings

127. Subject to section 126, any action or other proceeding that was commenced by or against Ontario Hydro before a transfer order takes effect and that relates to an officer, employee, asset, liability, right or obligation that is transferred by the order shall be continued by or against the transferee. 1998, c. 15, Sched. A, s. 127.

Limitation periods

128. An action or other proceeding shall not be commenced against a transferee in respect of any officer, employee, asset, liability, right or obligation that has been transferred to the transferee if, had there been no transfer, the time for commencing the action or other proceeding would have expired. 1998, c. 15, Sched. A, s. 128.

Certain rights not affected by transfer

129. (1) A transfer by or pursuant to a transfer order,

(a) shall be deemed not to constitute,

(i) a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance,

(ii) a breach of any Act, regulation or municipal by-law, or

(iii) an event of default or force majeure;

(b) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(c) shall be deemed not to give rise to any right to terminate or repudiate a contract, licence, permit or other right; and

(d) shall be deemed not to give rise to any estoppel. 1998, c. 15, Sched. A, s. 129 (1).

Exemptions

(2) Subsection (1) does not apply to the contracts prescribed by the regulations. 1998, c. 15, Sched. A, s. 129 (2).

No new cause of action

130. Subject to subsection 129 (2), nothing in this Act and nothing done by or pursuant to a transfer order creates any new cause of action in favour of,

(a) a holder of a debt instrument that was issued by Ontario Hydro and guaranteed by the Province of Ontario before this section comes into force; or

(b) a party to a contract with Ontario Hydro that was entered into before this section comes into force. 1998, c. 15, Sched. A, s. 130.

Conditions on exercise of powers

131. A transfer order may impose conditions on the exercise of powers by the transferee that are related to officers, employees, assets, liabilities, rights or obligations transferred by the transfer order, including a condition that the powers be exercised only with the approval of the Board. 1998, c. 15, Sched. A, s. 131.

Information

132. Ontario Hydro shall provide a transferee with records or copies of records, and other information, that are in its custody or control and that relate to an officer, employee, asset, liability, right or obligation that is transferred by or pursuant to a transfer order, including personal information. 1998, c. 15, Sched. A, s. 132.

Transfer orders, other matters

133. A transfer order may contain provisions dealing with other matters not specifically referred to in this Part that the Lieutenant Governor in Council considers necessary or advisable in connection with a transfer. 1998, c. 15, Sched. A, s. 133.

Amendment of transfer order

134. The Lieutenant Governor in Council may, at any time within 24 months after making a transfer order, make a further order amending the transfer order in any way that the Lieutenant Governor in Council considers necessary or advisable. 1998, c. 15, Sched. A, s. 134; 2002, c. 1, Sched. A, s. 27 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, section 134 is amended by the Statutes of Ontario, 2002, chapter 1, Schedule A, subsection 27 (2) by adding the following subsection:

Same

(2) This Part applies, with necessary modifications, to an amendment as if it were a new transfer order.

See: 2002, c. 1, Sched. A, ss. 27 (2), 31 (3).

Exemptions from other Acts

135. The *Bulk Sales Act*, the *Land Transfer Tax Act*, the *Retail Sales Tax Act* and such other Acts or provisions as are prescribed by the regulations do not apply to any transfer of officers, employees, assets, liabilities, rights or obligations by or pursuant to a transfer order. 1998, c. 15, Sched. A, s. 135.

Limitations

136. (1) If possession of land transferred by or pursuant to a transfer order has been taken by another person, the right of Ontario Hydro or the transferee, or anyone claiming under them, to recover it, is not barred by reason of the lapse of time, despite the *Real Property Limitations Act* or any other Act, or by reason of any claim based on possession adverse to it for any period of time that might otherwise be made lawfully at common law, unless it is shown that it had actual notice in writing of the adverse possession, and such notice was had by it 10 years before it or the person claiming under it commenced action to recover the land. 1998, c. 15, Sched. A, s. 136 (1); 2002, c. 24, Sched. B, s. 33 (1).

Same

(2) No claim under subsection (1) shall be acquired by possession, prescription, custom, user or implied grant to any way, easement, watercourse or use of water or water right or privilege or flooding privilege of Ontario Hydro or the transferee, or to any way, easement, watercourse, or use of water, or right of drainage along, over, upon, on or from any land, or water, or water right, or privilege of Ontario Hydro or the transferee, despite the *Real Property Limitations Act* or any other Act or any claim at common law based on lapse of time, or length of enjoyment or use. 1998, c. 15, Sched. A, s. 136 (2); 2002, c. 24, Sched. B, s. 33 (2).

Pensions

137. (1) A transfer order shall not include any provision relating to,

(a) the Ontario Hydro Pension and Insurance Plan or the Pension and Insurance Fund of Ontario Hydro, referred to in section 24 of the *Power Corporation Act*, as continued by Part VII of this Act; or

(b) the pension benefits and ancillary benefits within the meaning of the *Pension Benefits Act* that are provided under a pension plan with respect to officers or employees transferred by or pursuant to a transfer order. 1998, c. 15, Sched. A, s. 137 (1).

Exception

(2) Despite clause (1) (a), a transfer order may include provisions relating to the following matters:

1. The disability benefits and life insurance described in subsection 98 (7) and the amount referred to in subsection 98 (8).
2. Any liability or obligation associated with a proceeding or potential proceeding relating to the Ontario Hydro Pension and Insurance Plan and the Pension and Insurance Fund of Ontario Hydro or relating to the Ontario Hydro Financial Corporation Pension Plan and the pension fund for it. 1998, c. 15, Sched. A, s. 137 (2).

Other transfer orders

Pension subsidiary of Financial Corporation

138. (1) The Lieutenant Governor in Council may make orders transferring officers, employees, assets, liabilities, rights and obligations of the subsidiary of the Financial Corporation established under section 110 to Hydro One Inc., Ontario Power Generation Inc., the IESO, the Board, the Electrical Safety Authority or any other person. 1998, c. 15, Sched. A, s. 138 (1); 2002, c. 1, Sched. A, s. 28 (1); 2004, c. 23, Sched. A, s. 56 (1).

Financial Corporation assets, etc.

(1.1) The Lieutenant Governor in Council may make orders transferring the following assets, liabilities, rights and obligations to Hydro One Inc., Ontario Power Generation Inc., the IESO, the Electrical Safety Authority or any other person:

1. Assets, liabilities, rights and obligations of, or relating to, the Ontario Hydro Pension and Insurance Plan and the Pension and Insurance Fund of Ontario Hydro.
2. Assets, liabilities, rights and obligations of, or relating to, the Ontario Hydro Financial Corporation Pension Plan and the Ontario Hydro Financial Corporation Pension Fund.
3. Assets, liabilities, rights and obligations of the Financial Corporation relating to an act or omission by the Financial Corporation in connection with its rights or duties under Part VII or by any other person in connection with the person's rights or duties under that Part. 2000, c. 42, s. 43 (1); 2002, c. 1, Sched. A, s. 28 (2); 2004, c. 23, Sched. A, s. 56 (2).

Restriction on scope of order

(1.2) An order under subsection (1.1) shall not contain a provision that conflicts with a provision of an agreement entered into under section 111. 2000, c. 42, s. 43 (1).

Applications of this Part

(2) This Part, except section 137, applies with necessary modifications to an order made under subsection (1) or (1.1) and, for that purpose,

(a) a reference in this Part to a transfer order shall be deemed to be a reference to an order made under subsection (1) or (1.1), as the case may be;

(b) a reference in this Part to Ontario Hydro in connection with an order made under subsection (1) shall be deemed to be a reference to the subsidiary of the Financial Corporation established under section 110; and

(c) a reference in this Part to Ontario Hydro in connection with an order made under subsection (1.1) shall be deemed to be a reference to the Financial Corporation. 2000, c. 42, s. 43 (2).

Provincial liability not limited

139. The liability of the Province of Ontario as guarantor of a security or other liability of Ontario Hydro pursuant to a written guarantee given by the Province before this section comes into force is not limited by anything in this Act or by any transfer by or pursuant to a transfer order. 1998, c. 15, Sched. A, s. 139.

Regulations, Part X

140. (1) The Lieutenant Governor in Council may make regulations,

(a) supplementing the provisions of this Part and governing the transfer of officers, employees, assets, liabilities, rights and obligations under this Part;

(a.1) prescribing a date for the purposes of subsection 122 (6);

(b) prescribing persons for the purpose of paragraph 8 of subsection 124 (2);

(c) prescribing contracts or classes of contracts to which subsection 129 (1) does not apply, subject to such conditions or restrictions as may be prescribed by the regulations;

(d) prescribing Acts or provisions of Acts that do not apply to a transfer for the purpose of section 135, subject to such conditions or restrictions as may be prescribed by the regulations. 1998, c. 15, Sched. A, s. 140 (1); 2002, c. 1, Sched. A, s. 29.

General or particular

(2) A regulation made under this section may be general or particular in its application. 1998, c. 15, Sched. A, s. 140 (2).

PART XI
TRANSITION — MUNICIPAL ELECTRICITY UTILITIES

Interpretation, Part XI

141. (1) In this Part,

"transfer by-law" means a by-law made under section 145; ("règlement municipal de transfert ou de mutation")

"transferee" means the corporation incorporated under the *Business Corporations Act* pursuant to section 142; ("destinataire")

"transferor" means the municipal corporation, commission or other body whose employees, assets, liabilities, rights or obligations are transferred pursuant to a transfer by-law. ("auteur") 1998, c. 15, Sched. A, s. 141 (1).

Same

(2) For the purposes of this Part, a municipal corporation generates, transmits, distributes or retails electricity indirectly if it carries on any of those activities through,

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

(b) any other body, however established. 1998, c. 15, Sched. A, s. 141 (2).

Incorporation of municipal electricity businesses

142. (1) One or more municipal corporations may cause a corporation to be incorporated under the *Business Corporations Act* for the purpose of generating, transmitting, distributing or retailing electricity. 1998, c. 15, Sched. A, s. 142 (1).

Holding companies

(1.1) A corporation that one or more municipal corporations caused to be incorporated under the *Business Corporations Act* after November 6, 1998 and before May 2, 2003 to acquire, hold, dispose of and otherwise deal with shares of a corporation that was incorporated pursuant to this section shall be considered to be a corporation incorporated pursuant to this section. 2004, c. 31, Sched. 11, s. 7.

Conversion of existing electricity businesses

(2) Not later than the second anniversary of the day this section comes into force, every municipal corporation that generates, transmits, distributes or retails electricity, directly or indirectly, shall cause a corporation to be incorporated under subsection (1) for the purpose of carrying on those activities. 1998, c. 15, Sched. A, s. 142 (2).

Two or more municipal corporations

(3) Two or more municipal corporations may incorporate a single corporation for the purpose of complying with subsection (2). 1998, c. 15, Sched. A, s. 142 (3).

Ownership

(4) The municipal corporation or corporations that incorporate a corporation pursuant to this section shall subscribe for all the initial shares issued by the corporation that are voting securities. 1998, c. 15, Sched. A, s. 142 (4).

Same

(5) A municipal corporation may acquire, hold, dispose of and otherwise deal with shares of a corporation incorporated pursuant to this section that carries on business in the municipality. 2002, c. 1, Sched. A, s. 30.

Not a local board, etc.

(6) A corporation incorporated pursuant to this section shall be deemed not to be a local board, public utilities commission or hydro-electric commission for the purposes of any Act. 1998, c. 15, Sched. A, s. 142 (6).

(7) REPEALED: 2004, c. 23, Sched. A, s. 57.

No new commissions

143. Except as provided by section 142, a municipal corporation shall not, after section 142 comes into force,

(a) establish a commission or other body to generate, transmit, distribute or retail electricity; or

(b) authorize a commission or other body that was established before section 142 came into force to generate, transmit, distribute or retail electricity, if the commission or other body was not authorized to carry on that activity immediately before section 142 came into force. 1998, c. 15, Sched. A, s. 143.

Restriction on municipal electricity activity

144. (1) After the second anniversary of the day section 142 comes into force, a municipal corporation shall not generate, transmit, distribute or retail electricity, directly or indirectly, except through a corporation incorporated under the *Business Corporations Act* pursuant to section 142. 1998, c. 15, Sched. A, s. 144.

Exception, renewable energy generation facilities

(2) Despite subsection (1) and section 143, a municipal corporation, a municipal service board, a city board or municipal services corporation may, subject to the prescribed rules, generate electricity by means other than through a corporation incorporated under the *Business Corporations Act* if,

(a) the generation facility is a renewable energy generation facility that does not exceed 10 megawatts or such other capacity as may be prescribed by regulation; or

(b) the generation facility meets the prescribed criteria. 2009, c. 12, Sched. B, s. 15.

Definition

(3) In this section,

"municipal services corporation" means a corporation established by a municipal corporation under section 203 of the *Municipal Act, 2001* or under section 148 of the *City of Toronto Act, 2006*. 2009, c. 12, Sched. B, s. 15.

Transfer by-laws

145. (1) The council of a municipality may make by-laws transferring employees, assets, liabilities, rights and obligations of the municipal corporation, or of a commission or other body through which the municipal corporation generates, transmits, distributes or retails electricity, to a corporation incorporated under the *Business Corporations Act* pursuant to section 142 for a purpose associated with the generation, transmission, distribution or retailing of electricity by the corporation incorporated pursuant to section 142. 1998, c. 15, Sched. A, s. 145 (1).

Debentures

(2) Despite subsection (1), a transfer by-law may not transfer any liabilities, rights or obligations arising under a debenture issued or authorized to be issued by a municipal corporation. 1998, c. 15, Sched. A, s. 145 (2).

Binding on all persons

(3) A transfer by-law is binding on the transferee, the transferor and all other persons. 1998, c. 15, Sched. A, s. 145 (3).

Same

(4) Subsection (3) applies despite any general or special Act or any rule of law, including an Act or rule of law that requires notice or registration of transfers. 1998, c. 15, Sched. A, s. 145 (4).

No consent required

(5) A transfer by-law does not require the consent of the transferor, the transferee or any other person. 1998, c. 15, Sched. A, s. 145 (5).

Description of things transferred

146. A transfer by-law may describe employees, assets, liabilities, rights or obligations to be transferred,

(a) by reference to specific employees, assets, liabilities, rights or obligations;

(b) by reference to any class of employees, assets, liabilities, rights or obligations; or

(c) partly in accordance with clause (a) and partly in accordance with clause (b). 1998, c. 15, Sched. A, s. 146.

Employees

147. (1) The employment of an employee who is transferred by or pursuant to a transfer by-law is not terminated by the transfer and shall be deemed to have been transferred to the transferee without interruption in service. 1998, c. 15, Sched. A, s. 147 (1).

Service

(2) Service with the transferor of an employee who is transferred by or pursuant to a transfer by-law shall be deemed to be service with the transferee for the purpose of determining probationary periods, benefits or any other employment-related entitlements under the *Employment Standards Act* or any other Act or under any employment contract or collective agreement. 1998, c. 15, Sched. A, s. 147 (2).

No constructive dismissal

(3) An employee who is transferred by or pursuant to a transfer by-law shall be deemed not to have been constructively dismissed. 1998, c. 15, Sched. A, s. 147 (3).

Future changes

(4) If an employee is transferred by or pursuant to a transfer by-law, nothing in this Act,

(a) prevents the employment from being lawfully terminated after the transfer; or

(b) prevents any term or condition of the employment from being lawfully changed after the transfer. 1998, c. 15, Sched. A, s. 147 (4).

Reserve funds

148. (1) If employees or assets are transferred by or pursuant to a transfer by-law, the by-law or another transfer by-law shall transfer to the transferee,

(a) the portion of any reserve fund established under section 33 of the *Development Charges Act, 1997* that relates to development charges collected in respect of electrical power services; and

(b) the portion of any reserve fund referred to in section 63 of the *Development Charges Act, 1997* that relates to development charges collected in respect of electrical power services. 1998, c. 15, Sched. A, s. 148 (1).

Use of amount transferred

(2) Any amount transferred under subsection (1) shall be used by the transferee only to pay for capital costs in respect of electrical power services for which the amount transferred was collected. 1998, c. 15, Sched. A, s. 148 (2).

Effect on municipal by-law

(3) A municipal by-law that relates to development charges in respect of which an amount is transferred under subsection (1) ceases to apply in respect of electrical power services on the date of the transfer but otherwise continues to have effect, with necessary modifications. 1998, c. 15, Sched. A, s. 148 (3).

Payment for transfer

149. (1) A transfer by-law may require the transferor or the transferee to pay for anything transferred by or pursuant to the by-law and may specify to whom the payment shall be made. 1998, c. 15, Sched. A, s. 149 (1).

Amount of payment

(2) The transfer by-law may,

(a) fix the amount of the payment;

(b) specify a method for determining the amount of the payment; or

(c) provide that the amount of the payment be determined by a person designated by the by-law. 1998, c. 15, Sched. A, s. 149 (2).

Form of payment

(3) The transfer by-law may require that the payment be made in cash, by set off, through the issuance of securities or in any other form specified by the by-law. 1998, c. 15, Sched. A, s. 149 (3).

Securities

(4) If the transfer by-law requires that the payment be made through the issuance of securities, it may specify the terms and conditions of the securities or may authorize a person designated by the by-law to specify the terms and conditions. 1998, c. 15, Sched. A, s. 149 (4).

Valuations

(5) A transfer by-law may,

(a) fix the value of anything transferred by or pursuant to the by-law;

(b) specify a method for determining the value of anything transferred by or pursuant to the by-law; or

(c) provide that the value of anything transferred by or pursuant to the by-law be determined by a person designated by the by-law. 1998, c. 15, Sched. A, s. 149 (5).

Effective date of transfer

150. (1) A transfer by-law may specify a date not later than the second anniversary of the day section 142 comes into force as the date that a transfer takes effect and any interest in property that is transferred by the by-law vests in the transferee on that date. 1998, c. 15, Sched. A, s. 150 (1).

Effective on payment

(2) A transfer by-law may provide that a transfer not take effect until payment has been made for anything transferred by or pursuant to the by-law. 1998, c. 15, Sched. A, s. 150 (2).

Retroactive transfer

(3) A transfer by-law may provide that a transfer shall be deemed to have taken effect on a date earlier than the date the transfer by-law is made, but the effective date shall not be earlier than the day this section comes into force. 1998, c. 15, Sched. A, s. 150 (3).

Sequence of events

(4) A transfer by-law may provide that transfers specified in the by-law and other transactions associated with the transfers shall be deemed to have occurred in a sequence and at times specified in the by-law. 1998, c. 15, Sched. A, s. 150 (4).

Statements in registered documents

151. (1) A statement, in a registered document to which a corporation incorporated under the *Business Corporations Act* pursuant to section 142 is a party, that land described in the document was transferred to the corporation, by or pursuant to a transfer by-law, from a municipal corporation or from a commission or other body through which a municipal corporation generated, transmitted, distributed or retailed electricity, and any other statement in the document relating to the transfer by-law, shall be deemed to be conclusive evidence of the facts stated. 1998, c. 15, Sched. A, s. 151 (1).

No new interest

(2) Subsection (1) does not give any person an interest in land that the municipal corporation or the commission or other body did not have. 1998, c. 15, Sched. A, s. 151 (2).

References to unregistered transfer by-laws

(3) A document that is otherwise capable of being registered or deposited under the *Registry Act* or registered under the *Land Titles Act* and that refers to an unregistered transfer by-law may be registered or deposited under the *Registry Act* or registered under the *Land Titles Act* despite any provision of those Acts. 1998, c. 15, Sched. A, s. 151 (3).

Definitions

(4) In this section,

"land" means land, tenements, hereditaments and appurtenances, or any estate or interest therein; ("bien-fonds")

"registered document" means a document registered or deposited under the *Registry Act* or registered under the *Land Titles Act*. ("document enregistré") 1998, c. 15, Sched. A, s. 151 (4).

Execution of agreements

152. A transfer by-law may require the transferor or the transferee,

(a) to enter into any written agreement or execute any instrument specified in the by-law; and

(b) to register in accordance with the by-law any agreement or instrument entered into or executed under clause (a). 1998, c. 15, Sched. A, s. 152.

Enforcement of things transferred

153. (1) A transfer by-law may provide,

(a) that any liability or obligation that is transferred by the by-law may be enforced against the transferor, the transferee, or both of them; and

(b) that any right that is transferred by the by-law may be enforced by the transferor, the transferee, or both of them. 1998, c. 15, Sched. A, s. 153 (1).

Release of transferor

(2) Subject to subsection (1), the transfer of a liability or obligation under this Part releases the transferor from the liability or obligation. 1998, c. 15, Sched. A, s. 153 (2).

Actions and other proceedings

154. Subject to section 153, any action or other proceeding that was commenced by or against the transferor before a transfer by-law takes effect and that relates to an employee, asset, liability, right or obligation that is transferred by the by-law shall be continued by or against the transferee. 1998, c. 15, Sched. A, s. 154.

Limitation periods

155. An action or other proceeding shall not be commenced against a transferee in respect of any employee, asset, liability, right or obligation that has been transferred to the transferee if, had there been no transfer, the time for commencing the action or other proceeding would have expired. 1998, c. 15, Sched. A, s. 155.

Certain rights not affected by transfer

156. (1) A transfer by or pursuant to a transfer by-law,

(a) shall be deemed not to constitute,

(i) a breach, termination, repudiation or frustration of any contract, including a contract of employment or insurance,

(ii) a breach of any Act, regulation or municipal by-law, or

(iii) an event of default or force majeure;

(b) shall be deemed not to give rise to a breach, termination, repudiation or frustration of any licence, permit or other right;

(c) shall be deemed not to give rise to any right to terminate or repudiate a contract, licence, permit or other right; and

(d) shall be deemed not to give rise to any estoppel. 1998, c. 15, Sched. A, s. 156 (1).

Exemptions

(2) Subsection (1) does not apply to the contracts prescribed by the regulations. 1998, c. 15, Sched. A, s. 156 (2).

Information

157. A transferor shall provide a transferee with records or copies of records, and other information, that are in its custody or control and that relate to an employee, asset, liability, right or obligation that is transferred by or pursuant to a transfer by-law, including personal information. 1998, c. 15, Sched. A, s. 157.

Transfer by-laws, other matters

158. A transfer by-law may contain provisions dealing with other matters not specifically referred to in this Part that the municipal council considers necessary or advisable in connection with a transfer. 1998, c. 15, Sched. A, s. 158.

Exemptions from other Acts

159. The *Bulk Sales Act*, the *Land Transfer Tax Act*, the *Retail Sales Tax Act* and such other Acts or provisions as are prescribed by the regulations do not apply to any transfer of employees, assets, liabilities, rights or obligations by or pursuant to a transfer by-law. 1998, c. 15, Sched. A, s. 159.

159.1 REPEALED: 2004, c. 23, Sched. A, s. 58.

159.2 REPEALED: 2004, c. 23, Sched. A, s. 59.

159.3 REPEALED: 2004, c. 23, Sched. A, s. 60.

Regulations, Part XI

160. (1) The Lieutenant Governor in Council may make regulations,

(a) supplementing the provisions of this Part and governing the transfer of employees, assets, liabilities, rights and obligations under this Part;

(b) prescribing contracts or classes of contracts to which subsection 156 (1) does not apply, subject to such conditions or restrictions as may be prescribed by the regulations;

(c) prescribing Acts or provisions of Acts that do not apply to a transfer for the purpose of section 159, subject to such conditions or restrictions as may be prescribed by the regulations. 1998, c. 15, Sched. A, s. 160 (1).

General or particular

(2) A regulation made under this section may be general or particular in its application. 1998, c. 15, Sched. A, s. 160 (2).

Conflict with other Acts

161. (1) This Part applies despite the provisions of the *Municipal Act, 2001* relating to the production, manufacture, distribution or supply of a public utility by a municipality or a municipal service board and despite any other general or special Act. 1998, c. 15, Sched. A, s. 161; 2002, c. 17, Sched. F, Table.

Same

(2) This Part applies despite the provisions of the *City of Toronto Act, 2006* relating to the production, manufacture, distribution or supply of a public utility by the City or by a city board as defined in subsection 3 (1) of that Act. 2006, c. 11, Sched. B, s. 4 (2).

PART XI.1
TRANSITION — ONTARIO POWER AUTHORITY, ONTARIO ENERGY BOARD, INDEPENDENT ELECTRICITY SYSTEM OPERATOR

Definitions, Part XI.1

161.1 In this Part,

"transfer order" means an order made under section 161.2; ("décret de transfert")

"transferee" means a person to whom assets, liabilities, rights or obligations are transferred by a transfer order; ("destinataire")

"transferor" means the person from whom assets, liabilities, rights or obligations are transferred by a transfer order. ("auteur") 2004, c. 23, Sched. A, s. 61.

Transfer orders

161.2 (1) The Lieutenant Governor in Council may make orders transferring the following:

1. Assets, liabilities, rights and obligations of the IESO relating to market surveillance and the Market Surveillance Panel to the Board.
2. Assets, liabilities, rights and obligations of the IESO relating to the forecasting of electricity demand and the adequacy and reliability of electricity resources for the medium and long term to the OPA. 2004, c. 23, Sched. A, s. 61.

Binding on all persons

(2) A transfer order is binding on the transferor, transferee and all other persons and does not require the consent of any person. 2004, c. 23, Sched. A, s. 61.

Same

(3) Subsection (2) applies despite any general or special Act or any rule of law, including an Act or rule of law that requires notice or registration of transfers. 2004, c. 23, Sched. A, s. 61.

***Legislation Act, 2006*, Part III**

(4) Part III (Regulations) of the *Legislation Act, 2006* does not apply to a transfer order. 2004, c. 23, Sched. A, s. 61; 2006, c. 21, Sched. F, s. 136 (1).

Application of provisions of Part X

161.3 Sections 117, 118, 121 and 123, subsection 125 (1) and sections 126 to 135 apply for the purposes of this Part and, in the application of those provisions, references to Ontario Hydro shall be deemed to be references to the transferor under the transfer order. 2004, c. 23, Sched. A, s. 61.

Regulations

161.4 (1) The Lieutenant Governor in Council may make regulations,

(a) supplementing the provisions of this Part and governing the transfer of assets, liabilities, rights and obligations under this Part;

(b) prescribing contracts or classes of contracts to which subsection 129 (1), as made applicable by section 161.3, does not apply, subject to such conditions or restrictions as may be prescribed by the regulations;

(c) prescribing Acts or provisions of Acts that do not apply to a transfer for the purpose of section 135, as made applicable by section 161.3, subject to such conditions or restrictions as may be prescribed by the regulations;

(d) requiring the IESO, OPA and the Board to enter into contracts relating to the provision of services and such other matters as the Lieutenant Governor in Council considers necessary or advisable,

(i) to assist the Board and the Market Surveillance Panel with respect to market surveillance of the IESO-administered markets,

(ii) to assist the OPA with respect to the forecasting of electricity demand and the adequacy and reliability of electricity resources for the medium and long term. 2004, c. 23, Sched. A, s. 61.

General or particular

(2) A regulation under this section may be general or particular in its application. 2004, c. 23, Sched. A, s. 61.

162. OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 1998, c. 15, Sched. A, s. 162.

163. OMITTED (ENACTS SHORT TITLE OF THIS ACT). 1998, c. 15, Sched. A, s. 163.

Note: The Crown and its agents are protected from certain liabilities relating to or resulting from amendments made to this Act by the *Electricity Pricing, Conservation and Supply Act, 2002*, or from any action taken pursuant to those amendments or pursuant to regulations made under those amendments. See: 2002, c. 23, s. 6.

Français

Back to top

TAB 4

The Ontario Energy Board

Commission de l'énergie de l'Ontario

Ontario

EB-2010-0228

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B);

AND IN THE MATTER OF an application by Hydro One Networks Inc. for an order approving just and reasonable rates and other charges for electricity distribution to be effective January 1, 2010.

BEFORE: Cynthia Chaplin
Chair and Presiding Member

Cathy Spoel
Board Member

DECISION AND ORDER

December 17, 2010

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THE APPLICATION

[1] Hydro One Networks Inc. ("Hydro One") filed an application with the Ontario Energy Board, received on June 30, 2010, under section 78 of the *Ontario Energy Board Act*, *1998*, S.O. 1998, (the "Act") c.15 (Schedule B), requesting approval of new Joint Use charges related to generation projects, to be effective January 1, 2010, and new and revised Connection Impact Assessment ("CIA") charges. Hydro One requested that the proposed CIA charges be declared interim until the final decision in this proceeding.

[2] As part of its application, Hydro One suggested that Joint Use charges for generators need not be regulated by the Board and requested a determination by the Board on this issue.

[3] The Board issued Procedural Order No. 1 on August 18, 2010 approving intervenors and setting filing dates for interrogatories, interrogatory responses, and any additional evidence.

[4] The following parties were intervenors in the proceeding:

The Association of Power Producers of Ontario ("APPrO"),
The Canadian Manufacturers and Exporters ("CME"),
Enbridge Ontario Wind Power ("Enbridge Wind"),
Energy Probe Research ("EP"),
The Ontario Power Authority ("OPA"),
The Society of Energy Professionals ("The Society"), and
The Vulnerable Energy Consumers Coalition ("VECC").

APPrO, CME, Energy Probe and VECC were each found to be eligible for an award of costs. The Ontario Sustainable Energy Association ("OSEA") requested and was granted late intervenor status.

[5] The Board Issued Procedural Order No. 2 on September 22, 2010 setting dates for a technical conference, pre-filed questions for the conference, and submissions, and reply argument. Board staff, APPrO. VECC, Energy Probe, CME and OSEA filed submissions. Hydro One filed reply argument.

THE PRINCIPLES

[6] Board staff and intervenors suggested various principles that should guide the Board. The principles included:

- There should be a similar treatment of all parties requesting joint use of Hydro One's distribution poles;
- All generators should be treated fairly and equally;
- No undue cross subsidization should exist between generators and electricity distribution service customers;
- Charges should be substantiated by appropriate costs;
- Charges should be cost based; and
- Common costs should be shared equally.

[7] VECC noted that the application of the principles can yield different results depending on the starting point.

[8] The Board generally supports the principles which the parties have identified. The Board's decision in this proceeding has been guided in particular by the following:

- There should be no undue discrimination amongst third parties requesting joint use of Hydro One's distribution poles
- Joint use charges should be cost based
- Common costs should be shared equitably

THE ISSUES

Should Joint Use Charges be Regulated by the Board?

[9] Hydro One requested that the Board decide whether joint use charges require the Board's approval. Hydro One took the position that the service offered to generators is a competitive service and therefore does not require regulation by the Board. Hydro One pointed out that each generator has the option to install its own pole or the option to enter into a commercial agreement with Hydro One for joint use.

[10] Board staff and intervenors took the posiiton the charges should be regulated. The parties pointed to the Board's decision regarding joint use by telecommunications providers (the "CCTA Decision"), in which the Board stated:

> The Board agrees that power poles are essential facilities. It is a well established principle of regulatory law that where one party controls essential facilities, it is important that non-discriminatory access be granted to other parties. [1]

[11] Board staff also suggested that regulating the joint charge applicable to generators would be more efficient from a regulatory standpoint than potentially requiring the Board to respond to cases of alleged market abuse.

[12] APPrO and VECC pointed out that the range of competitive options is not robust and concluded that most economical choice a generator would make is joint use. CME argued that the choice available to generators is inadequate to support a conclusion that there is sufficient competition to protect the public interest. It went on to say that until the requirements of Section 29 of the Act are satisfied, the joint use charges should be regulated. VECC pointed out that joint use charges for telecommunication companies and other LDCs are regulated, and to some extent these entities have the same choice as to whether to construct their own facilities or to enter into joint use arrangements.

[13] Hydro One replied that if the Board should decide to regulate generator joint use charges, a decision is needed that would allow for an appropriate allowance for inflation, and a true-up every five years to ensure appropriate cost recovery with no cross-subsidization.

Board's Findings

[14] The Board will regulate joint use charges for generators. This is consistent with the CCTA Decision and the Board's approval of the distribution joint use charge. Hydro One provided no compelling evidence to support a different approach and expressed no strong opposition to the regulated approach.

The Generator Joint Use Charge

[15] Currently, generators are being charged the Board approved distribution joint use amount of $28.61.[2] Revenues from joint use charges are forecast in cost of

[1] RP-2003-0249 In the Matter of an Application under section 74 of the Ontario Energy Board Act, 1998 by the Canadian Cable Television Association for an Order or Orders to amend the licenses of electricity distributors, issued March 7, 2005 ("CCTA Decision")

[2] Exhibit B Tab 1 Schedule 1 Page 1 line 17

service applications and are reported as external revenues and used as revenue offsets in determining Hydro One's distribution rates.

[16] In examining the proposed method to set a schedule that would vary, taking into account the different needs of generators, several issues arose:

- What is the appropriate generator power space factor,
- What are the appropriate charges, and
- Is there a need for a sliding scale based on pole length?

[17] Hydro One also stated that generators desire to enter into 20 year contracts with Hydro One. To reflect the fact that costs will change in the future, Hydro One proposed that the charges set in contracts be reset every five years, and in the intervening years that the charges be adjusted by the difference in the CPI. This proposal raised two additional issues;

- What is the appropriate charge adjustor, and
- What is an apropriate rebasing period?

The Appropriate Generator Power Space Factor

[18] The space factor allocates costs to the power space on a pole. Based on the evidence, it appears that Hydro One determined the power space factor for generators by starting with the 21.9% telecommunications space factor for a 40 foot pole from the CCTA Decision. It then extrapolated the 40 foot pole factor to a 50 foot pole on a linear basis to determine the space factor on a 50 foot pole. This results in a power space factor of 28.1%, or 10 feet of generator power space on a 50 foot pole.[3]

[19] A number of alternative approaches were proposed by Board staff and various intervenors.

[20] Board staff submitted that the space factor should be 29.4% based on the fact that only 34 feet of a 40 foot pole can be used. The factor is the ratio of 10 feet of power space to 34 feet of available space on a pole. Energy Probe was in substantial agreement with Board staff's submission. APPrO disagreed with Board staff's approach of using 34 feet as usable space and stated that the space factors should be based on a 40 foot pole. APPrO pointed out that if the Board adopted

[3] Board staff Interrogatory 4 a.

Board staff's submission, then the power space factor on a 50 foot pole would be 23.3%. APPrO submitted that 40 feet is the appropriate length.

[21] VECC proposed that the CCTA methodology be applied directly to a 50 foot pole. On this basis, VECC derived a space factor of 15.2% for each telecom user and a 31% allocation factor for each of the two power users. CME supported VECC's approach.

[22] Hydro One acknowledged that there may be some minor shortcomings with the CCTA methodology, but submitted that it should be approved.

Board's Findings

[23] The Board will not adopt the methodology proposed by Board staff. The part of the pole which is below ground is part of the overall structure and in the Board's view it is not necessarily appropriate to exclude it from the calculations. In any event, this proposal did not receive sufficient review to form the basis of developing a new methodology at this time.

[24] The Board also will not adopt the approach proposed by VECC. Under VECC's approach, the factor for telecommunications connections is reduced from that which underpins those charges currently, while the factor for distribution connections is increased from that which underpins those current approved charges. Neither the telecommunications charges nor the distributor charges are before the Board in this proceeding. The Board finds that VECC's approach would result in misalingment amongst the various factors and the associated charges and is therefore not appropriate at this time.

[25] The Board will accept the approach proposed by Hydro One for purposes of setting the charge at the current time. The Board is satisfied that this approach is generally consistent with the CCTA Decision while at the same time ensuring that the treatment of generators is consistent with the treatment of distributors.

[26] The Board finds that the issue of space allocation, and therefore the resulting specific charges, should be revisited in Hydro One's next rebasing application. At that time the methodology in the CCTA Decision can be revisited in light of then current pole height, cost and attachment data to ensure that a consistent set of charges is developed.

The Appropriate Level of Charges

[27] Hydro One proposed that the base charge for generator joint use be the current Board approved $28.61 for 10 feet of power space based on the negotiated distributor joint use fees. That fee was developed in 2005.[4] Hydro One presented new costs in Exhibit KT 2 that would result in the rate being $28.40, but it is not proposing to set the base charge at the newer level.[5]

[28] APPrO submitted that Hydro One should charge $28.40 for 10 feet of space on a 50 foot pole.

[29] Under VECC's proposal the space factor for telecommunications space was determined to be 15.2% and the generator factor was determined to be 31%. VECC submitted that since Hydro One charges $22.35 for telecommunications users for the 15.2% space factor, then generators should be charged $45.58 for the 31% space factor.[6]

[30] VECC pointed out that there are different assumptions regarding telecommunications attachers between the CCTA methodology for a 40 foot pole and Hydro One's proposal for a 50 foot pole. The CCTA methodology assumes 2.5 telecommunications attachers, while Hydro One assumes 2. VECC further deducted that if this logic is applied to current costs, the joint use fee with 2.5 attachers would be $31.09. If only 2 attachers are assumed, then the charge would be $32.37. VECC submitted that $31.09 is the appropriate charge because its determination is consistent with the CCTA Decision.

[31] CME urged the Board to adopt VECC's submission. It also submitted that the base distribution joint use charge and the telecommunications joint use charge be reset at the same time as the generator joint use charge is reset.

[32] Hydro One replied that the Board should approve the proposed rate due to the volume of requests and the urgency for the rate.

Board's Findings

[33] The Board finds that it is appropriate to set the generator joint use charge at $28.40 which is the current level of the charge for distribution joint use, updated to reflect current costs. The Board finds that this approach achieves the best balance

[4] Board staff Interrogatory 5 b.
[5] Transcript Page 15 lines 6 - 16
[6] ($22.35 ÷ 15.2%) x 31% = $45.58

between the principles of cost based charges and non-discriminatory treatment amongst pole users. The Board finds that this approach maintains a reasonable alignment amongst the methodologies underpinning the telecommunications and distribution joint use charges while reflecting current costs into the charges being set in this proceeding.

[34] The Board will not adopt VECC's proposed charge of $31.09. As indicated above, this approach results in a misalignment amongst the various charges and the underlying space factors. As indicated above, this issue will be revisited in Hydro One's next rebasing application

The Sliding Scale Based on Pole Length

[35] Hydro One's proposal establishes the same joint use charge for power space negotiated with the EDA as the joint use charge for generators and proposes to apply that charge to 40 and 50 foot poles. However, some generators require poles taller than 50 feet. Therefore, Hydro One proposed a method in which the generator power space factor increases at a decreasing rate as the height of the pole increases.[7] Applying these factors to the base generator joint use charge gives rise to charges for poles taller than 50 feet that increase at a declining rate.[8] The proposal is to reflect that operating expenses do not increase linearly. Hydro One stated that there is less maintenance required as the pole height increases.[9]

[36] Board staff pointed out that the sliding scale is not a charge for pole height, but for space on the pole. Board staff submitted that the proposal to use the charge for 10 feet of space on a 50 foot pole and increasining it for OM&A is reasonable. Board staff also pointed out that Hydro One would request a capital contribution where incremental costs would be incurred. This would eliminate cross subsidization. Board staff concluded that the proposal was fair. Energy Probe substantially agreed with Board staff's submission.

[37] VECC questioned the appropriateness of the sliding scale noting that the majority of the pole costs are related to capital and not OM&A. VECC pointed out that by increasing the pole height from 50 feet to 60 feet, a 20% increase, the cost for the pole goes from $617.47 to $1,522.26, a 146% increase and concluded that using the sliding scale would require greater capital contributions so as not to have cross-

[7] Exhibit B Tab 1 Schedule 1 Table 2
[8] Exhibit B Tab 2 Schedule 1 Table 1
[9] Transcript Page 33 lines 5 - 9

subsidization from other users. VECC submitted that this issue needs to be revisited when the charges are reset. It also poined out that this serves to accentuate reviewing joint use charges before 2015. CME urged the Board to adopt VECC's submission.

[38] Hydro One replied that the sliding scale should be approved, and noted that no generators objected.

[39] With respect to the determination of the capital contribution, APPrO submitted that all revenues, including revenues from distribution, and the cost of a new pole less the remaining life of existing poles should be used to determine the contribution. It submitted that this method is similar to existing system expansion project evaluations. Hydro One responded that APPrO's recommendation was unclear and stated that the discounted cash flow methodology accounts for the incremental costs associated with replacing poles earlier than otherwise planned and holds ratepayers harmless with respect to those advancement costs. Hydro One also pointed out that economic evaluation that it uses is beyond the scope of this application.

Board's Findings

[40] The Board will accept Hydro One's proposed sliding scale of charges based on pole height. The Board is satisfied that the approach reasonably reflects the associated costs and that the issue of higher capital costs for taller poles is appropriately dealt with through the capital contribution. However the sliding scale should be based on $28. 40 as found above..

[41] While the methodology underpinning the capital contribution is not before the Board in the current proceeding, the Board notes that Hydro One's approach appears to address the concern raised by APPrO.

The Appropriate Charge Adjustor and Rebasing Period

[42] Hydro One stated that many generators have entered into 20-year power purchase contracts and therefore desire to enter into 20-year joint use agreements with Hydro One. Accordingly, Hydro One proposed that the new joint use charge for generators include a CPI rider, which would provide for an annual increase in the joint use charge, based on changes to the CPI.

[43] APPrO pointed out that an index is not used for telecommunications charges and street light attachments charges. APPrO therefore submitted that the Board should reject the index and require rebasing every five years. APPrO submitted that Hydro One should track costs and report back on whether an index is needed or not. At that time any over/under could be prospectively built into the charge.

[44] VECC submitted that Hydro One's proposals to reset every five years and to escalate the approved base charge by inflation appear reasonable. VECC submitted however, that given the problems with the proposed joint use base charge in terms of its link to costs, its link with other joint use charges and its link to the CCTA methodology, Hydro One should be directed to rebase and seek approval for its joint use charge for generators at the same time as it rebases and seeks approval for its LDC joint use charge. This would ensure that charges are established using the same cost base and with a consistent methodology.

[45] Board staff submitted that the contracts should be tied to the tariff sheet and therefore an index is not needed in the contracts. Tying the contracts to the approved tariff sheet would ensure that only one rate is in place for all generators, for as the fees change in the tariff with each of Hydro One's rate applications so would the fees under the contract. Board staff submitted, however, that if there is any indexing, the Gross Domestic Product Implicit Price Index Final Domestic Demand ("GDP-IPI (FDD)") should be used, and not the CPI. Energy Probe and VECC agreed that the GDP-IPI (FDD) is more appropriate.

[46] Hydro One responded that it needed approval of its proposed charge at this time due the volume of requests and the urgency for the charge. Hydro One stated that it would set a fixed schedule for rebasing, providing as an example that it could rabase in 2010, 2015, 2020, etc. Hydro One would apply the GDP-IPI (FDD) as an adjustor in the intervening years. It pointed out that indoing so all generators would pay the same charge. Hydro One also noted that its proposed joint use contracts with generators provide for the charges to be amended when the Board sets new charges.

Board's Findings

[47] The Board finds that it would be inappropriate to incorporate indexing into the rate at this time because the result would be substantially different treatment for generators than for telecommunications and distributor joint users. As indicated above all joint use charges should be revisited at the next Hydro One rebasing

application, at which time the issue of indexing can be considered in the context of all joint users.

Connection Impact Assessment Charges

[48] In accordance with Section 6.2.14 of the Distribution System Code ("DSC"), Hydro One assesses the technical impact of renewable generation connections to its distribution system through a CIA. The CIA is a detailed assessment of a project's impact culminating in a technical report outlining project feasibility, technical specifications needed for the project and the impacts the project would have on the distribution grid and any of its customers.[10]

[49] Hydro One has CIAs listed in its Tariff of Rates and Charges and so are considered as revenue offsets.[11]

[50] Hydro One requested approval to introduce a new schedule of charges to recover the costs associated with the CIA and definitions of CIA classifications:

- **Transitional Charges:** Temporary charges for small, mid-size, and large projects to help in the transition to the higher charges approved in EB-2009-0096;
- **Net Metering and Capacity Allocation Exempt CIA Charges:** New CIA classifications arising from new types of applications not considered in the original CIA charges; and
- **Rescinded and Revised CIA Charges:** New CIA classifications for generators who are re-applying for capacity or revising an existing application.

Transitional CIA Charges

[51] Hydro One obtained approval in EB-2009-0096 for CIA charges for small and mid-sized projects of $10,335, and for large projects of $10,405. Hydro One recognized that these charges represent a large change in costs for generation connections. To manage the transition to the new cost structure, Hydro One proposed a phased implementation with lower fees of $3,000, $5,000, and $6,000 for small, mid-sized, and large projects, respectively.

[10] Exhibit C Tab 1 Schedule 1 Page 1 lines 11 - 16

[11] Hydro One Tariff of Rates and Charges, EB-2010-0096, Effective May 1, 2010, Rate Codes 26 a. and 26 b.

[52] In Procedural Order No. 1 dated August 18, 2010, the Board ordered: "The Connection Impact Assessment (CIA) Charges – Small & Medium of $10,335 and the Connection Impact Assessment (CIA) Charges – Large of $10,405 are declared interim effective immediately."

[53] In its Argument-in-Chief Hydro One stated that as ordered by the Board, it implemened the approved charges of $10,335 and $10,405 and it no longer requires the transitional charges.

[54] Board staff submitted that the EB-2009-0096 CIA charges were declared interim until the issue of the phase-in charges was decided in this proceeding. It further submitted that by declaring the original charges interim, the issue still remains. However, since Hydro One has commenced billing, and no generator has objected, Board staff submitted that the transitional charges are no longer required. VECC agreed with Board staff.

[55] APPrO submitted that Hydro One committed to applying the lower charges and the affected generators would have relied on those commitments when planning and financing their projects. The lower charges were proposed in recognition of the fact that Hydro One had quoted the lower charges to generators applying for connection prior to the higher charges being approved. However, APPrO had no objection to proceeding without phase-in provided Hydro One is prepared to meet its previous commitments to generators that the CIA charges would be at the lower amounts. APPrO recommended that the Board approve the lower charges, including those where the CIAs were completed by Hydro One after August 31, 2010. APPrO supported transitional charges to avoid rate shock and to recognize the lower quoted charges if Hydro One could not meet these commitments.

[56] Hydro One replied that it believed that the Board's Order directed it to implement its approved charges on an interim basis until the issue of the transitional charges could be addressed, following a proper review. Hydro One then developed its communications and implemented the approved charges on August 27, 2010. Hydro One intended to charge the transitional charges until August 31. Hydro One submits that all of the generators who had been relying on the lower charges had their CIA applications accepted by August 27.

[57] Hydro One pointed out in its Reply that it had been applying the reduced charges previously and, in pre-consultations during the Fall of 2009, had made commitments to generators to assess their applications at those lower charges.

The CIA Application Dates were effectively determined by the OPA and that Hydro One did not receive the majority of these applications until on or after May 1, 2010 which is the effective date for the Applicant's higher CIA charges. The purpose of the present Application, therefore, was to enable Hydro One to keep its commitment to these generators and help them manage the transition to the new higher charge structure because Hydro One had been utilizing the lower charges and wanted to continue to use them until August 31, 2010, at which time, it believed that all proponents whose applications Hydro One had committed to assess at the lower charges would have been completed and the higher charges could then be implemented.

[58] Hydro One pointed out that because the "discounted" charges do not fully recover the costs of the work, it is unwilling to extend the offer past that date without an assurance that the costs can be recovered, and with clarification of the recovery mechanism. Therefore, there is no need to retroactively apply the transitional charges, particularly to generators whose CIAs were completed after August 31, 2010.

Board Findings

[59] The Board will approve the use of the lower transitional charges for the period between August 18, 2010 (when the charges were made interim) and August 31, 2010, the final date for which Hydro One sought approval to apply the lower transitional charges. The Board accepts that the lower transitional charges are reasonable in the circumstances and concludes that applying the lower charges during the identified period is consistent with Hydro One's communications with proponents. The previously approved (higher) charges will be effective September 1, 2010 on a final basis.

Net Metering, Capacity Allocation Exempt, Rescinded, and Revised CIA Charges

[60] Capacity allocation exempt ("CAE") projects are generation projects having a capacity greater than 10 kW but less than or equal to 250 kW (for a facility connected to a line less than 15 kV) or less than or equal to 500 kW (for a facility connected to a line equal to or greater than 15 kV). For CAE projects, Hydro One proposed to set the CIA charge at $3,000. Hydro One maintained that these projects require much less work than a typical CIA, with less analysis required and less strenuous connection requirements.

[61] Net metering is the measurement of the quantity of electricity a generator uses against the quantity of electricity it generates. This results in a "net" total bill. Net metering projects include those which have a capacity greater than 10 kW but less than or equal to 500 kW. Hydro One stated that these projects required the same level of work as CAE projects, and there proposed to set the CIA charge at the same level as for CAE projects, $3,000.

[62] Rescinded and revised CIAs are related to projects that have been through a CIA already, but a new CIA is required as a result of changes to the project. Hydro One stated that revised CIAs take approximately half the effort compared to doing a new study, and that therefore revisions to CIAs typically take half the time. Further, when a project application is rescinded and the proponent then reapplies for exactly the same project, it is effectively a revision to an existing CIA. Hydro One proposed that the charge for revised CIAs be set at 50% of the otherwise applicable charge.

[63] Board staff submitted that while there is no cost justification for the proposed $3,000 charges, the qualitative reasons provided, namely that less effort is required, seem reasonable

[64] Board staff pointed out that for rescinded and revised applications Hydro One's witness stated that the justification for 50% is based on management's decision underpinned by Hydro One staff's opinion that such applications take half the effort of doing full CIAs. Board staff submitted that while no detailed study was undertaken, the proposed 50% reduction is qualitatively justified.

[65] APPrO supports the immediate implementation of these charges as proposed by Hydro One.

[66] VECC submitted that Hydro One has adequately supported the cost basis for each of its proposed new charges and they should be approved by the Board.

Board Findings

[67] The Board finds that the charges proposed by Hydro One are reasonable and have been adequately supported.

Variance Accounts

[68] Distribution joint use revenues and CIA revenues are specific service cahrges and are used as a revenue offset when setting distribution rates.[12] Hydro One proposed to track joint use revenues in a variance account and use them to offset future rates for its distribution customers. Hydro One has not made a proposal for tracking costs and revenues from the new CIAs.

Joint Use Revenue Variance Account

[69] Hydro One stated that its external revenue from miscellaneous charges may increase by up to $286,340 as a result of generator joint use charges. It stated that it would track these revenue for future distribution rate setting.[13]

[70] Board staff, CME, and Energy Probe supported tracking the charges in the proposed variance account.

Board's Findings

[71] The Board approves the establishment of this variance account for purposes of applying the revenues toward Hydro One's revenue requirement at its next rebasing. As the Board has directed Hydro One to address the methodology and level for all its joint use charges at the next rebasing application, the Board does not expect that this account would be needed beyond that time.

CIA Variance Accounts

[72] Hydro One is not proposing a variance account for the CIA charges. It stated that there is no need to track revenues from CIAs as revenues will be offset by equal and unforeseen costs.

[73] Board staff was unclear as to whether this work is performed by contractors, or Hydro One employees and therefore whether the incremental revenues would be offset with incremental costs. Board staff submitted that it would be appropriate to track the costs and revenues associated with the proposed new CIA charges in a deferral account in order to equip the Board to make that determination in a future proceeding once empirical information becomes available.

[12] Hydro One Tariff of Rates and Charges, EB-2010-0096, Effective May 1, 2010, Rate Codes 26 a. and 26 b.

[13] Exhibit B Tab 1 Schedule 1 Page 10 lines 19 - 19

[74] CME did not understand what was meant by “unforeseen costs” and agreed with Board staff that a variance account should be used.

[75] Hydro One responded stating that it is concerned that, given the large volume of applications requiring assessments, the effort involved in tracking and true-up of CIA costs and revenues will be much greater than the benefits of determining these charges with certainty.

Board’s Findings

[76] The Board will establish a variance account for CIA revenues, to ensure that Hydro One’s disrtibution customers receive the full benefit of these revenues. Hydro One will be required to substantiate any claimed incremental costs which it proposes to include in the account. Hydro One questions the value of tracking revenues and costs for this large volume of assessments. The Board expects that Hydro One should be able to achieve an acceptable level of accuracy without tracking every assessment, perhaps through some sort of sampling. The Board notes that this information may be relevant to any further examination of CIA charges.

Aboriginal and Community Participation Projects

[77] OESA submitted that a credit should be applied to joint use charges and CIA charges based on the aboriginal and/or communicty participation levels. Specifically, OSEA proposed the following:

1. The proposed pole use charges and CIA charges should not apply to projects where the Aboriginal Participation Level or Community Participation Level, either separately or in combination, under the Ontario Power Authority’s Feed in Tariff (“FIT”) program, is over 51%; and

2. Where the Aboriginal Participation Level and/or Community Participation Level, either separately or in combination is less than 51%, then the project should obtain a credit against the proposed joint use charge and CIA charge based on the proportion of Aboriginal Participation Level and/or Community Participation Level in relation to the project:

[78] In OSEA’s view, this approach would be consistent with the Green Energy Act and the FIT program. The OSEA submits that Government Funding and additional incentives to support the development of Aboriginal and community power projects should not be clawed back as charges for use of electric distribution companies.

[79] Hydro One responded that these proposals are outside the scope of this proceeding as well as being outside the Board's jurisdiction.

Board's Findings

[80] OSEA's proposal was advanced for the first time in its final submission. OSEA did not elicit (through interrogatories) any evidence regarding this proposal; nor did it tender any evidence directly in support of this proposal. As such the record is insufficient to draw any conclusions regarding the appropriateness of the proposal. The Board has no information regarding the potential level of cross-subsidy involved; nor was there any evidence regarding the policy implications of this approach. OSEA may wish to explore this proposal at Hydro One's next rebasing application, at which time these charges will be examined and the merits of the proposal, including any issues regarding the Board's jurisdiction, can be considered.

Implementation

[81] Hydro One requested January 1, 2010 as the effective date for the proposed joint use charges. Hydro One had also requested that the already approved CIA charges be phased-in prior to September 1, 2010. In argument-in-chief, Hydro One stated that this phase-in was no longer required because Procedural Order No. 1 made the charges interim.

[82] APPrO stated that generators were made aware of Hydro One's joint use charge plans, but were not aware of the details. APPrO views changing the $28.61 to $28.40 as retroactive. However, since this is a reduction, the charge should be implemented on the following basis:

- $28.40 on January 1, 2010, and
- the sliding scale on January 1, 2011.

[83] APPrO suspects that some of the projects predate the Green Energy and Green Economy Act ("GEGEA") mentioned by Board staff. It submits that for applicants that have signed with the OPA after October 21, 2009, the proposed joint use sliding scale should take effect January 1, 2010.

[84] Board staff pointed out that the proposed new charges were a result of the GEGEA. In regards to the when these new charges should be implmented and the related issue of retroactive rate making, Board staff pointed out that in the Brant

County Motion, the Board found that the establishment of a new class differentiated the act of setting an effective date prior to any order from retroactive rate making.[14]

Board's Findings

[85] The Board is now setting charges for generator joint use (base charge and sliding scale for poles over 50 feet). These charges are not currently approved on an interim level. The Board has determined that the new charges should be implemented on a prospective basis. The Board finds that the effective date will be January 1, 2011.

[86] The Transitional CIA charges will be Implemented on August 18, 2010 and effective for the period of August 18, 2010 to August 31, 2010, after which the previously approved higher CIA charges will be implemented on a final basis.

[87] The new CIA charges will be implemented on August 18, 2010. The already approved CIA charges have been addressed already in this decision.

COST AWARDS

[88] The Board may grant cost awards to eligible stakeholders pursuant to its power under section 30 of the Ontario Energy Board Act, 1998. When determining the amount of the cost awards, the Board will apply the principles set out in section 5 of the Board's *Practice Direction on Cost Awards*. The maximum hourly rates set out in the Board's Cost Awards Tariff will also be applied.

[89] All filings with the Board must quote the file number EB-2010-0228, and be made through the Board's web portal at www.errr.oeb.gov.on.ca, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must be received by the Board by 4:45 p.m. on the stated date. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at www.oeb.gov.on.ca. If the web portal is not available you may e-mail your documents to the attention of the Board Secretary at BoardSec@oeb.gov.on.ca. All other filings not filed via the Board's web portal should be filed in accordance with the Board's Practice Directions on Cost Awards.

[14] Decision and Order; *Motion to Review and Vary the implementation of the Board's Interim Order Dated April 21, 2008 in this proceeding; and the Board's Decision dated July 18th, 2*008, EB-2009-0063, August 10, 2010

THE BOARD THEREFORE ORDERS THAT:

1. Hydro One will recalculate the Generator Joint Use Charge using $28.40 for space on a 50 foot pole using the allocation factors found in Exhibit B Tab 1 Schedule 1 Table 2.

2. The Base Generator Joint Use Charge of $28.40 and the Sliding Scale Generator Joint Use Charge will have an Effective Date of January 1, 2011.

3. The lower Transitional CIA Charges are to be in effect for the time period of August 18, 2010 to August 31, 2010 inclusive.

4. The current CIA Charges declared interim in Procedural Order No. 1 will become final on September 1, 2010.

5. All remaining charges will have an Effective Date of August 18, 2010.

6. Hydro One will maintain a Joint Use Revenue Variance Account and a CIA Variance Account as described in these findings for review by the Board in its next Cost of Service Rates Application.

7. Hydro One is to submit to the Board a schedule of the new charges, with supporting documentation, and their effective dates five days after the date of this Decision.

8. Intervenors shall file with the Board and forward to Hydro One Networks Inc. their respective cost claims within 30 days from the date of this Decision.

9. Hydro One Networks Inc. shall file with the Board and forward to intervenors any objections to the claimed costs within 44 days from the date of this Decision.

10. Intervenors shall file with the Board and forward to Hydro One Networks Inc. any responses to any objections for cost claims within 51 days of the date of this Decision.

DATED at Toronto, December 17, 2010

ONTARIO ENERGY BOARD

Original Signed By

Kirsten Wali
Board Secretary

TAB 5

Ontario Energy Board

Commission de l'Énergie de l'Ontario

RP-2003-0249

IN THE MATTER OF the *Ontario Energy Board Act 1998*, S.O.1998, c.15, (Schedule B);

AND IN THE MATTER OF an Application pursuant to section 74 of the *Ontario Energy Board Act, 1998* by the Canadian Cable Television Association for an Order or Orders to amend the licenses of electricity distributors

BEFORE: Gordon E. Kaiser
Vice Chair and Presiding Member

Paul Sommerville
Member

Cynthia Chaplin
Member

DECISION AND ORDER

The Applicant, Canadian Cable Television Association ("CCTA") seeks access to the power poles of the regulated electricity distribution utilities in Ontario for the purpose of supporting cable television transmission lines. Specifically, the CCTA is seeking an Order under section 74(1) of the *Ontario Energy Board Act* which would amend the licences of these utilities in a fashion that would specify the uniform terms of access including a province-wide uniform rate or pole charge for such access.

In the past, the CCTA members have rented space on the utilities' poles under private contract. That contract came to an end in 1996. Since then, the parties have been unable to reach further agreement with respect to rates.

Background

In early 1997, the CCTA applied to the Canadian Radio and Telecommunications Commission ("CRTC") to set a charge for access by cable companies to the poles of the Ontario electricity distributors. After a lengthy proceeding, the CRTC set an annual pole charge of $15.89.[1]

The Ontario Municipal Electric Association ("MEA") appealed that decision to the Federal Court of Appeal which held that the CRTC did not have statutory authority under the Telecommunications Act to regulate access by cable operators and telecommunication carriers to power poles.[2]

On further appeal by the CCTA the Supreme Court of Canada upheld the Federal Court of Appeal decision.[3] Given the Court's decision that the CRTC lacked jurisdiction, the CCTA filed an application with this Board on December 16, 2003 on behalf of the twenty-three cable companies that operate in Ontario. None of the parties questioned the jurisdiction of this Board.

The issues before this Board in this proceeding are as follows :

1. Is it necessary that this Board set access charges?
2. Which parties should have access?
3. What is the appropriate methodology?
4. How many attachers should be assumed in calculating the rate?
5. Should there be a province-wide rate?
6. What costs should be used in calculating the rate?
7. Should new licence conditions impact existing contracts?

The Need to Regulate Access Charges

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1 *Part VII Application - Access to supporting structures of municipal power utilities - CCTA v. MEA et al - Final Decision,* Telecom Decision CRTC 99-13, 28 September 1999. [hereinafter "Telecom Decision CRTC 99-13"]

2 *Barrie Public Utilities v. Canadian Cable Television Assn.,* [2001] 4 F.C. 237.

3 *Barrie Public Utilities v. Canadian Cable Television Assn.,* 2003 SCC 28.

The CCTA Application is opposed by the Electricity Distribution Association ("EDA") and the Canadian Electricity Association ("CEA"). The EDA represents virtually all licensed electricity distributors in this province (sometimes referred to as LDCs) while the CEA is a national association representing electricity distributors, generators and transmitters. The position of these two parties is supported by Hydro One Networks Inc., Hydro One Brampton Networks Inc., and Hydro One Remote Communities Inc.

The position of the EDA *et al* is that regulatory intervention by this Board is not necessary. The argument largely is that the Applicant has not demonstrated that there has been a systematic abuse of monopoly power and absent that showing, the Board should allow the parties to continue to negotiate.

There has been some evidence on both sides with respect to abuse. In the end the CCTA says that the electricity distributors do have monopoly power and the fact that the parties have been unable to come to an agreement for over a decade demonstrates the exercise of that monopoly power whether this results in abuse or not.

The Board agrees. A showing of abuse is not necessary to justify the intervention of this Board in this matter. The fact is the parties have been unable to reach an agreement in over a decade. This degree of uncertainty is not in the public interest.

The Board agrees that power poles are essential facilities. It is a well established principle of regulatory law that where a party controls essential facilities, it is important that non-discriminatory access be granted to other parties. Not only must rates be just and reasonable, there must be no preference in favour of the holder of the essential facilities. Duplication of poles is neither viable nor in the public interest.

The Board concludes that it should set access charges.

The EDA *et al* further submits that if the Board is going to set rates it should set a range of rates based on its proposed methodology as opposed to a specific rate. The CCTA opposes this. The CCTA argument is that a range of rates would simply lead to continued delay, that monopoly power would continue to be exerted and in fact, the upper range would become the rate. In another words, the bargaining power of the cable companies would be as deficient with a range of rates as it is at present. The Board accepts this view. There is no rationale for a range of rates in the current circumstances.

Who should have access?

On this issue, the parties are in agreement. In the Settlement Agreement of October 19, 2004, all parties agreed that if the Board does set access conditions, these conditions should apply to access to the communications space on the LDC poles by all Canadian Carriers as defined in the Telecommunications Act and cable companies. The only exception is that these conditions would not apply to the current joint use agreements between telephone companies and electricity companies that grant reciprocal access to each others poles.

This Board has accepted the settlement agreement in this regard. In addition, the Board has heard submissions to the effect that the LDCs agree that their own telecommunication affiliates would access poles on the same conditions as other users of the communications space. The LDCs also confirmed that all users of the communications space should pay the same charge.[5]

This is an important clarification. This market is changing rapidly and industries are converging. Cable companies are now providing the telecommunication services just as the electricity distributors enter this industry. The fact that the two groups that have been warring over the past decade are fast becoming competitors is an additional reason for the Board to intervene and establish clear guidelines. From this Board's perspective, it is equally important that costs be properly allocated and that the electricity distributor (and ultimately, the electricity ratepayer) receives its fair share of revenue.

What is the appropriate methodology?

There are two elements to the proposed rate. The first is the incremental or direct costs incurred by electricity distributors that results directly from the presence of the cable equipment. Second, there are common or indirect costs which are caused by both parties. The parties agree that the direct or incremental costs should be borne by the cable companies.

The dispute relates to what share of the common cost each parties should pay. The cable companies say the portion of the fixed or common cost they should bear should be based on the cable companies "proportionate use" of the usable space on the pole. Electricity distributors claim that the portion of the common cost each of the parties bear should be equal. In other words, the common cost should be divided equally among attachers on a "per capita" basis.

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[5] Tr. Vol. 2 at paras. 800 and 804.

Both parties called experts. The cable companies called Donald A. Ford while the electricity distributors called Dr. Bridger Mitchell. Reply evidence for the CCTA was presented by Patricia Kravtin and Paul Glist. All witnesses were qualified as experts.

The CCTA Application seeks a pole attachment rate of $15.65, a similar amount to that decided by the CRTC. The rates proposed by the EDA are substantially higher.

The principal argument advanced by the cable companies is that proportionate use is the methodology adopted by the CRTC and it has also been followed elsewhere in Canada and the United States. They point out that there have been numerous reviews of this rate methodology and the methodology has never been set aside.[6]

The response of the electricity distributors is that these rates are unduly low and are driven by considerations of telecommunication policy. In particular, they were designed to foster competition in that sector. The witnesses, however, were unable to point to any particular articulation of that policy goal as the justification for the rate levels at least in the Canadian context.

In Canada, the two decisions that follow the CRTC decision have in fact been divided on this issue. The Alberta Energy Utility Board ("AEUB") established a pole attachment rate of $18.34 in 2000 using the per capita approach.[7] The Nova Scotia Utility and Review Board ("NSURB") set a rate of $14.15 in 2002 following the CRTC approach.[8] The Nova Scotia Board did point out however, they had not conducted any cost allocation studies on their own.

An additional argument to support the lower rate advanced by the cable companies is that they are only tenants while the electricity distributors own the poles. They argue that pole ownership confers a benefit.

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6 *FCC v Florida Power Corp. 480 US 245, (1987); In the Matter of Alabama Cable Telecom Association v Alabama Power Corp.;* 16 FCC 12, 12, 209 (2001)

7 *TransAlta Utilities Corporation,* Decision 2000-86 (Alberta Energy and Utilities Board), December 27, 2000 online: <http://www.eub.gov.ab.ca/bbs/documents/decisions/2000/2000-86.pdf>.

8 *In the Matter of the Public Utilities Act and In the Matter of an Application by Nova Scotia Power Incorporated for Approval of an Increase in its Pole Attachment Charge,* Decision 2002 (Nova Scotia Utility and Review Board) NSUARB-1, January 24, 2004.

The electricity distributors deny this, claiming that ownership has costs; they have to install poles whether they have an attacher or not and may face stranded assets. In the end, the Board is not persuaded that the ownership of the poles should effect the level of rates. The Board agrees with the electricity distributors that the impact of ownership is neutral.

The CEA argues that electricity distributors should be allowed to raise the rates charged to the cable companies because cable companies are now generating "massive new sources of revenue" from the use of electricity distribution plant. In particular, they point out that revenues from high speed internet service have increased from $0 in 1995 to over $900 million annually by 2003. The CEA requested that the Board infer that a large portion of these revenues are from Ontario cable operations. The Board notes that there is very little evidence on this issue. Moreover, the Board believes that the methodology used to determine rates should be based on cost recovery, not some form of revenue sharing.

Another rationale advanced by the cable companies is that it makes no sense to have different methodologies for setting rates on power poles compared to telephone poles. The argument is that since the CRTC methodology is used to price access to telephone poles, the same methodology should be followed in pricing access to power poles. The Board is not convinced. This Board may have a different policy rationale than the CRTC particularly in terms of the electricity ratepayer and the serving utility. In any event, it is worth noting that the rental charge paid by the cable companies for access to telephone poles is $9.60 per pole. This is certainly not the rate being advanced by the cable companies in this proceeding.

The most persuasive argument for equal sharing of the common cost is the practice that appears to take place when parties are in position of equal bargaining power. The LDCs point to the reciprocal agreements between the telephone companies and the
power companies that have existed for a number of years. Under those agreements, each of the regulated utilities has access to the other's poles. They essentially split the common cost equally.

The cable companies question this proposition. They argue that these are regulated entities that have a bias to invest more than optional amounts of capital based on the Averch Johnson principle. [9] The Board notes however, that both sides face the same incentive in terms of investing capital in rate base assets. It can reasonably be assumed that the telephone companies and the power companies are in an equal bargaining position and the resulting solution is a meaningful guideline.

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[9] Harvey Averch and Leland L. Johnson, "Behaviour of the Firm under Regulatory Constraint," *Amer. Econ. Rev.* (December 1962) LII: 1052-1069.

The CCTA responds that its members are not in an equal bargaining position. In the Board's view, that is not relevant. The free and open negotiation between the telephone and power companies is offered as a proxy for a competitive market solution. No party holds an advantage over the other or is in a position to exercise monopoly power.

For many years, electricity and telephone companies in at least four provinces have openly negotiated reciprocal access agreements to telephone and power poles. In all cases, these agreements appear to reflect equal allocation of common costs. This suggests that the per capita or equal sharing methodology is the appropriate one. Moreover, as more and more parties attach to these poles, the notion that there is a discrete portion of space to be allocated to each becomes more problematic.

The Board recognizes that a case can be made for both the proportionate use and the equal sharing methodology. On balance, however, the Board prefers the equal sharing theory for the reasons stated.

How many attachers should be assumed?

When the CCTA filed its Application, it assumed two attachers. This position was amended in Final Argument when 2.5 attachers was proposed. The Reply Argument of the CCTA appears to revert back to two attachers with reference to the CRTC rate of $15.65.

Two attachers were assumed in the CRTC decision. The industry however, has changed dramatically over the last five years. There is evidence that in one municipality there are as many as seven different parties seeking attachment. There is also evidence that poles are used by municipalities for the purpose of street lighting and traffic lights.

In addition, an increasing number of telecommunication providers are entering the market to compete with incumbent telephone company providing voice and data services. A number intervened in this proceeding and by virtue of the settlement agreement will have access to the poles in question. Finally, in a number of major markets the Ontario electricity distributors have established their own affiliates to offer telecommunication services. The LDCs have agreed that these affiliates should pay the same rates as the other parties attaching to the power poles. There is also evidence that Hydro One which accounts for a third of the poles in the province has more than two attachers.

The Board considers 2.5 attachers to be reasonable. Things have changed since the days of the CRTC decision. If anything, there will be more than 2.5 attachers in the future.

Should there be a province-wide rate?

The cable companies argued for a standard province-wide rate. There is precedent for this in terms of the CRTC decision as well as the Nova Scotia and Manitoba decisions. A province-wide rate has the advantage that it is simple to administer. This is certainly one of the goals the Board hopes to achieve in this decision. Moreover, the cost data at the individual LDC level is incomplete. Calculating these costs for ninety different utilities will be a challenge for all concerned.

This is not to say there should not be relief available for electricity distributors who feel the province-wide rate is not appropriate to their circumstances. Any LDC that believes that the province-wide rate is not appropriate can bring an application to have the rates modified based on its own costing. Absent any application, the province-wide rate will apply as a condition of licence, as of the date of the Order.

What costs should be used to calculate the rate?

The annual pole rental charge of $15.65 proposed by the CCTA is a function of both the direct and the indirect cost as set out in Appendix 1. The direct costs consist of the administration cost and the loss of productivity. The total direct cost estimate of $2.61 is based on the CRTC decision.

The EDA claims that there is no reason why the Board should use a $1.92 estimate of loss of productivity as advanced by the CCTA. The EDA points to different data from five different LDCs which range from $0.67 per pole in the case of Hydro One Networks to $5 per pole in the case of Guelph Hydro. References are also made to the evidence of Manitoba Hydro filed by the CEA which calculated a loss of productivity of $6.39 per joint use pole.

There is no question that there is a wide variation in these costs and estimates. The EDA recommends that if this Board determines that it should use the CCTA model to arrive at a uniform annual pole charge, the Board should use the highest Ontario data available to set that uniform rate. That rate would be $32.81 using the Toronto Hydro data and the productivity loss estimate for Guelph Hydro. The Board disagrees and concludes that province-wide representative cost data are more meaningful in the circumstances. For the purposes of calculating the rate in this proceeding, the Board has adopted the direct costs set out in the CCTA application and reproduced in Appendix 1.

Next there are the indirect costs which consist of the net embedded cost per pole plus depreciation, maintenance expense and carrying costs. Again a wide range of costs were proposed by the EDA depending on the particular utility chosen. The Board has concluded that the depreciation, maintenance and carrying costs proposed by the CCTA are representative as set out in Appendix 1.

The CCTA's proposed rate is based on an average net embedded pole cost of $478. This embedded cost is derived from material filed by Milton Hydro in the proceeding leading to the Telecom Decision of the CRTC 99-13 and is supported by the evidence of Hamilton Hydro in this proceeding that the embedded pole cost is $477.47.

EDA argues that local costs vary significantly and if the Board considers it appropriate to set a uniform rate, the rate should reflect the cost of the utilities having the highest embedded pole cost. The EDA then submits that the parties should be free to apply to the Board for a lower rate where they can demonstrate lower costs.

While the Board recognizes local costs vary, there are advantages to having a province-wide rate. That rate should to a maximum extent possible, be based upon representative cost. The Board accepts the CCTA's estimated average net embedded pole cost of $478.

The rate proposed by the CCTA assumed a pre-tax weighted average cost of capital of 9.5%. In response to an undertaking, the CCTA provided a revised weighted average cost of capital based upon a debt equity ratio of 50/50, an interest rate of 7.25% and a return on equity of 9.88% as provided for in the Board's current Rate Handbook. This cost of capital applies to distributors with a rate base of less than $100 million. Given that a large majority of distributors in the province have less than this amount, the Board believes that this new weighted average of capital is an appropriate one to use in calculating a province-wide rate.

Calculation of the rate

To calculate the rate, it is necessary to define the number of attachers as well as the embedded pole costs discussed above. It is also important to define the spacing on a typical pole.

The CCTA proposal assumes a typical pole height of 40 feet with two feet of communications space, 3.25 feet of separation space and 11.50 feet of power space. Mr. Wiebe, on behalf of CEA proposed slightly different space allocations. The CCTA argues that the space allocations adopted by Mr. Ford are virtually identical to those put forward by the Municipal Electric Association in the CRTC proceeding. In addition, the EDA put forward a model agreement developed co-

operatively by a number of LDCs (the Mearie Group) where the assumptions regarding space allocation for a typical 40 foot pole were identical to those used by Mr. Ford. The Board finds that the CCTA estimates are acceptable.

As stated, the Board believes that a single province-wide rate is in the public interest. As indicated, the Board believes its more realistic to use 2.5 as the number of attachers. The Board agrees with the EDA and CEA that the common costs should be shared equally among all attachers. On these principles and the cost data described above, the annual pole charge is $22.35 per attacher as set out in Appendix 2.

Should there be a standard form of agreement?

Under the Settlement Agreement, the parties agree to negotiate the terms and conditions once the Board has made its determination as to the rate. The parties agree to report back to the Board in four months as to the progress of these negotiations. The Board accepts this approach.

Impact on existing contracts

In the Settlement Agreement all parties with one exception, agreed that any new rate set by the Board should not apply to existing contracts. The rate would only apply when the current term of existing contracts expired. Where no contract exists, the licence conditions would apply immediately.

The acceptance of this position appears to be driven by the fact that most existing contracts provide for retroactive rate adjustment in the event this Board determines a rate.

The CCTA states that it would not object to a Board ruling that existing contracts without a retroactivity clause are immediately subject to the Board's decision regarding new licence conditions. They claim however, that few contracts do not have retroactivity provisions.

MTS objects to the Settlement Agreement and submits that any pole access rates set by the Board should be applied to all existing contracts not just those with retroactivity clauses. The Board will provide that the new rates and conditions resulting from this decision will apply immediately to those agreements without a retroactivity clause. Those are apparently few in number. This should provide immediate relief to those who are unable to benefit from a retroactivity provision.

THE BOARD ORDERS THAT:

The licence conditions of the electricity distributors licenced by this Board shall as of the date of this Order be amended to provide that all Canadian carriers as defined by the Telecommunications Act and all cable companies that operate in the Province of Ontario shall have access to the power poles of the electricity distributors at the rate of $22.35 per pole per year.

Dated at Toronto, March 7, 2005.

_____
Gordon E. Kaiser
Vice Chair and Presiding Member

Appendix 1: CCTA Recommended Charge (2 Attachers)

	Price Component - Per Pole	***$***	***Explanation***
	DIRECT COST		
A	Administration Costs	$0.69	CRTC estimate 1999 $0.62, plus inflation
B	Loss in Productivity	$1.92	MEA estimate 1991 = $3.08, plus inflation, and divided between two pole attachers
C	Total Direct Costs	$2.61	A + B
	INDIRECT COSTS		
D	Net Embedded Cost per pole	$478.00	Milton Hydro 1995 = $478
E	Depreciation Expense	$31.11	Milton Hydro 1995 = $31.11
F	Pole Maintenance Expense	$7.61	Milton Hydro 1995 = $6.47, plus inflation
G	Capital Carrying Cost	$45.41	Pre-tax weighted average cost of capital 9.5% applied to net embedded cost per pole (D)
H	Total Indirect Costs per Pole	$84.13	E+F+G
I	Allocation Factor	15.5%	CRTC allocation
J	Indirect Costs Allocated	$13.04	H x I
K	Annual Pole Rental Charge	$15.65	C + J

Appendix 2: 2.5 Attachers - Shared Costs Evenly Spread Amongst All Users

	Price Component - Per Pole	***$***	***Explanation***
	DIRECT COST		
A	Administration Costs	$0.69	CRTC estimate 1999 $0.62, plus inflation
B	Loss in Productivity	$1.23	MEA estimate 1991 = $3.08, plus inflation, and divided between 2.5 pole attachers
C	Total Direct Costs	$1.92	A + B
	INDIRECT COST		
D	Net Embedded Cost per pole	$478.00	Milton Hydro 1995 = $478
E	Depreciation Expense	$31.11	Milton Hydro 1995 = $31.11
F	Pole Maintenance Expense	$7.61	Milton Hydro 1995 = $6.47, plus inflation
G	Capital Carrying Cost	$54.59	Pre-tax weighted average cost of capital 11.42% applied to net embedded cost per pole (D)
H	Total Indirect Costs per Pole	$93.31	E+F+G
I	Allocation Factor	21.9%	Allocation based on 2.5 attachers
J	Indirect Costs Allocated	$20.43	H x I
K	Annual Pole Rental Charge	$22.35	C + J

TAB 6

We will break now for an hour and a half and come back at 2:30 with our decision.

639

--- Luncheon recess taken at 1:00 p.m.

640

---On resuming at 2:31 p.m.

641

DECISION ON MOTIONS:

642

MR. KAISER: The Board's decision in this matter will deal with the matters in the order in which they were argued this morning. First, we'll deal with the cost issue.

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Having heard the submissions of the different parties, the Panel has concluded that each party should be responsible for its own costs. This is subject to the Board costs being shared equally by the cable companies and telecom companies on the one hand and the electricity distributors on the other.

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For the moment, we will leave the division of the costs in the two groups up to the members of those groups. If the cable companies and the telecom companies can't agree, they can speak to the Board; and, to the same degree, if the CEA and EDA can't agree, the Board may be spoken to in that regard.

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To the Board costs, we will add the costs of the expert evidence that has been prepared jointly by the CEA and the EDA, and we will add the costs of Energy Probe. We recognize that based on an earlier decision, expenditures were incurred with respect to that expert evidence. We also realize that Energy Probe is a non-commercial entity, and perhaps of all the parties is more aligned to what might be regarded as a consumer interest or the public interest. That's the reason we have dealt with their costs differently.

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We have not dealt differently with the costs of the Major Power Users, and if there are submissions that need to be heard in that, we're prepared to listen to them. But the ruling of the Panel is that each party bears its own costs, subject to what I've said with respect to Energy Probe.

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We realize that we've departed from our earlier decision with respect to costs in this matter, but the proceeding has changed materially in its complexion. In particular, the telecom companies have intervened and we think that has made a difference. We think it is important that the access to be enjoyed by the telecom companies be dealt with at the same time as the cable companies. It's not in the public interest, or in the Board's interest, or any of the parties' interest to split this into two separate proceedings.

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We recognize that these are essential facilities. They are not only monopoly assets, as Mr. Brett stressed, but they are essential facilities, and non-discriminatory access is important. In this regard, the Board notes these industries are converging. The cable companies are increasingly competing with telecom companies and vice versa, and the LDCs are, themselves, entering into some telecommunication activities. In such circumstances, it is important that there be non-discriminatory access and no undue preference to any of the competing entities.

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The next matter deals with the motion of the Electricity Distributors Association filed with the Board on September 13th. That motion requested a Procedural Order to bifurcate this proceeding into two phases; phase one, the current phase, wherein the Board would determine if the Board will set specific terms of access; and B, if necessary, a second phase to determine the specific terms or charges, if any, which the Board wishes to set.

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Having heard the submissions of the parties, the Board has concluded that it would be unwise to further delay these proceedings. As mentioned by Mr. Brett, this application was filed back on December 16th of last year. We are now nine months into the process. This entire matter has been proceeding for years. It's important that it get resolved in a timely fashion and the Board is not open to any further delay.

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We are particularly concerned in this regard with the fact that this motion was brought late in the day. Accordingly, this motion is denied.

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The third matter is a notice of motion that was filed by the CEA on September 24. This was a motion for an order for disclosure on the public record of an unabridged response of the Cable Television Association, answers to OEB Staff Interrogatories Nos. 2 and 6, and an order requiring the CCTA to answer the CEA's Interrogatory No. 3(b), which was of similar effect. The third aspect of that motion was for an

order for the disclosure on the public record of an unabridged response of MTS Allstream's response to OEB Staff Interrogatory No. 2.

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In this proceeding before us, this morning MTS Allstream was not represented, but we did hear from counsel for the CEA and the Canadian Cable Television Association. Pursuant to the discussion with the parties, counsel for the CEA, Mr. Ruby has agreed to accept these answers in confidence, and we accept his undertaking that they will remain in confidence. Mr. Ruby has indicated to the Board that if he requires disclosure of this material to his client, he will approach the Board for further direction. Mr. Brett, for the Canadian Cable Television Association, has agreed to that procedure.

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With respect to MTS Allstream, although they're not represented, we will ask them to comply with the same procedure.

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Last but not least, and perhaps one of the more complicated motions, is the motion by the Cable Television Association of September 28th, requiring that the Electricity Distributors Association be ordered to provide a full and adequate response to CCTA Interrogatories 4(a) through 4(g), and Interrogatory 6(a) through 6(g).

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I'm going to try to deal with those in the order in which they were raised. Dealing first with questions 4(a), (b), and (c). This was a question posed by the Cable Association regarding the number of distribution poles owned, either solely or jointly with another party. 4(b) was the number of distribution poles with cable television attachments. 4(c) was the number of distribution poles with communication attachments, other than cable television attachments.

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The discussion on the record indicates that the LDCs do, in fact, bill both cable companies and telcos currently, and that those bills would indicate revenues as well as the number of poles and/or attachments. Accordingly, we direct the LDCs to provide a copy of the bill for the last available month in each of those categories, 4(a), 4(b), and 4(c), to the extent that they're available. The Board is not requesting the LDCs to provide information they do not have. What the Board is requesting is that they provide the existing bills, obviously totalled, so that an aggregate amount by month can be made available to counsel for the Canadian Cable Television Association.

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Mr. Brett has agreed on the record that that is acceptable, and the last month's billing will be sufficient for his purposes.

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Turning next to questions 4(d) and 4(e). Question 4(d) is the annual revenues from cable television pole attachment fees. 4(e) is the total annual revenue for all attachment fees. We're led to believe, by Mr. Brett, that such information is available in the uniform system of accounts, account number 4210, and accordingly we direct each of the LDCs to produce that information. Again, we are not asking the LDCs to produce something they do not have. We're asking them simply to provide that information for the last reporting period for that account.

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Regarding 4(f) and 4(g), we understood counsel for the Canadian Cable Television Association to say they had that information and a Board ruling is not required with respect to those matters.

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Turning next to Interrogatory 6, and starting with 6(a)and 6(b), question 6(a) related to the embedded costs per pole and 6(b) was the net-embedded cost per joint-use pole.

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We are led to believe that the information referred to and requested in 6(a) is available in account 1830, in the uniform system of accounts. And the information requested in 6(b) is available in account 5705. Again, we direct each of the LDCs to produce that information from those accounts for the last reporting period.

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We accept and understand the submissions of counsel for the EDA that such information may not be exactly what Mr. Brett requests, but in order to proceed in an expeditious manner, we'll start with this and ask the LDCs to produce the information in that account, and we'll go from there.

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We then come to question 6(c) and 6(d). In this respect, an affidavit was filed by Mr. Mace, who is the vice chair of the EDA and the chief executive officer of Thunder Bay Hydro. Mr. Mace states, in paragraph 18 of that affidavit that:

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"In reality, the LDCs have never been required and do not track these costs."

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While we accept Mr. Mace's statement, the Board is unclear, from that answer, as to whether the information doesn't exist for some of the utilities or all of the utilities. Accordingly, we would ask counsel for the EDA to inquire of each of the LDCs that she represents, and, for that matter, Mr. Ruby, in the case of the seven LDCs that he represents - I'm not sure whether there is an overlap or not - to inquire of their clients, do they or do they not have that information. If they do have that information, it should be produced; if they do not have that information in a manner that can be readily supplied to the Board, we are not asking at this time that it be created or extensive efforts be undertaken to obtain it.

667
We then come to 6(e) and 6(f). 6(f) was the average pole maintenance expense per joint-use pole and 6(e) was the annual depreciation charge per joint-use pole, as reflected in the books of the LDC. We are led to believe that such information is contained in account 5120, and we ask and we direct the LDCs to produce such information as contained in the most recent reporting period.

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With respect to 6(g), that was the weighted average cost of capital, we understand from counsel of the EDA that such information exists, and accordingly, the Board directs each of the LDCs represented by that association to produce that information.

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We believe the above information can be produced in a timely fashion. It appears to the Board that it's readily available. In order to move on with these proceedings, we ask that it be produced within seven days. If there is a problem with that timeline, the Board may be spoken to.

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Thank you very much. Is there anything arising from the Board's decision that we need to consider at this time?

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Mr. Brett?

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MR. BRETT: No, sir, I have no questions at this time.

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MR. KAISER: Mr. Ruby?

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MR. RUBY: If I may just have a moment to consult. No, thank you, Mr. Chair.

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MR. KAISER: Thank you, sir.

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Mr. Dingwall?

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MR. DINGWALL: No questions, sir.

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MR. KAISER: Ms. Friedman?

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MS. FRIEDMAN: Sorry, if you could just give me one moment to look back --

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MR. BRETT: Mr. Chairman, just while Ms. Friedman is checking, I assume our settlement conference proceeds tomorrow as planned?

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MR. KAISER: Yes.

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MS. FRIEDMAN: No.

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MS. LEA: Mr. Chairman, I'm not sure if it's of any assistance to the parties, but I just thought I'd let folks know that I was only here for the day, so if you have questions of a legal nature and need to speak to counsel for the Board in the matter, it will be Mike Lyle rather than myself.

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MR. KAISER: Thank you.

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That said, the Board is adjourned.

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--- Whereupon the hearing adjourned at 2:50 p.m.

TAB 7

No parties commented on Rate 8100.

Board Findings

The Board notes that the changes TransAlta has proposed to the rate, namely unbundling and time of use pricing, are consistent with the changes proposed to many of the other rates. The Board finds that TransAlta's proposed design of Rate 8100 is reasonable except that the Delivery Charge should be the TA Billings charge.

In Section 3(a), the Board directed TransAlta to design rates so that:

- the DISCO's total charges related to Energy Supply, TA Billings and DISCO Services are unbundled, with the revenue-to-cost ratio for each set at 100%;
- the revenue-to-cost ratios for Energy Supply and TA Billings are each set at 100% for every rate class' and to the extent possible the revenue-to-cost ratios for Energy Supply and TA Billings are each set at 100% for individual customers; and
- the overall increase in revenue over that collected from existing rates is kept at less than 10% for every class, by adjusting as required the "residual" DISCO Services amounts to be recovered from customer classes. (The Board notes that individual customers may see more than a 10% increase if their usage characteristics warrant.)

The Board also directed TransAlta to include a table showing the revenue-to-cost ratios for each cost source (Energy Supply, TA Billings and DISCO Services) for each rate class.

(16) Shared Use of Overhead Facilities C Rate 9100

In older residential subdivisions within TransAlta's service area electricity is distributed through a system of overhead wires. The supporting structure for TransAlta's distribution wires is a network of distribution poles. The distribution poles are owned by TransAlta. Where these distribution poles are in place and space is available on the poles, TransAlta has shared its poles with telecommunication carriers and cable television companies. In exchange for access to TransAlta's distribution pole network, TransAlta levies a charge to recover a sharing of the pole costs. Previously this rate was negotiated between TransAlta and the cable companies and TELUS and was not submitted to the Board for approval. TransAlta has applied for approval of Shared Use of Overhead Facilities Rate 9100 (Rate 9100). Shaw Communications Inc. and The Canadian Cable Television Association (collectively the Cable Intervenors) opposed TransAlta's Application with respect to Rate 9100 on jurisdictional grounds. TELUS also opposed the Application on the basis that approval of Rate 9100 is beyond the jurisdiction of the Board. In its submission TELUS limited its jurisdictional argument to what has been defined below as the constitutional issue; that as a matter of constitutional law provincial legislation cannot regulate a vital part of a federal undertaking.[32] TELUS went on to comment on the substance of TransAlta's proposed tariff. The FIRM Customers supported TransAlta's Application.

[32] TELUS Communications Inc., Intervenor Evidence Submission to AEUB, p.2

The jurisdiction issues raised by the Cable Intervenors were as follows:

> Whether the Alberta Energy and Utilities Board has the constitutional jurisdiction to approve Rate 9100. ("the constitutional issue")
>
> Alternatively, leaving aside the constitutional issue entirely, whether the Applicant was right in placing the charges contemplated by Rate 9100 before the Board at all ("the narrow issue").[33]

Board Findings

Although framed somewhat differently, the Board considers the second issue raised by the Cable Intervenors to be a question of statutory interpretation, that is whether the Board has the authority to consider and approve, disapprove or vary the rate charged by TransAlta to cable companies (or telephone companies) for the shared use of TransAlta's distribution power poles. The Board will deal with the question of its statutory jurisdiction first.

Statutory Jurisdiction

The question the Board has been asked to consider involves an examination and interpretation of the Board's jurisdiction. The Board's basic powers to regulate the tolls of power utilities are found in the EU Act and the *Public Utilities Board Act* (PUB Act).

While the relevant provisions of the statutory framework are lengthy, they are set out below for completeness. First the Board clearly has jurisdiction over an "electric utility" which is defined in section 1(1)(f) to mean:

> (f) "electric utility" means
>
> (i) a regulated generating unit,
>
> (ii) a transmission facility, or
>
> (iii) an electric distribution system,
>
> that is used, directly or indirectly, for the public, but does not include
>
> (iv) a generating unit not listed in the Schedule,
>
> (v) a transmission facility owned by a municipality or a subsidiary of a municipality, other than the City of Edmonton, unless the municipality passes a bylaw under section 59,

[33] Argument in Chief of Cable Intervenors dated 9 December 1998, p.2

(vi) an electric distribution system owned by a municipality or a subsidiary of a municipality, unless the municipality passes a bylaw under section 59,

(vii) an arrangement of conductors intended to distribute electricity solely on property of which a person is the owner or a tenant, for use solely by that person and solely on that property, or

(viii) a facility exempted by the Board pursuant to section 73(4);

Section 49(1) of the EU Act requires the owners of "electric utilities" to file tariff applications with the Board. It reads:

> **49**(1) The owner of an electric utility shall prepare a tariff relating to the electric utility and apply to the Board for approval of the tariff.

"Electric utility" was previously defined to include "an electric distribution system." "Electric distribution system" is defined in section1(1)(d) of the EU Act as follows:

> "electric distribution system" means the plant, works, equipment, systems and services necessary to distribute electricity in a service area, but does not include a generating unit or a transmission facility;

As TransAlta operates an electric distribution system, it is an electric utility as defined in the EU Act and it must file for approval of its tariffs pursuant to section 49(1) of the EU Act.

Additional power for the Board to act in respect of tariffs for the attachment by cable television operators and telecommunication companies to TransAlta's distribution poles is found in section 88 of the PUB Act:

> **88** When it is in the public interest or when, as a means of saving expense, it is in the interest of any owners of public utilities that there be a joint use of poles, conduits or equipment or other means of distribution, the Board may, after notice to all parties concerned, in cases where it is practicable, order the joint use and declare the terms thereof, and by the order or subsequent order make any provisions necessary for the convenient and effectual carrying out of the work, and for the operation of the services by means of the equipment so to be jointly used.

The overall powers of the Board are strengthened by the general supervisory powers over public utilities found in subsections 28(1)(a) and (2) and section 29 of the PUB Act:

> **28**(1) The Board has all the necessary jurisdiction and power
>
> (a) to deal with public utilities and the owners thereof as provided in this Act; …
>
> (2) In addition to the jurisdiction and power mentioned in subsection (1), the Board has all necessary jurisdiction and powers to perform any duties that are assigned to it by statute or pursuant to statutory authority.
>
> **29** In matters within its jurisdiction the Board may order and require any person or local authority to do forthwith or within or at a specified time and in any manner prescribed by the Board, so far as it is not inconsistent with this Act or any other Act conferring jurisdiction, any act, matter or thing that the person or local authority is or may be required to do under this Act or under any other general or special Act, and may forbid the doing or continuing of any act, matter or thing that is in contravention of any such Act or of any regulation, rule, order or direction of the Board.

The Cable Intervenors argue that the definition of "electric utility" relates solely to the generation, transmission and distribution of electricity. In their view the costs for sharing support structures are not related to the distribution of electricity. In the result those costs should not form a part of a tariff filed by an electric utility pursuant to section 49. TransAlta points out that the definition of "electric distribution system" expands the definition of "electric utility" to clarify that an "electric distribution system" includes the facilities necessary to distribute electricity. As a result TransAlta concludes that the fee for joint use of distribution poles is properly before the Board.

It is clear to the Board that the statutory language cannot be limited as the Cable Intervenors propose and that distribution poles are included in the definition of "electric distribution system." As such the costs related to those distribution poles are properly the subject matter of a tariff application to the Board.

A second reason not to limit the Board's powers in the narrow way advocated by the Cable Intervenors relates to the key principles of statutory interpretation that the Board utilizes in delineating its jurisdiction. In the Board's view the specific jurisdiction conferring sections should be examined in light of the statutory scheme as a whole, the purpose of the legislation, the reason for the Board's existence, the expertise of the Board and the nature of the problem before the Board.

When taken as a whole the provisions set out above from the EU Act and the PUB Act strengthen the Board's interpretation of "electric distribution utility" as they indicate a clear legislative intention to confer significant power in the Board over power utilities and their rates. In particular section 88 of the PUB Act confers upon the Board specific authority to order the

joint use of poles and declare the terms for such sharing. The statutory scheme promotes the public policy objective of encouraging the sharing of existing support structures and provides a regulatory mechanism for reviewing the appropriateness of the rates charged by the electric utility for use of its poles.

The Board is therefore of the view that it has statutory jurisdiction to consider, approve, disapprove or vary Rate 9100 filed by TransAlta.

The Board would like to comment on a contention of the Cable Intervenors that the Board does not have jurisdiction over everything TransAlta does simply because it is an electric utility. In particular it is argued that because all TransAlta is doing is leasing part of its facilities to cable television operators, it need not apply for approval of the rent as a tariff item. The analogy is made to a sublease of its office space to a cable television operator.[34]

Although not cited by any of the parties, this issue was addressed by the Manitoba Court of Appeal in *Greater Winnipeg Cablevision Limited v. The Public Utilities Board and Manitoba Telephone System*, [1979] 2 WWR 82 (Man. C.A.). In that case, the Court considered whether the Manitoba Public Utilities Board had jurisdiction to regulate the amount of rent charged for coaxial cables by public utilities. The Court stated at p.87:

> It is common ground that MTS is a public utility within the definition, with respect to its telephone and telegraph services … It does not necessarily follow that everything done by MTS is subject to the regulatory supervision of the board. It is possible for an undertaking to be a public utility as defined in the Act for some purposes and not for others.

The Court went on to consider the specific provisions of the *Public Utilities Board Act* (Manitoba) and the *Manitoba Telephone Act* and concluded that those provisions did not give the Board the jurisdiction to regulate coaxial cables.

The Board recognizes that the Court concluded that a tribunal does not have jurisdiction in all cases over the action of a public utility simply because it is a public utility as defined in the tribunal's enabling legislation. However the Court does look to the relevant statute to determine the scope of the tribunal's jurisdiction over a public utility. In our case, as set out above, the Board has concluded that the relevant statutory provisions provide direct statutory authority over the tariff for the joint use of poles.

Furthermore the Board considers that the various provisions of the EU Act and the PUB Act must be interpreted in light of one of the purposes of the Board; the protection of ratepayers against the monopoly power of the utility. Therefore the Board is of the view that the Board's broad general powers provide it with the ability to regulate the tariff charged by TransAlta to

[34] Argument in Chief of Cable Intervenors dated 9 December 1998, p.9

TAB 8

Canadian Radio-television and Telecommunications Commission

Conseil de la radiodiffusion et des télécommunications canadiennes

DECISION

Ottawa, 12 August 1994

Telecom Decision CRTC 94-15

REGULATION OF WIRELESS SERVICES

I BACKGROUND

On 13 October 1993, the Commission issued Regulation of Wireless Services Provided by Canadian Carriers, Telecom Public Notice CRTC 93-64 (Public Notice 93-64), in which it stated the view that, under the Telecommunications Act (the Act), the provision of wireless telecommunications may well constitute the provision of a "telecommunications service" and that a Canadian carrier providing such services would be subject to Commission regulation, including the requirement to file tariffs for the Commission's approval. In that Public Notice, the Commission invited comment on, among other things, its preliminary view that, pursuant to section 34 of the Act, it would be appropriate to forbear from exercising some or all of its powers and performing some or all of its duties with respect to the provision of cellular service, public cordless telephone service (PCTS) and other wireless services (such as mobile radio and paging) provided by Canadian carriers.

DÉCISION

Ottawa, le 12 août 1994

Décision Télécom CRTC 94-15

RÉGLEMENTATION DES SERVICES SANS FIL

I HISTORIQUE

Le 13 octobre 1993, le Conseil a publié l'avis public Télécom CRTC 93-64 intitulé Réglementation des services sans fil fournis par les entreprises canadiennes (l'avis public 93-64), dans lequel il a indiqué qu'en vertu de la Loi sur les télécommunications (la Loi), la fourniture de services de télécommunications sans fil pourrait bien constituer la fourniture d'un "service de télécommunication" et qu'une entreprise canadienne qui fournit de tels services serait assujettie à la réglementation du Conseil, notamment pour ce qui est de l'obligation de déposer des tarifs pour fins de son approbation. Dans ce même avis, il a invité les parties intéressées à se prononcer, entre autres choses, sur le fait qu'il estimait de prime abord que, conformément à l'article 34 de la Loi, il conviendrait de s'abstenir d'exercer, en tout ou en partie, les pouvoirs et fonctions à l'égard de la fourniture du service cellulaire, du service téléphonique public sans fil (STPSF) et d'autres services sans fil (comme les services de radiotéléphones mobiles et de téléappel) fournis par des entreprises canadiennes.

Section 34 of the Act states as follows:

34.(1) The Commission may make a determination to refrain, in whole or in part and conditionally or unconditionally, from the exercise of any power or the performance of any duty under sections 24, 25, 27, 29 and 31 in relation to a telecommunications service or class of services provided by a Canadian carrier, where the Commission finds as a question of fact that to refrain would be consistent with the Canadian telecommunications policy objectives.

(2) Where the Commission finds as a question of fact that a telecommunications service or class of services provided by a Canadian carrier is or will be subject to competition sufficient to protect the interests of users, the Commission shall make a determination to refrain, to the extent that it considers appropriate, conditionally or unconditionally, ... in relation to the service or class of services.

(3) The Commission shall not make a determination to refrain ... if the Commission finds as a question of fact that to refrain would be likely to impair unduly the establishment or continuance of a competitive market for that service or class of services.

The sections enumerated in section 34 may be summarized as follows:

L'article 34 de la Loi porte que :

34.(1) Le Conseil peut s'abstenir d'exercer - en tout ou en partie et aux conditions qu'il fixe - les pouvoirs et fonctions que lui confèrent normalement les articles 24, 25, 27, 29 et 31 à l'égard de services ou catégories de services fournis par les entreprises canadiennes dans les cas où il conclut, comme question de fait, que son abstention serait compatible avec la mise en oeuvre de la politique canadienne de télécommunication.

(2) S'il conclut, comme question de fait, que le cadre de la fourniture par les entreprises canadiennes de services ou de catégories de services est suffisamment concurrentiel pour protéger les intérêts des usagers - ou le sera -, le Conseil doit s'abstenir, dans la mesure qu'il estime indiquée et aux conditions qu'il fixe, ... à l'égard des services ou catégories de services en question.

(3) Le Conseil ne peut toutefois s'abstenir, ... s'il conclut, comme question de fait, que cela aurait vraisemblablement pour effet de compromettre indûment la création ou le maintien d'un marché concurrentiel pour la fourniture de ces services ou catégories de services.

Les articles cités à l'article 34 peuvent se résumer comme suit :

(1) section 24: the offering and provision of any telecommunications service by a Canadian carrier are subject to any conditions imposed by the Commission or included in a tariff approved by the Commission;

(1) l'article 24 : l'offre et la fourniture des services de télécommunication par l'entreprise canadienne sont assujetties aux conditions fixées par le Conseil ou contenues dans une tarification approuvée par celui-ci;

(2) section 25: among other things, no Canadian carrier shall provide a telecommunications service except in accordance with a tariff filed with and approved by the Commission, specifying the rate or the maximum or minimum rate, or both, to be charged;

(2) l'article 25 : entre autres choses, l'entreprise canadienne doit fournir les services de télécommunication en conformité avec la tarification déposée auprès du Conseil et approuvée par celui-ci fixant - notamment sous forme de maximum, de minimum ou des deux - les taux à imposer ou à percevoir;

(3) section 27: among other things, every rate charged by a Canadian carrier for a telecommunications service shall be just and reasonable, and the Canadian carrier shall not unjustly discriminate or give an undue or unreasonable preference in relation to the provision of a telecommunications service or the charging of a rate for it;

(3) l'article 27 : entre autres choses, tous les tarifs doivent être justes et raisonnables et il est interdit à l'entreprise canadienne, en ce qui concerne soit la fourniture de services de télécommunication, soit l'imposition ou la perception des tarifs y afférents, d'établir une discrimination injuste ou d'accorder une préférence indue ou déraisonnable;

(4) section 29: no Canadian carrier shall, without the prior approval of the Commission, give effect to any agreement or arrangement, whether oral or written, with another telecommunications common carrier respecting the interchange of telecommunications, the management or operation of facilities or the apportionment of rates or revenues; and

(4) l'article 29 : est subordonnée à leur approbation par le Conseil la prise d'effet des accords et ententes - oraux ou écrits - conclus entre une entreprise canadienne et une autre entreprise de télécommunication sur soit l'acheminement de télécommunications par leurs installations respectives, soit la gestion ou l'exploitation de celles-ci, ou de l'une d'entre elles, ou d'autres installations qui y sont interconnectées, soit encore la répartition des tarifs et des autres recettes entre elles; et

(5) section 31: no limitation of a Canadian carrier's liability in respect of a telecommunications service is effective unless it has been authorized or prescribed by the Commission.

(5) l'article 31 : la limitation de la responsabilité d'une entreprise canadienne en matière de services de télécommunication n'a d'effet que si elle est prévue par règlement du Conseil ou si celui-ci l'a approuvée.

With respect to cellular services, the Commission expressed the preliminary view that the criteria set out in section 34 would be met if it were to refrain from exercising and performing some or all of the enumerated powers and duties, in that:

Pour ce qui est des services cellulaires, le Conseil a dit estimé de prime abord que les critères établis à l'article 34 seraient respectés s'il s'abstenait d'exercer, en tout ou en partie, les pouvoirs et fonctions énoncés, étant donné :

(1) a determination to refrain would be consistent with the Canadian telecommunications policy objectives, particularly the objective "to foster increased reliance on market forces ... and to ensure that regulation, where required, is efficient and effective";

(1) que cette décision serait compatible avec la mise en oeuvre de la politique canadienne de télécommunication, plus particulièrement avec l'objectif visant à "favoriser le libre jeu du marché ... et assurer l'efficacité de la réglementation, dans le cas où celle-ci est nécessaire";

(2) the provision of cellular service is subject to a degree of competition sufficient to protect the interests of users; and

(2) que le cadre de la fourniture du service téléphonique cellulaire est suffisamment concurrentiel pour protéger les intérêts des usagers; et

(3) a determination to refrain would not be likely to impair unduly the continuance of a competitive market.

(3) que cette décision n'aurait vraisemblablement pas pour effet de compromettre indûment le maintien d'un marché concurrentiel.

However, the Commission also stated the view that any determination to refrain with respect to the approval of tariffs for cellular telephone services offered by telephone company affiliates should be conditional on the existence of adequate safeguards to ensure that the cellular activities of those

Toutefois, de l'avis du Conseil, une décision de s'abstenir d'approuver les tarifs applicables aux services cellulaires offerts par les affiliées de la compagnie de téléphone devrait être assujettie à l'existence de garanties permettant de s'assurer que les activités cellulaires de ces affiliées sont

affiliates are conducted at arm's length from the telephone company's regulated activities and that there is no cross-subsidization from monopoly revenues.

sans lien de dépendance avec les activités réglementées de la compagnie de téléphone et qu'il n'y a aucun interfinancement par les revenus des services monopolistiques.

With respect to PCTS, the Commission was similarly of the preliminary view that the criteria of section 34 would be met if it refrained from the exercise and performance of all or some of the enumerated powers and duties.

Quant aux STPSF, le Conseil a jugé aussi de prime abord que les critères établis à l'article 34 seraient respectés s'il s'abstenait d'exercer, en tout ou en partie, les pouvoirs et fonctions énoncés.

With respect to mobile wireless services other than PCTS and cellular services (other wireless services), the Commission stated the preliminary view that the statutory criteria set out in section 34 would be met if it were to refrain from exercising and performing all of the enumerated powers and duties. The Commission was also of the view that, in the alternative, it would be consistent with the Canadian telecommunications policy as set out in section 7 of the Act to make an exemption order pursuant to section 9. That section provides that the Commission may, by order, exempt any class of Canadian carriers from the application of the Act, subject to any conditions contained in the order, where the Commission, after holding a public hearing, is satisfied that the exemption is consistent with the Canadian telecommunications policy objectives. Where the Commission proposes to so exempt a class of Canadian carriers, section 10 requires that the proposed order be sent to the Minister, who will lay it before each House of Parliament.

Pour ce qui est des services mobiles sans fil autres que les STPSF et les services cellulaires (autres services sans fil), le Conseil a estimé de prime abord que les critères établis à l'article 34 seraient respectés s'il s'abstenait d'exercer tous les pouvoirs et fonctions énoncés. Il juge également qu'autrement, il serait compatible avec la mise en oeuvre de la politique canadienne de télécommunication énoncée à l'article 7 de la Loi de publier une ordonnance d'exemption conformément à l'article 9. En effet, cet article prévoit que le Conseil peut, par ordonnance, soustraire, aux conditions qu'il juge indiquées, toute catégorie d'entreprises canadiennes à l'application de la présente Loi, s'il estime l'exemption, après avoir tenu une audience publique à ce sujet, compatible avec la mise en oeuvre de la politique canadienne de télécommunication. Lorsque le Conseil propose d'exempter une catégorie d'entreprises canadiennes, l'article 10 exige que le projet d'ordonnance soit transmis au ministre, qui le fera déposer devant chaque chambre du Parlement.

The Commission received comments from Canada Popfone Corporation (Popfone), Canadian Association of Messages Exchanges Inc. (CAM-X), Canadian Business Telecommunications Alliance, Clearnet Inc. (Clearnet), Mobility Canada, RadioComm Association of Canada (RAC), Rogers Cantel Inc. (Cantel), Stentor Resource Centre Inc. (Stentor), Teleglobe Canada Inc. (Teleglobe), Telezone Corporation, TMI Communications (TMI) and Unitel Communications Inc. (Unitel).

Le Conseil a reçu des observations de la Canada Popfone Corporation (la Popfone), de l'Association canadienne d'échange de messages, Inc. (la CAM-X), de l'Alliance canadienne des télécommunications de l'entreprise, de la Clearnet Inc. (la Clearnet), de Mobility Canada, de l'Association RadioComm du Canada (l'ARC), Rogers Cantel Inc. (Cantel), du Centre de ressources Stentor Inc. (Stentor), de Téléglobe Canada (Téléglobe), de la Telezone Corporation, de la TMI Communications (la TMI) et d'Unitel Communications Inc. (Unitel).

II CONCLUSIONS

II CONCLUSIONS

A. General

A. Généralités

The Commission finds that the provision of wireless telecommunications constitutes the provision of a telecommunications service within the meaning of the Act. Thus, the provision of such services by Canadian carriers, within the meaning of the Act, is subject to regulation by the Commission. The Commission notes that parties to this proceeding generally agreed with this view.

Le Conseil conclut que la fourniture de services de télécommunications sans fil constitue la fourniture d'un service de télécommunication au sens de la Loi. Ainsi, la fourniture de services de ce genre par des entreprise canadiennes, au sens de la Loi, est assujettie à la réglementation du Conseil. Celui-ci signale que les parties à la présente instance partageaient généralement cet avis.

Unitel submitted that the Commission should defer any consideration of refraining with respect to wireless services until after the appropriate criteria for assessing market competitiveness are established in the proceeding initiated by Review of Regulatory Framework, Telecom Public Notice CRTC 92-78, 16 December 1992.

Selon Unitel, le Conseil devrait reporter l'examen de la question de l'abstention à l'égard des services sans fil jusqu'à ce qu'on ait pu établir les critères appropriés d'évaluation de la compétitivité du marché dans l'instance amorcée par l'avis public Télécom CRTC 92-78 du 16 décembre 1992 intitulée Examen du cadre de réglementation.

The Commission notes that subsections 34(1), (2) and (3) of the Act set out the conditions governing a determination on its part to refrain from exercising powers or performing duties under the Act. The Act does not require the Commission to delineate criteria in addition to those set out in section 34, nor in the Commission's view is it necessary to do so in order to determine whether or not to refrain with respect to the services under consideration in this proceeding.

Le Conseil souligne que les paragraphes 34(1), (2) et (3) de la Loi énoncent les conditions qui motivent sa décision de s'abstenir d'exercer les pouvoirs et fonctions que lui confère la Loi. La Loi ne l'oblige pas à préciser les critères qui s'ajoutent à ceux que prévoit l'article 34, pas plus que le Conseil estime qu'il est nécessaire de le faire pour décider de s'abstenir ou non à l'égard des services à l'étude dans la présente instance.

B. Cellular Service and Public Cordless Telephone Service

B. Service cellulaire et service téléphonique public sans fil

In connection with cellular service, parties were generally of the view that the Commission should refrain with respect to all or some of the sections enumerated in section 34. Mobility Canada and Stentor submitted that the Commission should refrain with respect to all sections, stating that cellular service providers have no market power. Mobility Canada added that continued regulation would be inconsistent with the policy objectives set out in section 7 of the Act, specifically, the objectives to foster increased reliance on market forces and to respond to the economic and social requirements of users of telecommunications services. Cantel submitted that, initially, the Commission should refrain only with respect to itself and BCE Mobile Inc. It was Cantel's view that, in the case of both these service providers, a significant number of independent investors hold shares, making anti-competitive conduct unlikely. With respect to the cellular affiliates of the other telephone companies, Cantel

En ce qui a trait au service cellulaire, les parties estimaient généralement que le Conseil devrait s'abstenir en vertu de tous les articles énoncés à l'article 34 ou de certains d'entre eux. Selon Mobility Canada et Stentor, le Conseil devrait s'abstenir en vertu de tous les articles, déclarant que les fournisseurs de services cellulaires n'ont aucune puissance commerciale. Mobility Canada a ajouté qu'une réglementation continuelle serait incompatible avec la mise en oeuvre de la politique énoncée à l'article 7 de la Loi, plus particulièrement avec les objectifs visant à favoriser le libre jeu du marché et à satisfaire les exigences économiques et sociales des usagers des services de télécommunication. Pour sa part, la Cantel a soutenu qu'au début, le Conseil ne devrait s'abstenir qu'à son égard et à celui de la BCE Mobile Inc. À son avis, dans le cas de ces deux fournisseurs de services, de très nombreux investisseurs indépendants détiennent des actions, ce qui rend un comportement anticoncurrentiel

submitted that the Commission should refrain only after examining the adequacy of competitive safeguards.

improbable. Quant aux affiliées cellulaires des autres compagnies de téléphone, le Conseil ne devrait s'abstenir, d'après elle, qu'après avoir examiné la suffisance des garanties en matière de concurrence.

Teleglobe contended that the Commission should forbear from regulating both cellular and PCTS, but should not refrain from its powers and duties under section 29, in order that it could ensure the Canadian carriage of Canadian traffic.

Téléglobe a affirmé que le Conseil devrait s'abstenir de réglementer les services cellulaires et les STPSF, mais pas d'exercer les fonctions et pouvoirs que lui confère l'article 29, de sorte qu'il puisse garantir l'acheminement canadien du trafic canadien.

Most parties saw a continuing requirement for safeguards against anti-competitive behaviour. RAC was of the view that the Commission should refrain only with respect to the powers and duties set out in sections 24 and 25, submitting that sections 27, 29 and 31 may be required to investigate complaints regarding such behaviour.

De l'avis de la majorité des parties, des garanties permanentes contre des comportements anticoncurrentiels s'imposent. L'ARC estimait que le Conseil devrait s'abstenir seulement à l'égard des pouvoirs et fonctions que lui confèrent les articles 24 et 25, faisant valoir que les articles 27, 29 et 31 peuvent être nécessaires pour donner suite aux plaintes concernant ce genre de comportement.

The Commission notes that there are two licensed providers of cellular service and that four potential PCTS providers received licenses from the Department of Communications (now Industry Canada) in 1992. PCTS and other new services, such as enhanced specialized mobile radio systems, will provide substitutes for cellular service in some circumstances. Thus, these services will be subject to competition in the marketplace from each other and, in the case of PCTS, from pay telephones and certain PBX and Centrex services. Based on the above, the Commission finds it appropriate to refrain from the exercise of powers and the

Le Conseil signale que deux fournisseurs de services cellulaires sont autorisés et que quatre fournisseurs potentiels de STPSF ont reçu des licences du ministère des Communications (maintenant Industrie Canada) en 1992. Les STPSF et d'autres nouveaux services, comme les systèmes de radiotéléphones mobiles spécialisés évolués, pourront être substitués au service cellulaire dans certains cas. Ainsi, dans le marché, ces services se feront concurrence entre eux, et dans le cas des STPSF, ce seront les téléphones payants et certains services Centrex et de PBX. Compte tenu de ce qui précède, le Conseil juge approprié de s'abstenir

performance of duties with respect to cellular service and PCTS, except as described below.

d'exercer les pouvoirs et fonctions à l'égard des services cellulaires et des STPSF, sauf les services décrits ci-dessous.

With regard to Cantel's submission in the context of cellular service that the Commission should refrain only with respect to Cantel and BCE Mobile, the Commission does not consider that the presence of significant independent investment ensures against anti-competitive behaviour. However, as indicated in Public Notice 93-64, the Commission does consider it appropriate that its determination to refrain should be subject to assurances that cellular activities are conducted at arm's length from the telephone company's regulated activities and that there is no cross-subsidization from monopoly revenues. Accordingly, the Commission will not refrain with respect to cellular operations carried on within a regulated telephone company (i.e., one providing primary exchange service).

Quant à l'affirmation de la Cantel concernant le service cellulaire selon laquelle le Conseil ne devrait s'abstenir qu'à son égard et à celui de la BCE Mobile Inc., le Conseil ne croit pas que des investissements indépendants considérables garantissent un comportement anticoncurrentiel. Toutefois, comme il l'a indiqué dans l'avis public 93-64, il juge effectivement approprié que sa décision de s'abstenir soit assujettie à des garanties que les activités cellulaires soient sans lien de dépendance avec les activités réglementées de la compagnie de téléphone et qu'il n'y ait pas d'interfinancement par les revenus des services monopolistiques. Par conséquent, le Conseil ne s'abstiendra pas dans le cas des activités cellulaires menées au sein d'une compagnie de téléphone réglementée (c.-à-d., une qui fournit le service local de base).

With respect to cellular operations carried on by telephone company affiliates, the Commission would note that appropriate safeguards were established in Cellular Radio - Adequacy of Structural Safeguards, Telecom Decision CRTC 87-13, 23 September 1987 (Decision 87-13) and in Rogers Cantel Inc. v. Bell Canada - Marketing of Cellular Service, Telecom Decision CRTC 92-13, 29 June 1992 (Decision 92-13). These safeguards apply to the conduct of the telephone companies themselves, vis-à-vis their relations with cellular affiliates. Thus, the Commission's determination to refrain with regard to the provision

Pour ce qui est des activités cellulaires menées par des affiliées des compagnies de téléphone, il fait observer que des garanties appropriées ont été établies dans la décision Télécom CRTC 87-13 du 23 septembre 1987 intitulée Radio cellulaire - Opportunité des garanties structurelles (la décision 87-13) et dans la décision Télécom CRTC 92-13 du 29 juin 1993 intitulée Rogers Cantel Inc. c. Bell Canada - Mise en marché du service cellulaire (la décision 92-13). Ces garanties s'appliquent à la conduite des compagnies de téléphone elles-mêmes, en ce qui concerne leurs rapports avec les affiliées cellulaires.

of cellular service by affiliates does not affect the status of those safeguards.

Ainsi, la décision du Conseil de s'abstenir à l'égard de la fourniture du service cellulaire par des affiliées ne change en rien ces garanties.

For the reasons set out in Decisions 87-13 and 92-13, the Commission considers that the safeguards established in those Decisions should be extended to apply to the relations of the telephone companies with any affiliates in respect of the provision of PCTS.

Pour les raisons exposées dans les décisions 87-13 et 92-13, le Conseil estime que les garanties qui y sont établies devraient s'appliquer également aux rapports des compagnies de téléphone avec les affiliées en ce qui concerne la fourniture du STPSF.

In addition, the Commission considers that all terms and conditions currently applicable to cellular service providers governing the protection of the confidentiality of customer information, whether set out in tariffs, service contracts or otherwise in Commission rulings, should remain in effect. On a going-forward basis, all such provisions are to be included in customer service contracts. In addition, these provisions will continue to apply to existing customers, whether or not they were included in the service contracts signed by those customers. Finally, the Commission considers that the same terms and conditions governing the protection of the confidentiality of customer information should apply to providers of PCTS. Accordingly, as with cellular service, PCTS providers are to include those terms and conditions in any customer service contracts.

En outre, le Conseil juge que les modalités qui s'appliquent actuellement aux fournisseurs de services cellulaires en ce qui concerne la protection du caractère confidentiel des renseignements sur l'abonné, qu'elles soient établies dans les tarifs, les contrats de service ou autrement dans des décisions du Conseil, devraient demeurer en vigueur. Dorénavant, ces dispositions doivent être incluses dans les contrats de service des abonnés. De plus, elles continueront de s'appliquer aux abonnés actuels, qu'elles soient incluses ou non dans les contrats de service qu'ils signent. En dernier lieu, le Conseil estime que les mêmes modalités à l'égard de la protection du caractère confidentiel des renseignements sur l'abonné devraient s'appliquer aux fournisseurs de STPSF. En conséquence, comme pour le service cellulaire, les fournisseurs de STPSF doivent inclure ces modalités dans tous les contrats de service des abonnés.

In order to maintain its ability to require conditions governing customer confidential information, and in order to place other general

Pour pouvoir encore exiger des conditions régissant le caractère confidentiel des renseignements sur l'abonné et en imposer d'autres plus

conditions on the provision of cellular service and PCTS should it prove appropriate to do so, the Commission will continue to exercise powers and perform duties under section 24.

générales à l'égard de la fourniture de services cellulaires et de STPSF s'il jugeait opportun de le faire, le Conseil continuera d'exercer les pouvoirs et fonctions que lui confère l'article 24.

The Commission does not consider it necessary to continue to require providers of cellular service and PCTS to obtain the Commission's approval in order to give effect to agreements. However, in general, the Commission considers open access to telecommunications networks to be in the public interest. Consistent with this view, the Commission considers it necessary to ensure that cellular service and PCTS providers do not unjustly discriminate against other service providers or subscribers, or confer any undue or unreasonable preference, with respect to access to their networks. Further, the Commission considers that instances of unjust discrimination or undue preference in the provision of cellular service or PCTS could arise in other contexts. Accordingly, the Commission will continue to exercise powers and perform duties under subsections 27(2) and (4) in relation to these services.

Le Conseil ne considère pas nécessaire de continuer à exiger des fournisseurs de services cellulaires et de STPSF qu'ils obtiennent son autorisation pour donner effet aux accords. Toutefois, en général, il estime que la liberté d'accès aux réseaux de télécommunications sert l'intérêt public. Dans cette optique, il faut s'assurer, selon lui, que les fournisseurs de services cellulaires et de STPSF n'établissent pas de discrimination injuste à l'égard d'autres fournisseurs de services ou abonnés, ou qu'ils n'accordent pas de préférence indue ou déraisonnable, en ce qui a trait à l'accès à leurs réseaux. De plus, il juge que les cas de discrimination injuste ou de préférence indue dans la fourniture de services cellulaires ou de STPSF pourraient survenir dans d'autres contextes. Il continuera donc d'exercer les pouvoirs et fonctions que lui confèrent les paragraphes 27(2) et (4) à l'égard de ces services.

Based on the above, pursuant to subsection 34(1), the Commission finds as a fact that to refrain from exercising powers and performing duties under sections 25, 29 and 31 and subsections 27(1), (5) and (6) with respect to the provision of cellular service and PCTS by Canadian carriers other than the telephone companies would be consistent with the Canadian telecommunications policy objectives. Pursuant to subsection 34(2), the Commission finds that the

Compte tenu de ce qui précède, pour ce qui est du paragraphe 34(1), le Conseil conclut, comme question de fait, que s'abstenir d'exercer les pouvoirs et fonctions que lui confèrent les articles 25, 29 et 31 de même que les paragraphes 27(1), (5) et (6) à l'égard de la fourniture de services cellulaires et de STPSF par des entreprises canadiennes autres que les compagnies de téléphone serait compatible avec la mise en oeuvre de la politique canadienne de

provision of cellular service and PCTS is or will be subject to sufficient competition to protect the interests of users, so that it is appropriate to so refrain; further, with reference to subsection 34(3), the Commission finds that to so refrain would not be likely to impair unduly the establishment or continuance of a competitive market for these services. Pursuant to section 34(4), effective the date of this Decision, sections 25, 29 and 31 and subsections 27(1), (5) and (6) do not apply to the provision of cellular service or PCTS by Canadian carriers other than the telephone companies.

télécommunication. En ce qui a trait au paragraphe 34(2), il conclut que le cadre de la fourniture de services cellulaires et de STPSF est ou sera suffisamment concurrentiel pour protéger les intérêts des usagers, de sorte qu'il est approprié de s'abstenir; de plus, relativement au paragraphe 34(3), il conclut que s'abstenir n'aurait vraisemblablement pas pour effet de compromettre la création ou le maintien d'un marché concurrentiel pour ces services. Quant au paragraphe 34(4), à compter de la date de la présente décision, les articles 25, 29 et 31 de même que les paragraphes 27(1), (5) et (6) ne s'appliquent plus à la fourniture de services cellulaires ou de STPSF par les entreprises canadiennes autres que les compagnies de téléphone.

C. Other Wireless Services

With respect to other wireless services (for example, mobile radio, radio paging), the majority of parties submitted that the services in question are sufficiently competitive and that, pursuant to section 9, the Commission should exempt the carriers providing such services from the application of the Act. Parties noted that a number of the services in question (for example, radio paging) have never been regulated by the Commission, except where provided by the regulated telephone companies. However, Clearnet and RAC submitted that any order exempting carriers of other wireless services should be conditional on the implementation of adequate competitive safeguards.

C. Autres services sans fil

Pour ce qui est des autres services sans fil (par exemple, les services de radiotéléphones mobiles et de téléappel), la majorité des parties ont fait valoir que les services en question sont suffisamment concurrentiels et qu'en vertu de l'article 9, le Conseil devrait exempter ces services de l'application de la Loi. Les parties ont souligné que certains des services en question (par exemple, les services de téléappel) n'ont jamais été réglementés par le Conseil, sauf lorsqu'ils sont fournis par des compagnies de téléphone réglementées. Toutefois, de l'avis de la Clearnet et de l'ARC, une ordonnance exemptant les entreprises d'autres services sans fil devrait être assujettie à la mise en oeuvre de garanties adéquates en matière de concurrence.

Several parties, including Popfone and CAM-X, submitted that it would be more appropriate for the Commission to refrain pursuant to section 34, rather than exempt under section 9. Popfone was of the view that such an approach was preferable in order to check the uncontrolled entry of foreign firms.

Pour plusieurs parties, dont la Popfone et la CAM-X, au lieu d'exempter en vertu de l'article 9, le Conseil devrait s'abstenir en vertu de l'article 34. Selon PopFone, ce genre de démarche, est préférable pour surveiller l'entrée non contrôlée de firmes étrangères.

TMI submitted that there is effective competition between all wireless services such as cellular, PCTS and new mobile satellite radio. In TMI's view, given that customers can switch from one type of service to another, there is no need to regulate mobile satellite services.

La TMI a fait savoir qu'il existe une véritable concurrence entre tous les services sans fil comme les services cellulaires et les nouveaux services radiotéléphoniques mobiles par satellite. À son avis, comme les abonnés peuvent passer d'un service à l'autre, il est inutile de réglementer les services mobiles de transmission par satellite.

With respect to entry by foreign firms, the Commission notes that the operation of facilities making use of radio spectrum requires a licence under the Radiocommunication Act, and that the applicable regulations require that the licensee be a Canadian corporation and that it be at least 80% Canadian owned. In general, the Commission considers that the regulation of providers of other wireless services, other than the telephone companies, would be unnecessary and inefficient.

Quant à l'entrée de firmes étrangères, le Conseil fait remarquer que pour exploiter des installations qui utilisent des fréquences radiophoniques, il faut obtenir une licence en vertu de la Loi sur la radiocommunication, et que les dispositions réglementaires applicables exigent que la titulaire soit une compagnie canadienne et qu'elle appartienne au moins à 80 % à des intérêts canadiens. En général, il estime qu'il serait inutile et inefficace de réglementer des fournisseurs d'autres services sans fil, autres que les compagnies de téléphone.

Based on the record of the proceeding, the Commission is satisfied that it would be consistent with the Canadian telecommunications policy objectives to exempt, pursuant to section 9, providers of existing other wireless services, other than the telephone companies, from the application of the Act with respect to the

Le dossier de l'instance a convaincu le Conseil qu'il serait compatible avec la mise en oeuvre de la politique canadienne de télécommunication d'exempter, en vertu de l'article 9, les fournisseurs d'autres services sans fil en place, autres que les compagnies de téléphone, de l'application de la Loi pour ce qui

provision of those services. As noted earlier, section 9 requires that a public hearing be held. In this context, the Commission notes that a public hearing may be conducted by means of an oral or a written proceeding, depending on the circumstances of each case. In this case, the Commission is satisfied that parties had full opportunity to present their views in writing and that oral submissions were not required for that purpose. Further, in the Commission's view, the record of the proceeding is adequate for the purpose of its assessment of the relevant issues. In light of the above, the Commission considers that the current proceeding meets the requirement of section 9 that a public hearing be held. Accordingly, the Commission will send a proposed order providing for the exemption of providers of other wireless services, other than the telephone companies, to the Minister to be laid before each House of Parliament pursuant to section 10 of the Act.

est de la fourniture de ces services. Tel que noté précédemment, l'article 9 exige la tenue d'une audience publique. Dans ce contexte, le Conseil souligne qu'une audience publique peut avoir lieu dans le cadre d'une instance avec ou sans comparution, selon les circonstances de chaque cas. Dans le cas présent, comme il est convaincu que les parties ont eu amplement l'occasion d'exprimer leurs vues par écrit, il n'a pas exigé d'exposés oraux. En outre, de l'avis du Conseil, le dossier de l'instance est suffisant aux fins de l'évaluation des questions pertinentes. À la lumière de ce qui précède, il estime que l'instance en cours respecte l'obligation qui lui est faite à l'article 9 de tenir une audience publique. Il enverra donc un projet d'ordonnance prévoyant l'exemption des fournisseurs d'autres services sans fil, autres que les compagnies de téléphone, au ministre qui le fera déposer devant chaque chambre du Parlement, conformément à l'article 10 de la Loi.

Based on the record of this proceeding, the Commission considers that TMI competes with other wireless carriers generally and with other satellite carriers in particular. Further, the Commission is satisfied that the findings in the previous paragraph also apply to TMI. The Commission will therefore include TMI, the only existing service provider of its class, in its proposed order.

D'après le dossier de la présente instance, le Conseil estime que la TMI livre concurrence à d'autres entreprises sans fil en général et à d'autres entreprises de transmission par satellite en particulier. Il est également convaincu que les conclusions du paragraphe précédent s'appliquent aussi à la TMI. Il inclura donc la TMI, le seul fournisseur actuel de service de sa catégorie, dans son projet d'ordonnance.

The Commission notes that an exemption order cannot become effective until it has been laid before each House of Parliament and the requirements of section 10 have

Le Conseil fait remarquer qu'une ordonnance d'exemption ne peut prendre effet que lorsqu'elle a été déposée devant chaque chambre du Parlement et que les exigences de

otherwise been met. Accordingly, with respect to the provision of existing other wireless services by Canadian carriers other than the telephone companies and the provision of mobile satellite service by TMI, the Commission considers it appropriate to refrain unconditionally from the exercise of its powers and the performance of its duties under sections 24, 25, 27, 29 and 31 of the Act, in order that providers of such services not be subject to regulatory requirements such as the obligation to file tariffs. For these purposes, the Commission finds that to so refrain would be consistent with the Canadian telecommunications policy objectives. The Commission also finds that the services in question are subject to competition sufficient to protect the interests of users, so that it is appropriate to so refrain. Further, the Commission finds that to so refrain is not likely to impair unduly the establishment or continuance of a competitive market for those services. Pursuant to subsection 34(4), effective the date of this Decision, sections 24, 25, 27, 29 and 31 do not apply to the provision of existing other wireless services by Canadian carriers other than the telephone companies or to the provision of mobile satellite service by TMI.

l'article 10 sont par ailleurs respectées. En conséquence, pour ce qui est de la fourniture d'autres services sans fil actuels par des entreprises canadiennes autres que les compagnies de téléphone et de la fourniture par la TMI de services mobiles de transmission par satellite, il juge approprié de s'abstenir inconditionnellement d'exercer les pouvoirs et fonctions que lui confèrent les articles 24, 25, 27, 29 et 31 de la Loi, de manière que les fournisseurs de services de ce genre ne soient pas assujettis à des exigences réglementaires comme l'obligation de déposer des tarifs. Pour ces fins, le Conseil conclut que s'abstenir serait compatible avec la mise en oeuvre de la politique canadienne de télécommunication. Il conclut aussi que les services en question sont suffisamment concurrentiels pour protéger les intérêts des usagers, de sorte qu'il convient de s'abstenir. De plus, il conclut que s'abstenir n'aura vraisemblablement pas pour effet de compromettre indûment la création ou le maintien d'un marché concurrentiel pour ces services. Pour ce qui est du paragraphe 34(4), à compter de la date de la présente décision, les articles 24, 25, 27, 29 et 31 ne s'appliquent pas à la fourniture d'autres services sans fil existants par des entreprises canadiennes autres que les compagnies de téléphone ou à la fourniture par la TMI de services mobiles de transmission par satellite.

D. Cellular and Other Wireless Services Provided by Telephone Companies

D. Service cellulaire et autres services sans fil fournis par les compagnies de téléphone

Finally, the Commission considers that, conditional upon the development and implementation of

En dernier lieu, le Conseil estime que, sous réserve de l'élaboration et de la mise en oeuvre de garanties

the appropriate costing and marketing safeguards, it would be appropriate to forbear with respect to the provision of wireless services by the telephone companies. The Commission is prepared to consider proposals from the telephone companies to that end.

Allan J. Darling
Secretary General

appropriées en matière de prix de revient et de marketing, il conviendrait de s'abstenir à l'égard de la fourniture de services sans fil par les compagnies de téléphone. Le Conseil serait disposé à examiner des propositions des compagnies de téléphone dans ce sens.

Le Secrétaire général
Allan J. Darling

TAB 9

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *FortisBC Inc. v. Shaw Cablesystems Limited,* 2010 BCCA 552

Date: 20101206
Docket: CA037934

Between:

FortisBC Inc.

Appellant
(Applicant)

And

Shaw Cablesystems Limited, Shaw Business Solutions Inc. and British Columbia Utilities Commission

Respondents
(Respondents)

And

British Columbia Hydro and Power Authority

Intervenor

Before: The Honourable Mr. Justice Donald
The Honourable Madam Justice Kirkpatrick
The Honourable Mr. Justice Groberman

On appeal from: British Columbia Utilities Commission, February 17, 2010 (Order G-24-10) and April 1, 2010 (Order G-63-10)

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Place and Date of Hearing:	Vancouver, British Columbia October 27, 2010
Place and Date of Judgment:	Vancouver, British Columbia December 6, 2010

Written Reasons by:
The Honourable Mr. Justice Donald

Concurred in by:
The Honourable Madam Justice Kirkpatrick
The Honourable Mr. Justice Groberman

Reasons for Judgment of the Honourable Mr. Justice Donald:

[1] This is a case of statutory interpretation going to the jurisdiction of the British Columbia Utilities Commission (BCUC) to determine the terms and conditions under which Shaw Cablesystems Limited and Shaw Business Solutions Inc. (collectively "Shaw") may use FortisBC Inc.'s electricity transmission structures to support Shaw's cables.

[2] Since 1972, FortisBC has permitted access to Shaw under agreement. Then FortisBC purported to terminate the arrangement when Shaw rejected a 20-fold rent increase. Shaw applied to the BCUC under s. 70 of the *Utilities Commission Act*, R.S.B.C. 1996, c. 473 (the *Act*), for an order that FortisBC allow the continued use of the transmission facilities and directing a Negotiated Settlement Process to resolve the impasse between the parties.

[3] FortisBC disputed the BCUC's jurisdiction to entertain the application. The BCUC determined on 17 February 2010 that it had jurisdiction under s. 70: Order G-24-10. On 1 April 2010, the BCUC dismissed FortisBC's application for reconsideration: Order G-63-10. Reasons for decision were rendered in each instance.

[4] FortisBC brings this appeal from both orders with leave granted by the Chief Justice on 2 June 2010. British Columbia Hydro and Power Authority (BC Hydro) was granted intervenor status by Madam Justice Bennett on 28 July 2010.

[5] FortisBC appeals on the ground that the BCUC misinterpreted s. 70. For the reasons that follow, I do not accept that ground. In my opinion, the BCUC's interpretation was correct and I would accordingly dismiss the appeal.

FACTS

[6] FortisBC describes itself in its factum this way:

> 4. The Commission regulates Fortis under the *UCA* [*Utilities Commission Act*] as a privately-owned electric utility serving south-central British Columbia, including the Trail-Rossland area and extending westward to include most of the Okanagan Valley. (Fortis was incorporated in the late 1800's, originally based in Trail to generate electricity for the local mine, and operated as a utility for many years under the name "West Kootenay Power".) British Columbia Hydro and Power Authority ("BC Hydro") provides electricity to the rest of British Columbia. BC Hydro is also regulated by the Commission and this appeal has equal application to BC Hydro in its service area.
>
> 5. Fortis, like many electric utilities, includes three main functions, or facilities, in its service, *generation* (including dams and related turbines), *transmission* (large wires carrying electricity from the dams and generally throughout the service area to places where it is used) and *distribution* (smaller wires, usually in more concentrated populations, such as cities, which distribute electricity to homes and other end users). This appeal focuses on the Fortis transmission system, although it is also relevant that Shaw has telecommunications cable on the Fortis distribution system as well (A.R. p.3).

[7] Shaw's self-description in its factum is:

> 1. Since 1972, the Shaw Respondents (or their predecessors or affiliates) have placed their communications cables and associated facilities on the poles owned by FortisBC (or its predecessors) (Appeal Record, p. 3).
>
> 2. Throughout British Columbia and Canada, Shaw and other telecommunications service providers follow a similar pattern of accessing existing utility transmission corridors and infrastructure for the purpose of installing and maintaining communications facilities (Appeal Record, p. 7).

[8] The background is conveniently summarized in the preamble to the reasons issued under Order G-63-10:

> C. Shaw has accessed FortisBC's transmission and distribution poles for the placement of telecommunication facilities since 1972 with the agreement and cooperation of FortisBC and its predecessors; and
>
> D. Shaw submits that the issues in the Application are narrow and centre on fair and reasonable terms and rates and asks that a Negotiated Settlement Process be set as soon as possible; and
>
> E. On February 13, 2009, FortisBC notified Shaw that the Transmission License Agreement will terminate effective February 12, 2019; and
>
> F. On April 3, 2009, FortisBC notified Shaw to remove its facilities from FortisBC poles along lines 50 and 54 by April 3, 2010 and from poles along lines 40 and 76 by October 31, 2010 in accordance with good

utility practice and the decommissioning of line 40 (the April 3, 2009 Notices); and

G. Shaw disputes the validity of the April 3, 2009 Notices and submits they are related to unresolved issues on other matters, principally the ownership of the Kettle Valley telecommunication facilities and FortisBC's dissatisfaction with the Transmission License Agreement rates and FortisBC's proposal to increase the annual fee from approximately $40,000 to $927,000; and

H. Shaw states that FortisBC recently commenced an action in the Supreme Court of British Columbia that seeks:

1) a declaration that the Transmission License Agreement has been terminated,

2) a mandatory injunction to have Shaw remove its telecommunications facilities from FortisBC's transmission facilities and land,

3) an injunction to restrain Shaw from using its telecommunications facilities on FortisBC's transmission facilities; ...

[9] Before the BCUC, FortisBC argued that when the language of s. 70 is considered in the context of the *Act* as a whole, in light of its legislative history, and with the guidance of relevant case authority, it must be determined that the BCUC has no authority to regulate cable connections to electricity transmission facilities. The BCUC rejected those arguments. FortisBC renews those arguments on appeal.

RELEVANT ENACTMENTS

[10] Section 70 is in Part 5 of the *Act* which is headed "Part 5 – Electricity Transmission". Section 70 reads:

Use of electricity transmission facilities

70 (1) On application and after a hearing, the commission may make an order directing a public utility to allow a person, other than a public utility, to use the electricity transmission facilities of the public utility if the commission finds that

(a) the person and the public utility have failed to agree on the use of the facilities or on the conditions or compensation for their use,

(b) the use of the facilities will not prevent the public utility or other users from performing their duties or result in any substantial detriment to their service, and

> (c) the public interest requires the use of the facilities by the person.
>
> (2) An order under subsection (1) may contain terms and conditions the commission considers advisable, including terms and conditions respecting the rates payable to the public utility for the use of its electricity transmission facilities.
>
> (3) After a hearing, the commission may, by order, vary or rescind an order made under this section.
>
> (4) Any interested person may apply to the commission for an order under this section, and the application must contain the information the commission specifies.

[11] The phrase "electricity transmission facilities" is defined in s. 68:

> **68** In this Part:
>
> "**electricity transmission facilities**" means conductors, circuits, transmission towers, substations, switching stations, transformers and any other equipment or facilities that are necessary for the purpose of transmitting electricity;

[12] Section 27 deals with joint use by public utilities as defined by the *Act* (it is common ground that FortisBC is such an entity and Shaw, a federally regulated undertaking, is not):

> **Joint use of facilities**
>
> **27** (1) If the commission, after a hearing, finds that
>
> (a) public convenience and necessity require the use by a public utility of conduits, subways, poles, wires or other equipment belonging to another public utility, and
>
> (b) the use will not prevent the owner or other users from performing their duties or result in any substantial detriment to their service,
>
> the commission may, if the utilities fail to agree on the use, conditions or compensation, make an order it considers reasonable, directing that the use or joint use of the conduits, subways, poles, wires or other equipment be allowed and prescribing conditions of and compensation for the use.
>
> (2) If the commission, after a hearing, finds that the provision of adequate service by one public utility or the safety of the persons operating or using that service requires that wires or cables carrying electricity and run, placed, erected, maintained or used by another public utility be placed, constructed or equipped with safety devices, the commission may make an order it considers reasonable about the placing, construction or equipment.

(3) By the same or a later order, the commission may

(a) direct that the cost of the placing, construction or equipment be at the expense of the public utility whose wire, cable or apparatus was most recently placed, or

(b) in the discretion of the commission, apportion the cost between the utilities.

[13] Other provisions of the *Act* giving the BCUC jurisdiction over the use of the assets of a utility are:

General supervision of public utilities

23 (1) The commission has general supervision of all public utilities and may make orders about

(a) equipment,

(b) appliances,

(c) safety devices,

(d) extension of works or systems,

(e) filing of rate schedules,

(f) reporting, and

(g) other matters it considers necessary or advisable for

(i) the safety, convenience or service of the public, or

(ii) the proper carrying out of this Act or of a contract, charter or franchise involving use of public property or rights.

(2) Subject to this Act, the commission may make regulations requiring a public utility to conduct its operations in a way that does not unnecessarily interfere with, or cause unnecessary damage or inconvenience to, the public.

* * *

Directions

92 If, in the exercise of a commission power under an Act, the commission directs that a structure, appliance, equipment or works be provided, constructed, reconstructed, removed, altered, installed, operated, used or maintained, the commission may, except as otherwise provided in the Act conferring the power, order

(a) by what person interested at or within what time,

(b) at whose cost and expense,

(c) on what terms including payment of compensation, and

(d) under what supervision,

the structure, appliance, equipment or works must be carried out.

[14] According to the theory of utilities regulation postulated by the respondents and intervenor, the authority over the facilities in question derives fundamentally from the grant of a Certificate of Public Convenience and Necessity:

> **Certificate of public convenience and necessity**
>
> **45** (1) Except as otherwise provided, after September 11, 1980, a person must not begin the construction or operation of a public utility plant or system, or an extension of either, without first obtaining from the commission a certificate that public convenience and necessity require or will require the construction or operation.
>
> * * *
>
> (8) The commission must not give its approval unless it determines that the privilege, concession or franchise proposed is necessary for the public convenience and properly conserves the public interest.
>
> (9) In giving its approval, the commission
>
> (a) must grant a certificate of public convenience and necessity, and
>
> (b) may impose conditions about
>
> (i) the duration and termination of the privilege, concession or franchise, or
>
> (ii) construction, equipment, maintenance, rates or service,
>
> as the public convenience and interest reasonably require.

ISSUES

[15] The issues are:

1. What is the standard of review?
2. Did the BCUC err in its interpretation of s. 70?

DISCUSSION

1. Standard of Review

[16] FortisBC and the BCUC agree that correctness is the appropriate standard to review the interpretation of s. 70 because it determines jurisdiction. Shaw argues that reasonableness is the applicable standard because the issue revolves around the meaning and application of “use” in s. 70, a term which must be understood in a

specialized field where the BCUC has expertise. BC Hydro took no position on the standard. It made its submissions on the assumption that correctness was the right test.

[17] In granting leave to appeal in this case, the Chief Justice expressed the opinion that correctness is the right standard:

> [10] The issue is whether leave should be granted so the Court can consider whether the Commission had jurisdiction to make the order under s. 70 of the *UCA*. That jurisdictional question depends upon the proper interpretation of s. 70. It is a question of law reviewable on the correctness standard. On an application for leave to appeal, the question is not whether the appeal will succeed but whether the points raised are arguable or not frivolous. That threshold is met. I am also of the view that a determination of the Commission's jurisdiction is a question of some general importance, and one that will provide benefits to the parties and others. Applying the *Queens Plate* factors, I conclude that the appeal meets the threshold of importance and merit to warrant granting leave to appeal.

[18] Shaw's argument for reasonableness is twofold. First, since FortisBC's transmission towers come within the regulatory framework, their "use" forms part of the subject matter assigned to the BCUC – in other words, the BCUC has both the power to enter upon the inquiry whether the use in question is covered by the *Act* and the special expertise to answer the question. Secondly, reviewing courts should not strain to brand as jurisdictional something which is debatable, paraphrasing Mr. Justice Dickson, as he then was, in *Canadian Union of Public Employees Local 963 v. New Brunswick Liquor Corporation*, [1979] 2 S.C.R. 227 at 233, 97 D.L.R. (3d) 417.

[19] The *Utilities Commission Act* contains a privative clause in s. 105. The *Administrative Tribunals Act*, at s. 58, stipulates that the presence of a privative clause mandates patent unreasonableness as a standard of review. However, that standard only applies to "... a finding of fact or law or an exercise of discretion by the tribunal in respect of a matter over which it has exclusive jurisdiction...." For all other matters, the standard of review is correctness according to s. 58(2)(c). This includes instances in which a tribunal determines its own jurisdiction.

[20] I can see no way around the fact that in construing s. 70, the BCUC was determining the extent of its power. In effect, Shaw's argument assumes the very point in issue, namely, that the BCUC has authority over non-electrical transmission uses to which transmission towers may be put. The following passage from *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, has direct application:

> [59] Administrative bodies must also be correct in their determinations of true questions of jurisdiction or *vires*. We mention true questions of *vires* to distance ourselves from the extended definitions adopted before *CUPE*. It is important here to take a robust view of jurisdiction. We neither wish nor intend to return to the jurisdiction/preliminary question doctrine that plagued the jurisprudence in this area for many years. "Jurisdiction" is intended in the narrow sense of whether or not the tribunal had the authority to make the inquiry. In other words, true jurisdiction questions arise where the tribunal must explicitly determine whether its statutory grant of power gives it the authority to decide a particular matter. The tribunal must interpret the grant of authority correctly or its action will be found to be *ultra vires* or to constitute a wrongful decline of jurisdiction: D. J. M. Brown and J. M. Evans, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 14-3 to 14-6. An example may be found in *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485, 2004 SCC 19. In that case, the issue was whether the City of Calgary was authorized under the relevant municipal acts to enact bylaws limiting the number of taxi plate licences (para. 5, *per* Bastarache J.). That case involved the decision-making powers of a municipality and exemplifies a true question of jurisdiction or *vires*. These questions will be narrow. We reiterate the caution of Dickson J. in *CUPE* that reviewing judges must not brand as jurisdictional issues that are doubtfully so.
>
> [Emphasis added.]

[21] In my opinion, the appropriate standard of review is correctness.

2. Interpretation of Section 70

(a) Common ground

[22] Before embarking upon a discussion of the issues in this case, I wish to mention some areas of common ground. As I said earlier, FortisBC is a public utility under the *Act*, while Shaw, being a federally regulated entity, is not. Shaw applied for joint use under s. 70 rather than s. 27. Section 27, as an alternative source of jurisdiction, is not before us. We are to assume, without deciding, that the conditions in s. 70(1)(a) and (c) can be met. FortisBC permits Shaw to use its distribution poles

under an agreement which is not in dispute at present. Apart from one contextual argument by FortisBC in aid of its interpretation of s. 70, the distinction between transmission and distribution of electricity is not material to the jurisdictional question before us. No issue relating to the division of powers under ss. 91 and 92 of the *Constitution Act* arises in this case. Finally, this is a case of first impression, no other application under s. 70 having been made.

(b) Interpretation issues

[23] I propose to analyse the case under three headings: plain meaning, the legislative history and context, and the scope of the regulatory scheme.

(i) Plain meaning

[24] FortisBC says that read properly, s. 70 is about electricity transmission; it is not about telecommunications. The plain and ordinary meaning of s. 70 is that any application for use of the facilities must be for the purpose of transmitting electricity. Section 68 circumscribes the subject matter of s. 70 in its definition of “electricity transmission facilities”.

[25] The respondents and intervenor reply that the syntax of s. 70 has “electricity transmission” modifying “facilities”, not “use”; and there are no words of limitation regarding “use”. Likewise, the definition in s. 68 simply describes what facilities are subject to Part 5 and is silent about the range of uses to which they may be put by an applicant under s. 70. The conditions listed in s. 70(1)(a) through (c) operate to ensure that the intended use is compatible with the electricity service and in the public interest.

[26] The interpretative task involves an examination of the words for their “ordinary and grammatical meaning” in context. I quote from *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42, [2002] 2 S.C.R. 559:

> 26 In Elmer Driedger’s definitive formulation, found at p. 87 of his *Construction of Statutes* (2nd ed. 1983):
>
> > Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their

> grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> Driedger's modern approach has been repeatedly cited by this Court as the preferred approach to statutory interpretation across a wide range of interpretive settings...

[27] I find Shaw's analysis of the language particularly persuasive:

> 48. FortisBC's argument to the contrary relies primarily on the closing words of the definition of "electricity transmission facilities" in s. 68 – in particular, the element of the definition that reads, "any other equipment or facilities that are necessary for the purpose of transmitting electricity". FortisBC's argument is summed up by the last sentence of its para. 25:
>
> > In the submission of Fortis, to say that something must be "necessary" for transmitting electricity is not materially different in this context from saying that it is to be "used" for the transmission of electricity.
>
> 49. The flaw in this submission is that it treats a description of the nature of the facilities as a limitation on the manner in which the facilities are to be used. The definition of "electricity transmission facilities" describes only the nature of the facilities to be regulated, and in that regard it provides simply that all facilities necessary for transmission of electricity are included. The "uses" to which those facilities may be put are not the subject of s. 68 at all; rather, the concept of "use" only appears in s. 70, and there it is left without limitation.

[28] FortisBC's interpretation requires that a limit on use be read into s. 70. That is not possible unless other interpretative aids compel that result.

(ii) Legislative history and context

[29] Moving from the words of s. 70 to history and context, FortisBC relies on legislative debates upon the introduction of the enactment in 1988 to support the contention that its object and purpose was only about transmission ("wheeling" in the parlance of the industry) of electricity.

[30] The *Debates of the Legislative Assembly (Hansard)*, 34th Parl, 2nd Sess, 8 June 1988 at 4948, record the proponent of the bill, the Honourable Jack Davis, saying to the Assembly:

> Mr. Speaker, I move that the bill be introduced and read a first time now. This bill enhances the powers of the B.C. Utilities Commission, specifically as to gas purchase arrangements, indeed power purchase arrangements also entered into by regulated utilities. It also permits wheeling on both gas and

> pipeline systems at regulated rates, the rates and the conditions of wheeling to be governed by the Utilities Commission.
>
> [Emphasis added.]

and at second reading (27 June 1988) at 5408 Minister Davis said:

> Bill 46 increases the powers of the British Columbia Utilities Commission. Its principal function is to regulate the activities of monopolies, particularly those incorporated provincially which produce, transport and sell energy; more particularly those in the electricity supply business and in the production and transportation of natural gas.
>
> * * *
>
> It provides not only for the wheeling of natural gas by B.C. Hydro or other owners and operators of large-diameter gas pipelines, but also for the wheeling or transportation of electricity in high-voltage lines by B.C. Hydro, Inland Natural Gas and others engaged in that line of activity.
>
> [Emphasis added.]

[31] I digress briefly to discuss a submission by FortisBC that, properly interpreted, s. 70 applies only to wheeling in the sense that a request for joint use must engage the complete bundle of functions listed in s. 70. The bundle theory is supported by reference to the use of “and” in the list of functions rather than “or”, in addition to the *Hansard* references and other contextual aids yet to be discussed. It follows from the bundle theory that since Shaw’s application is solely for use of the towers, it does not qualify under s. 70.

[32] Whether *Hansard* is used for the bundle theory or for the less ambitious argument that s. 70 is concerned only with aspects of electricity transmission, I do not find it has much influence on my reading of the section. FortisBC candidly admits that we do not place much reliance on *Hansard*, and cites to us this passage from *Skopnik v. BC Rail Ltd.*, 2008 BCCA 331, 82 B.C.L.R. (4th) 313:

> [69] While a ministerial statement may be looked at to discover the object or purpose of a statute (per Southin J.A. in *Lewis (Guardian ad litem of) v. British Columbia)* (1995), 12 B.C.L.R. (3d) 1 (B.C.C.A.) at para. 136), “the frailties of *Hansard* evidence are many” (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 35); and “Parliamentary debates surrounding the enactment of legislation must be read with caution, because they are not always a reliable source for the Legislature’s intention” (*Construction Gilles Paquette Ltée. v. Enterprises Végo Ltée.*, [1997] 2 S.C.R. 299 (S.C.C.) at para. 20).

[33] All that I can take from *Hansard* is that the primary focus of the 1988 amendments was the joint use of electricity and gas facilities. It does not shed any light on the intention of the legislature in enacting s. 70 in such broad and unrestricted terms.

[34] As for the “and” versus “or” argument, I find, with respect, the distinction rigid and literal. The bundle theory would prevent even an electrical producer from applying under s. 70 if the request was for only a partial use of the bundle.

[35] FortisBC submits that s. 70 deals only with “transmission facilities” to the exclusion of “distribution facilities” which are defined elsewhere in the *Act*. The appellant suggests that if s. 70 was meant to include telecommunications, it would necessarily have to refer to both transmission and distribution facilities because Shaw uses both types of facilities to hang cables. The omission of “distribution” from s. 70 is said to preclude the consideration of telecommunications under this section. With respect, I do not find this argument persuasive. Distribution and transmission are addressed in separate parts of the *Act* and this appeal dealt solely with the issue of whether the BCUC took proper authority over issues related to distribution lines used to hang Shaw cables. It would stretch the principles of interpretation to infer that because distribution was not mentioned, the BCUC does not have authority to decide issues related to transmission facilities. The exclusion of distribution facilities from s. 70 (assuming, without deciding, that they are excluded) does not vary the conclusion that the BCUC properly took jurisdiction over this matter.

(iii) Case Law

[36] FortisBC submits that given the language of s. 70 in light of the *Act* as a whole, the Legislature cannot be taken to have given the BCUC power to regulate cable activities since cable connections fall outside the “regulatory compact”. The latter phrase refers to the philosophical justification for regulating monopolistic utilities on the basis that lack of competition is counterbalanced by rate setting in the public interest. FortisBC says Shaw lies outside this framework as far as electricity is concerned. FortisBC cited three decisions to elucidate these points: *Greater*

Winnipeg Cablevision Ltd. v. Public Utilities Board (1978), 93 D.L.R. (3d) 741, [1979] 2 W.W.R. 82 (Man. C.A.); *Barrie Public Utilities v. Canadian Cable Television Assn.*, 2003 SCC 28, [2003] 1 S.C.R. 476; and *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140.

1) *Greater Winnipeg Cablevision*

[37] In *Greater Winnipeg Cablevision*, the question was whether the provincial Public Utilities Board had jurisdiction to decide an application by a cable company for permission to use a telephone company's coaxial cable. The Board declined jurisdiction. A Queen's Bench judge ordered *mandamus*. The Court of Appeal reversed, holding that "public utility" as defined in the enabling Act referred to the transmission of telephone messages, and since carrying cable television signals is different, the telephone company's cable facility is not covered by the Act. In the result, the Court of Appeal found that the telephone company's cable operation fell outside the jurisdiction of the Board.

[38] FortisBC argues by analogy that s. 70 is about wheeling electricity, not supporting structures for cable, and the same result should obtain.

[39] I do not find this case on point. The Manitoba Act defined public utility narrowly, unlike the British Columbia statute in question here. The facts are different: the facility in *Greater Winnipeg Cablevision*, namely, the cable, was not and could not be used to carry telephone signals, whereas at bar the transmission towers support both electricity wires and cable lines and form an integral part of the undertaking which brings FortisBC into the regulatory scheme. The Manitoba courts were not asked to construe a joint use provision such as s. 70.

2) *Barrie Public Utilities*

[40] In *Barrie Public Utilities*, the Canadian Radio-television and Telecommunications Commission (CRTC) was asked by an association of cable suppliers for permission to use Barrie's power poles to support cable television transmission lines. The CRTC took jurisdiction and made an access order. The Federal Court of

Appeal held that the *Telecommunications Act*, S.C. 1993, c. 38, under which the CRTC operates, did not give it jurisdiction over the power poles of provincially regulated electric power companies. The Supreme Court of Canada affirmed the result.

[41] The decision in *Barrie Public Utilities* largely turned on the interpretation of s. 43 of the *Telecommunications Act*, particularly subsection (5), which reads:

> (5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.
>
> [Emphasis added.]

[42] As in the present case, the meaning and application of general words had to be determined within the context of the regulatory statute. The phrase "the supporting structure of a transmission line" does not limit its application to telecommunications structures. Mr. Justice Gonthier, for the majority, accepted the Utilities argument that, read in harmony with the rest of s. 43 which refers in subsections (2), (3) and (4) to a "Canadian carrier or distribution undertaking", the lines must belong to such an entity before the CRTC has jurisdiction. Mr. Justice Gonthier wrote:

> 31 The Utilities deny that the omission of "Canadian carrier or distribution undertaking" in s. 43(5) has such significance. That phrase, as it is used in s. 43(2) to (4), identifies who may construct transmission lines and under what terms; it does not, in the Utilities' submission, identify the owner of existing transmission lines. Therefore, the absence of the phrase "Canadian carrier or distribution undertaking" and the presence of the broader phrase "a person who provides services to the public" in s. 43(5) reveal nothing about the meaning of "the supporting structure of a transmission line". The broader wording indicates only that the applicant for access to the supporting structure of a transmission line under s. 43(5) need not be a "Canadian carrier or distribution undertaking" but may be any person providing services to the public. By contrast, it is not any service provider who may construct, maintain or operate transmission lines by virtue of s. 43(2), (3) and (4); only Canadian carriers and distribution undertakings may do so. In short, the subject of s. 43(5), i.e., the applicant for access, is different but the object, i.e., transmission lines constructed pursuant to this section, remains the same.

> 32 I agree with this construction of the section. I would also observe that ss. 43(1) to 43(4) are entirely concerned with telecommunications matters and not at all concerned with other supporting structures such as the Utilities' power poles. For s. 43(5) to encompass power poles would be a surprising departure from the otherwise harmonious meaning of the section as a whole. This analysis of s. 43 as a whole raises further doubts as to the correctness of the CRTC's decision.
>
> [Emphasis added.]

[43] This reasoning is said by FortisBC to apply directly to the present case by construing general words according to the subject matter of the enactment, here electricity transmission, and by limiting its reach to persons engaged in that undertaking.

[44] In my opinion, *Barrie Public Utilities* does not assist in the interpretation of s. 70. There are two points of distinction. First, unlike s. 43(5), there is no doubt that s. 70 applies to FortisBC's transmission towers. Secondly, Barrie Utilities were already regulated under a provincial scheme. The superimposition of another regulatory regime was not likely intended by Parliament. In the present case, Shaw went to FortisBC's regulator for a joint use order. No dual jurisdiction problem arises. This is where the analogy to *Barrie* breaks down. To be truly analogous, the cable suppliers in *Barrie* would have had to go to the Ontario regulator for an access order.

3) *ATCO Gas & Pipelines*

[45] The facts in *ATCO Gas & Pipelines* bear little resemblance to those at bar. ATCO discontinued one of its gas transmission facilities. The operations were under the regulatory authority of the Alberta Board. ATCO sought the Board's permission to take it out of service and to sell the property. The Board granted permission but stipulated that the net gain on the sale had to be distributed to the ratepayers. The Alberta Court of Appeal set aside the decision to allocate on the grounds that the Board lacked jurisdiction. The Supreme Court of Canada dismissed the appeal.

[46] As in *Barrie Public Utilities*, the court had to construe general words in the enabling statute which the Board used to exercise the power in question. While it was not disputed the Board had authority over discontinuance of the facility, the

Alberta Energy and Utilities Board Act, R.S.A. 2000, c. A-17, was silent on what to do with the proceeds. The key provision was this:

> 15(1) For the purposes of carrying out its functions, the Board has all the powers, rights and privileges of the ERCB [Energy Resources Conservation Board] and the PUB [Public Utilities Board] that are granted or provided for by any enactment or by law.
>
> * * *
>
> (3) Without restricting subsection (1), the Board may do all or any of the following:
>
> * * *
>
> (d) with respect to an order made by the Board, the ERCB or the PUB in respect of matters referred to in clauses (a) to (c), make any further order and impose any additional conditions that the Board considers necessary in the public interest;

[47] A majority of the Court in *ATCO Gas & Pipelines* refused to give this remedial provision the scope for which the Board contended. Mr. Justice Bastarache, who wrote for the majority, embarked on the interpretation with these words heavily relied on by FortisBC:

> 48 This Court has stated on numerous occasions that the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry. The Court is obliged to consider the total context of the provisions to be interpreted, no matter how plain the disposition may seem upon initial reading (see *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 34; Sullivan [R. Sullivan, *Sullivan and Driedger on the Construction of Statutes* (4th ed. 2002)], at pp. 20-21). I will therefore proceed to examine the purpose and scheme of the legislation, the legislative intent and the relevant legal norms.

[48] Mr. Justice Bastarache reasoned that the Board's primary function, as with most utilities regulators, was the setting of rates and in that context the remedial powers in the above quoted provision could encompass only those matters ancillary to the rate-setting function. The scheme did not, in his view, transfer a property right in the Utilities' assets to the ratepayers. He explained as follows:

> 62 Rate regulation serves several aims — sustainability, equity and efficiency — which underlie the reasoning as to how rates are fixed:
>
> > . . . the regulated company must be able to finance its operations, and any required investment, so that it can continue to operate in the future. . . . Equity is related to the distribution of welfare among members of society. The objective of sustainability already implies

> that shareholders should not receive "too low" a return (and defines this in terms of the reward necessary to ensure continued investment in the utility), while equity implies that their returns should not be "too high".
>
> (R. Green and M. Rodriguez Pardina, *Resetting Price Controls for Privatized Utilities: A Manual for Regulators* (1999), at p. 5)

> 63 These goals have resulted in an economic and social arrangement dubbed the "regulatory compact", which ensures that all customers have access to the utility at a fair price — nothing more. As I will further explain, it does not transfer onto the customers any property right. Under the regulatory compact, the regulated utilities are given exclusive rights to sell their services within a specific area at rates that will provide companies the opportunity to earn a fair return for their investors. In return for this right of exclusivity, utilities assume a duty to adequately and reliably serve all customers in their determined territories, and are required to have their rates and certain operations regulated (see Black, at pp. 356-57; Milner, at p. 101; *Atco Ltd*., at p. 576; *Northwestern Utilities Ltd. v. City of Edmonton*, [1929] S.C.R. 186 ("*Northwestern 1929*"), at pp. 192-93).
>
> 64 Therefore, when interpreting the broad powers of the Board, one cannot ignore this well-balanced regulatory arrangement which serves as a backdrop for contextual interpretation. The object of the statutes is to protect both the customer *and* the investor (Milner, at p. 101). The arrangement does not, however, cancel the private nature of the utility. In essence, the Board is responsible for maintaining a tariff that enhances the economic benefits to consumers and investors of the utility.

[49] FortisBC says *ATCO Gas & Pipelines* supports the proposition that as Shaw falls outside the "regulatory compact" – Shaw applies *qua* joint user, not ratepayer – it cannot invoke the BCUC's regulatory power under s. 70. Or, to put it another way, s. 70 confers no authority on the BCUC to make orders outside the scheme of electricity regulation.

[50] I am unable to accept that *ATCO Gas & Pipelines* applies to the interpretation problem in this case. Apart from the obvious distinction on the facts, the enactments to be construed are very different. The Alberta Board relied on a catch-all clause empowering it to make such orders as may be required to complete its function; but that begged the question whether allocation of net gain on the sale of a discontinued facility is one of the Board's functions. There is no such doubt in s. 70. That provision gives the BCUC authority over a specific use of designated facilities to non-utilities. This is in a statute which in several explicit ways brings the assets of the utility into the regulatory scheme.

[51] The central instrument is the Certificate of Public Convenience and Necessity: s. 45. In this connection, I refer to the judgment of Mr. Justice Goldie, writing for this Court, in *British Columbia Hydro and Power Authority v. British Columbia (Utilities Commission)* (1996), 20 B.C.L.R. (3d) 106 (C.A.). In discussing the theoretical framework of the regulatory process, he wrote:

> 48 The certification process is at the heart of the regulatory function delegated to the Commission by the legislature. In *Memorial Gardens Association Ltd. v. Colwood Cemetery Co.*, [1958] S.C.R. 353 Mr. Justice Abbott, after referring to the American origin of the phrase, said at 357:
>
> > As this Court held in the *Union Gas* case, *supra*, the question whether public convenience and necessity requires a certain action is not one of fact. It is predominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion. In delegating this administrative discretion to the Commission the Legislature has delegated to that body the responsibility of deciding, in the public interest, the need and desirability of additional cemetery facilities, and in reaching that decision the degree of need and of desirability is left to the discretion of the Commission.
>
> 49 The other function the legislature has entrusted to the regulatory tribunal is the supervision of the utility's use of property dedicated to service as a result of the certification process. Unless so certified, or exempted from certification by the Commission, such property is not part of the appraised value of the utility company under s.62(1) which is the basis for fixing a rate under s.66. In respect of such property the supervisory powers of the Commission, principally found in Part 3 of the *Utilities Act*, enable it to oversee the statutory obligation in s.44 to furnish service imposed upon every public utility, namely:
>
> > 44. Every public utility shall maintain its property and equipment in a condition to enable it to furnish, and it shall furnish, a service to the public that the commission considers is in all respects adequate, safe, efficient, just and reasonable.

[52] From the Certificate of Public Convenience and Necessity flows the power under s. 23 to exercise “General Supervision of Public Utilities”, including orders about equipment: s. 23(1)(a); to direct the joint use of facilities under s. 27 by two or more public utilities within the meaning of the Act; and in the case of a person other than a public utility, like Shaw, to direct joint use under s. 70. I do not regard the relationship between utility and ratepayer and the function of rate setting as exclusively defining the scope of the regulatory arrangements.

(iv) The BCUC and Telecommunications Contracts

[53] I now move to FortisBC's final argument that no regulatory purpose is served in having the BCUC supervise the telecommunications contracts.

[54] This is a variation on the theme that s. 70 is concerned only with electricity transmission. FortisBC says that hanging cable lines on electricity towers will not contribute to the orderly provision of electrical service. Cable connection is a private matter between FortisBC and Shaw. The BCUC should not intrude where electricity transmission is not involved.

[55] I do not accept this submission. In its review decision (Order G-63-10), the BCUC identified an important policy objective:

> Although the Supreme Court of Canada in *Barrie* found the CRTC did not have jurisdiction over the power poles of the provincially-regulated utilities, it did not disagree with the CRTC's conclusion that "an approach that forces each operator to construct its own duplicate infrastructure is not in the public interest." (paras. 40, 41)
>
> The Commission Panel notes that the Commission is required to consider the public interest in its regulation of public utilities. Section 70 is but one of a number of sections in the *Act* where the public interest must be considered.
>
> In the Commission Panel's view, the policy objective against duplication of infrastructure is clear on a reading of the *Act* as a whole, for the reasons discussed above.

[56] FortisBC answers the duplication argument by citing the words of Gonthier J. in *Barrie Public Utilities* that duplication of infrastructure is not an inevitable result of an impasse:

> 40 Considerations of efficiency and affordability played a significant part in the CRTC's decision. The CRTC was anxious to avoid an interpretation of s. 43(5) that would require the CCTA or others to construct their own supporting structures because they could not gain access to the Utilities' power poles. Such a result was described by the CRTC (at para. 126) as inconsistent with the orderly development of the Canadian telecommunications system, ultimately costly to end-users, a potential disincentive to new entrants into the telecommunications marketplace and inconvenient to the public. The CRTC concluded (at para. 131) that "an approach that forces each operator to construct its own duplicate infrastructure is not in the public interest".
>
> 41 I need not disagree with that conclusion. I do disagree, however, with the assumption that founds it. It is not at all clear to me that the erection of a

> province-wide duplicate infrastructure of cable television poles is the necessary or even the likely result of finding that the CRTC lacks jurisdiction over power poles. The CCTA originally sought access to the Utilities' power poles by contract. When it could not reach terms agreeable to it by those means, it opted for the untested avenue of a CRTC regulatory solution. If that avenue proves unavailable, there may yet be other avenues, be they contractual or regulatory.
>
> 42 The consideration of legislative objectives is one aspect of the modern approach to statutory interpretation. Yet, courts and tribunals must invoke statements of legislative purpose to elucidate, not to frustrate, legislative intent. In my view, the CRTC relied on policy objectives to set aside Parliament's discernable intent as revealed by the plain meaning of s. 43(5), s. 43 generally and the Act as a whole. In effect, the CRTC treated these objectives as power-conferring provisions. This was a mistake.

[57] FortisBC submits that policy objectives cannot displace the plain meaning of s. 70. It proposes that one solution to a potential problem of duplication is for the Legislature to amend s. 70 to give clear jurisdiction to the BCUC.

[58] It must be remembered that in *Barrie* there was another regulatory avenue provided by the provincial scheme; Gonthier J. no doubt had that in mind. As to an amendment to avoid duplication, the argument is circular. It assumes that a more explicit grant of power is necessary. What is under consideration at this point in the discussion is whether there is any merit to the contention that an order for cable connections will not advance the objects and purposes of the *Act*. In my view, avoidance of duplication achieves an important policy goal within the scheme.

[59] There is one other element and it goes directly to the fixing of rates. FortisBC brings into the rate-setting process its revenue from all sources. That includes the rent Shaw pays for use of the towers. The utility's revenue base is a key component in arriving at a fair return for the provision of electrical service and ultimately for the rate to be charged. It cannot therefore be said that cable connections are irrelevant to the scheme.

SUMMARY

[60] In summary, I am not persuaded that the BCUC erred in determining that it had jurisdiction over this matter. A plain reading of s. 70 reveals that the legislation

enables the BCUC to make decisions regarding electricity transmission facilities. This power is not limited to particular uses. The BCUC properly took jurisdiction over the matter and in doing so entertained an issue relating to electricity transmission facilities, not telecommunications contracts. The Certificate of Public Convenience and Necessity enables the BCUC to direct the joint use of facilities, including joint use by a non-utility, such as Shaw.

DISPOSITION

[61] For the foregoing reasons, I would dismiss the appeal.

"The Honourable Mr. Justice Donald"

I agree:

"The Honourable Madam Justice Kirkpatrick"

I agree:

"The Honourable Mr. Justice Groberman"

TAB 10

Barrie Public Utilities *v.* Canadian Cable Television Assn., [2003] 1 S.C.R. 476, 2003 SCC 28

Canadian Cable Television Association *Appellant*

v.

Barrie Public Utilities, Essex Public Utilities Commission, Guelph Hydro, Innisfil Hydro, Leamington Public Utilities Commission, Markham Hydro Electric Commission, Mississauga Hydro Electric Commission, Niagara-on-the-Lake Hydro Electric Commission, The Hydro Electric Commission of North Bay, Oakville Hydro, Orillia Water, Light and Power, Perth Public Utilities Commission, Richmond Hill Hydro Electric Commission, Shelburne Hydro, Stoney Creek Hydro-Electric Commission, Stratford Public Utility Commission, Toronto Hydro-Electric Commission (formerly Hydro Electric Commission of the City of North York and Public Utilities Commission of the City of Scarborough), Waterloo North Hydro and Kitchener-Wilmot Hydro *Respondents*

and

Attorney General of Canada, Attorney General of Ontario, Attorney General of Quebec, Attorney General of New Brunswick, Attorney General of Manitoba, Attorney General of British Columbia, Attorney General for Saskatchewan, Attorney General of Alberta, Saskatchewan Power Corporation, Federation of Canadian Municipalities, GT Group Telecom Services Corp., Aliant Telecom Inc., AT & T Canada, Bell Canada, Bell West Inc., MTS Communications Inc. and TELUS Communications Inc. *Interveners*

Indexed as: Barrie Public Utilities *v.* Canadian Cable Television Assn.

Neutral citation: 2003 SCC 28.

File No.: 28826.

2003: February 19; 2003: May 16.

Present: McLachlin C.J. and Gonthier, Major, Bastarache, Arbour, LeBel and Deschamps JJ.

on appeal from the federal court of appeal

Administrative law — Judicial review — Standard of review — Canadian Radio-television and Telecommunications Commission — Commission ordering provincially regulated electric power companies to grant cable television companies access to their power poles — Whether Court of Appeal properly reviewed Commission's decision on correctness standard — Telecommunications Act, S.C. 1993, c. 38, s. 43(5).

Broadcasting — Telecommunications — Access to power poles — Canadian Radio-television and Telecommunications Commission ordering provincially regulated electric power companies to grant cable television companies access to their power poles — Whether phrase "the supporting structure of a transmission line" in s. 43(5) of Telecommunications Act includes power poles of provincially regulated electric power companies — Telecommunications Act, S.C. 1993, c. 38, s. 43(5).

The appellant CCTA seeks access to the power poles of the respondent power utilities for the purpose of supporting cable television transmission lines. In the past, the CCTA's members have rented space from the utilities under private contract. Since 1996, the parties have been unable to reach agreement. The CCTA obtained an order from the CRTC requiring the utilities to grant it access to their power poles on

terms stipulated by the CRTC. The CRTC found that the phrase "the supporting structure of a transmission line" in s. 43(5) of the *Telecommunications Act*, read in context and in the light of telecommunications and broadcasting policy objectives, was broad enough to grant it authority over the utilities' power poles. The CRTC found that this interpretation was *intra vires* Parliament under s. 91of the *Constitution Act, 1867*. The utilities successfully appealed this order to the Federal Court of Appeal, which reviewed the decision on a correctness standard and held that s. 43(5), properly interpreted, does not give the CRTC jurisdiction over the power poles of provincially regulated electric power companies.

Held (Bastarache J. dissenting): The appeal should be dismissed.

Per McLachlin C.J. and Gonthier, Major, Arbour, LeBel and Deschamps JJ.: The standard of review applicable to the CRTC's decision is correctness. All four factors of the pragmatic and functional approach point to that conclusion. Section 64(1) of the *Telecommunications Act* grants a right of appeal to the Federal Court of Appeal with leave of that court on any question of law or of jurisdiction. While the presence of a statutory right of appeal is not decisive of a correctness standard, it is a factor suggesting a more searching standard of review. With respect to relative expertise, deference to the decision maker is called for only when it is in some way more expert than the court and the question under consideration is one that falls within the scope of its greater expertise. The proper interpretation of the phrase "the supporting structure of a transmission line" in s. 43(5) is not a question that engages the CRTC's special expertise in the regulation and supervision of Canadian broadcasting and telecommunications. Rather, it is a purely legal question and is therefore ultimately within the province of the judiciary. The court's expertise in

matters of pure statutory interpretation is superior to that of the CRTC, which suggests a less deferential approach. The purposes of the legislation and the provision in particular also point to a less deferential standard of review. While much of the CRTC's work involves the elaboration and implementation of telecommunications policy, s. 43(5) accords the CRTC the essentially adjudicative role of considering applications from, and providing redress to, public service providers who cannot gain access to the supporting structure of a transmission line on terms acceptable to them. Finally, regarding the nature of the problem, even pure questions of law may be granted a wide degree of deference where other factors suggest the legislature so intended. But that is not the case here.

Section 43(5) cannot bear the broad meaning given to it by the CRTC and advanced by the CCTA. Looking for the moment at the subsection alone, three points arise. First, the phrase "a person who provides services to the public" in s. 43(5) includes but is broader than the phrase "Canadian carrier or distribution undertaking" found elsewhere in the section. Second, the phrase "constructed on a highway or other public place" qualifies the phrase "transmission line" and therefore, the CRTC may not grant access to transmission lines situated on private land. The utilities' power poles sometimes stand on private land pursuant to public utility rights-of-way. Third, the subsection speaks of "transmission lines" rather than "distribution lines". The utilities' power poles support distribution lines, not transmission lines. Parliament should be taken to know this distinction. Had Parliament intended to submit the utilities' power poles to the jurisdiction of the CRTC, it would have referred to distribution lines. Looking next to s. 43 as a whole, the CRTC's interpretation of subs. (5) is at odds with the rest of the section. The phrase "transmission lines" may not be given a broader meaning in subs. (5) than occurs in the rest of the section. The

absence of the phrase "Canadian carrier or distribution undertaking" in subs. (5) does not justify such a broader interpretation. The definition of "transmission facility" in s. 2 must also be taken into account. A transmission facility is defined as a facility for the transmission of "intelligence". The utilities' power poles do not serve to transmit intelligence. They serve to transmit electricity. One must conclude that the "transmission lines" referred to in s. 43(5) are the same as those constructed, maintained and operated pursuant to s. 43(2) to (4). They do not include the utilities' power poles.

The CRTC's heavy reliance on the policy objectives of the *Telecommunications Act* and the *Broadcasting Act* was in error. The consideration of legislative objectives is one aspect of the modern approach to statutory interpretation. Yet the CRTC relied on policy objectives to set aside Parliament's discernible intent as revealed by the plain meaning of s. 43(5), s. 43 generally and the Act as a whole.

Per Bastarache J. (dissenting): The constitutional question whether s. 43(5), as construed by the CRTC, is *ultra vires* Parliament has been important at every level of this case. The CRTC canvassed the issue thoroughly in its reasons. The Federal Court of Appeal referred to the constitutional issue. The Chief Justice of this Court certified a constitutional question. The Federal Court of Appeal erred by failing to separate the constitutional question from the statutory interpretation question. Judicial review of the CRTC's order requires a separation of that decision into two main questions. One is the constitutional question, which is whether any interpretation argued for s. 43(5) of the Act would make that provision *ultra vires* Parliament. The other is the more general question of the CRTC's interpretation of s. 43(5) and exercise of its power in issuing its decision. Combining a constitutional question and

a statutory interpretation question may skew the standard of review for an agency's decision. In addition, where a constitutional question is raised, reviewing the agency's ordinary statutory interpretation without isolating the constitutional question can limit the agency's ability to give the legislation at issue the full import intended by the legislature. The Federal Court of Appeal did not rule on the constitutionality of the CRTC's interpretation of s. 43(5), but was clearly concerned by the possibility that it might be *ultra vire*s. This concern was erroneous. According to the doctrine of the presumption of constitutionality, a statute should be presumed constitutional unless proven unconstitutional. Where a statute is ambiguous and more than one construction is possible, the presumption of constitutionality does not empower a decision maker to reject a plausible construction on the basis that it may be unconstitutional or that its unconstitutionality has been merely alleged. Before rejecting the CRTC's interpretation of s. 43(5), the Federal Court of Appeal should have ruled on the constitutional question.

It is settled law that application of the pragmatic and functional approach to a question of constitutional law will yield a correctness standard and therefore the CRTC's constitutional determination is reviewable on that standard. However, in the present appeal, the main question was the appropriateness of the CRTC's access order issued under s. 43(5). The constitutional question was raised only as an attack on the CRTC's order. If the allegation the provision is unconstitutional is meritless, the constitutional question should not serve nevertheless to dictate the level of scrutiny by the court reviewing the administrative decision.

Review of the administrative decision itself consists of two questions. The first is the CRTC's interpretation of s. 43(5). This is a question of law. The second is

the appropriateness of the specific terms of the decision, which is a question of mixed law and fact. It is uncontroversial that the reviewing court owes the CRTC deference on the specific terms of an order and therefore the standard of review of the specific terms of the decision in question is reasonableness *simpliciter*.

The standard of review for the CRTC's interpretation of s. 43(5) is also reasonableness *simpliciter*. While a statutory right of appeal suggests a more searching standard of review and militates against deference, it is necessary to consider the other factors before making the final determination of the degree of deference. Expertise is the most important of the factors that a court must consider in settling on a standard of review. Expertise is to be understood as a relative, not an absolute concept. The court is perhaps better positioned than the CRTC to interpret general legal terms of wide usage; however, the CRTC will have greater expertise *vis-à-vis* the reviewing court for technical and policy-related matters, including determination of legal questions associated with the specialized statutes enabling the CRTC. The meaning of "the supporting structure of a transmission line" is a technical question best answered by the specialized agency in whose enabling legislation it arises. When its enabling legislation is in issue, a specialized agency will be better equipped than a court to interpret words in their entire context in harmony with the Act, the object of the Act, and the intention of Parliament. On even a purely legal question within its expertise, the CRTC is owed deference. The CRTC would have been significantly better positioned than the court to assess the alternatives and the consequences for the broader scheme of each possible interpretation of s. 43(5). If knowledge of all the technical meanings of terms such as "transmission" and the factual situation of poles are relevant, the issue appears no longer to be a pure question of statutory interpretation. Instead, it is one deeply enmeshed in the context and the

domain of the CRTC's expertise. Therefore, determining the definition of "the supporting structure of a transmission line" falls squarely within the CRTC's expertise. The purpose of the Act as a whole and the provision in particular also suggest substantial deference. The purpose of s. 43(5), as evident from its inclusion with the other subsections of s. 43, is clearly to provide an alternative to the construction of new structures on public land. This suggests deference to the extent that the question is one best answered by the expert tribunal in appreciation of the real-life consequences for other provisions in the statute. The nature of the problem suggests, at first blush, less deference. It is established, however, that even pure questions of law may be granted deference where other factors of the pragmatic and functional approach suggest that the legislature intends such deference.

Construing s. 43(5) so as to allow the CRTC to permit access to the poles of provincially regulated utilities would not render the provision *ultra vires* Parliament. The CRTC therefore decided correctly that this construction of s. 43(5) is constitutionally valid.

The CRTC's interpretation of s. 43(5) stands up to scrutiny and is therefore reasonable. It is unnecessary to determine whether the CRTC's contextual approach to "public place" is correct, but it is at least reasonable. Furthermore, the CRTC's decision was supported by reasons that could stand up to a somewhat probing examination. Since the CRTC's order was reasonable, the Federal Court of Appeal erred in allowing the appeal.

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By Bastarache J. (dissenting)

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APPEAL from a judgment of the Federal Court of Appeal, [2001] 4 F.C. 237, 202 D.L.R. (4th) 272, 273 N.R. 291, [2001] F.C.J. No. 1150 (QL), 2001 FCA 236, setting aside the Telecom Decision CRTC 99-13. Appeal dismissed, Bastarache J. dissenting.

Neil Finkelstein and *Catherine Beagan Flood*, for the appellant.

Alan Mark and *Peter Ruby*, for the respondents.

Brian J. Saunders and *Peter Southey*, for the intervener the Attorney General of Canada.

Michel Y. Hélie, for the intervener the Attorney General of Ontario.

Alain Gingras, for the intervener the Attorney General of Quebec.

Gaétan Migneault, for the intervener the Attorney General of New Brunswick.

Cynthia Devine, for the intervener the Attorney General of Manitoba.

Nancy E. Brown, for the intervener the Attorney General of British Columbia.

Robert G. Richards, *Q.C.*, for the intervener the Attorney General for Saskatchewan.

Roderick S. Wiltshire, for the intervener the Attorney General of Alberta.

Written submissions only by *Robert G. Richards, Q.C.*, for the intervener the Saskatchewan Power Corporation.

Written submissions only by *Christian S. Tacit*, for the intervener the Federation of Canadian Municipalities.

Written submissions only by *Seumas Woods* and *Charlotte Kanya-Forstner*, for the intervener GT Group Telecom Services Corp.

Written submissions only by *Thomas G. Heintzman, Q.C.*, *Susan L. Gratton* and *Genevieve Currie*, for the interveners Aliant Telecom Inc., AT & T Canada, Bell Canada, Bell West Inc., MTS Communications Inc. and TELUS Communications Inc.

The judgment of McLachlin C.J. and Gonthier, Major, Arbour, LeBel and Deschamps JJ. was delivered by

1 GONTHIER J. — The appellant, Canadian Cable Television Association ("CCTA"), seeks access to the power poles of the respondent power utilities ("Utilities") for the purpose of supporting cable television transmission lines. In the past, the CCTA's members have rented space from the Utilities under private contract. Since 1996, however, the parties have been unable to reach agreement. The CCTA sought and obtained an order from the Canadian Radio-television and Telecommunications Commission ("CRTC") requiring the Utilities to grant it access to their power poles on terms stipulated by the CRTC. The Utilities successfully appealed this order before the Federal Court of Appeal. The CCTA now appeals that decision.

2 The CRTC purported to make its order against the Utilities pursuant to s. 43(5) of the *Telecommunications Act*, S.C. 1993, c. 38 ("Act"). The Federal Court of Appeal held that s. 43(5), properly interpreted, does not give the CRTC jurisdiction over the power poles of provincially regulated electric power companies such as the Utilities. I agree with this finding and would dismiss the appeal.

I. Facts

3 The members of the CCTA provide cable television services throughout Canada by means of cable transmission lines. In Ontario, these transmission lines are commonly carried on telephone and power poles. The CCTA claims to use over 300 000 power poles for this purpose in Ontario alone. By renting space on the poles of other providers, the CCTA avoids the expense, inconvenience and duplication of erecting its own poles.

4 The Utilities are provincially regulated electric power providers. The power poles by which they and other power utilities distribute electricity are a familiar sight throughout the country. In Ontario, the Utilities' poles are erected on both public and private property. It is not disputed that the Utilities are subject to the legislative jurisdiction of the Province of Ontario.

5 In 1996 the parties began negotiating a new rental agreement to replace the one that would soon expire. The Utilities demanded an increase in the rental rate from $10.42 to $40.92 per pole. The CCTA refused and the existing rental agreement expired. On February 13, 1997, the CCTA applied to the CRTC for final and interim relief.

II. Procedural History

6 The CRTC issued Telecom Decision CRTC 99-13 on September 28, 1999. It found that s. 43(5) of the Act granted it authority over the Utilities' power poles. In particular, the CRTC found that the phrase "the supporting structure of a transmission line", read in context and in the light of telecommunications and

broadcasting policy objectives, was broad enough to include the Utilities' power poles. It ordered the Utilities to grant the CCTA access to their power poles at the annual rate of $15.89 per pole.

7 The Federal Court of Appeal granted leave to appeal the CRTC's decision under s. 64(1) of the Act. Rothstein J.A. for the court allowed the appeal. He found that the CRTC's decision was reviewable on a correctness standard. He agreed with the CCTA that "the supporting structure of a transmission line", read literally and in isolation, was capable of bearing a broad enough meaning to include power poles. Read in the context of the section as a whole, however, such an interpretation was inconsistent and unworkable. Rothstein J.A. rejected the CRTC's reliance on policy objectives to inform its interpretation of s. 43(5), observing that the policies themselves do not confer jurisdiction on the CRTC and cannot be used as a basis for exercising a power the Act does not grant it.

III. Relevant Statutory Provisions

8 *Telecommunications Act*, S.C. 1993, c. 38

> **2.** (1) In this Act,
>
> . . .
>
> "Canadian carrier" means a telecommunications common carrier that is subject to the legislative authority of Parliament;
>
> . . .
>
> "transmission facility" means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points, but does not include any exempt transmission apparatus.

43. (1) In this section and section 44, "distribution undertaking" has the same meaning as in subsection 2(1) of the *Broadcasting Act*.

(2) Subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

(3) No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.

(4) Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the Commission may, having due regard to the use and enjoyment of the highway or other public place by others, grant the permission subject to any conditions that the Commission determines.

(5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.

45. On application by a municipality or other public authority, or by an owner of land, the Commission may authorize the construction of drainage works or the laying of utility pipes on, over, under or along a transmission line of a Canadian carrier or any lands used for the purposes of a transmission line, subject to any conditions that the Commission determines.

64. (1) An appeal from a decision of the Commission on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

Broadcasting Act, S.C. 1991, c. 11

2. (1) In this Act,

. . .

> "distribution undertaking" means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking;

IV. Analysis

A. *Standard of Review*

9 I agree with the Federal Court of Appeal that correctness is the appropriate standard of review in this case.

10 As is well known, Canadian courts take a pragmatic and functional approach to the review of administrative decisions. The leading statement on determining the applicable standard of review within the pragmatic and functional approach is found in the reasons of Bastarache J. in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; see also *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, 2003 SCC 19. Bastarache J. identified four factors to be taken into account: (1) the presence or absence of a privative clause or statutory right of appeal; (2) the expertise of the tribunal relative to that of the reviewing judge on the issue in question; (3) the purposes of the legislation and the provision in particular; and (4) the nature of the problem.

(1) Privative Clauses and Statutory Rights of Appeal

11 Section 64(1) of the Act grants a right of appeal in the following terms:

> An appeal from a decision of the Commission on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with the leave of that Court.

While the presence of a statutory right of appeal is not decisive of a correctness standard (*Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, [2001] 2 S.C.R. 100, 2001 SCC 36, at para. 27), it is a factor suggesting a more searching standard of review (*Pushpanathan*, *supra*, at para. 30).

(2) Relative Expertise

12 The proper concern of the reviewing court is not the expertise of the decision maker in general, but its expertise relative to that of the court itself *vis-à-vis* the particular issue (*Pushpanathan*, at para. 33). The reviewing court must also bear in mind that in determining the standard of review, the focus of the inquiry is on the particular provision being invoked and interpreted by the tribunal; some provisions within the same Act may require greater curial deference than others (*Pushpanathan*, at para. 28).

13 These points are illustrated by L'Heureux-Dubé J.'s discussion of the standard of review in *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739. There, L'Heureux-Dubé J. aptly described the CRTC as "a specialized administrative tribunal . . . which possesses considerable expertise over the subject matter of its jurisdiction" yet found that it was reviewable on a correctness standard "as regards jurisdictional questions and questions of law outside the CRTC's area of expertise" (paras. 30-31). To ascertain the CRTC's relative expertise for the

purpose of this appeal, I must consider the particular provision at issue and the nature of the CRTC's expertise.

14 The provision at issue is s. 43(5). More particularly, the question before the Court in this appeal is whether the phrase "the supporting structure of a transmission line" in s. 43(5) includes the Utilities' power poles. This phrase has no technical meaning beyond the ken of a reviewing court. Indeed, it appears to have no stand-alone meaning at all, but only the meaning given to it by the Act itself. In short, we are faced with a question of statutory interpretation.

15 The CRTC's expertise lies in the regulation and supervision of Canadian broadcasting and telecommunications. In particular, the CRTC is charged with the implementation of Canada's telecommunications policy as enunciated in s. 7 of the Act.

16 Deference to the decision maker is called for only when it is in some way more expert than the court and the question under consideration is one that falls within the scope of its greater expertise (*Dr. Q*, at para. 28). In my view, this is not such a case. The proper interpretation of the phrase "the supporting structure of a transmission line" in s. 43(5) is not a question that engages the CRTC's special expertise in the regulation and supervision of Canadian broadcasting and telecommunications. This is not a question of telecommunications policy, or one which requires an understanding of technical language. Rather, it is a purely legal question and is therefore, in the words of La Forest J., "ultimately within the province of the judiciary" (*Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825,

at para. 28). This Court's expertise in matters of pure statutory interpretation is superior to that of the CRTC. This factor suggests a less deferential approach.

(3) Purposes of the Legislation and Provision

17 Much of the CRTC's work involves the elaboration and implementation of telecommunications policy. I consider the policy objectives of the Act below. I note, however, that this policy function is much less in evidence in s. 43(5) than elsewhere in the Act. Rather, s. 43(5) accords the CRTC the essentially adjudicative role of considering applications from, and providing redress to, public service providers who cannot gain access to the supporting structure of a transmission line on terms acceptable to them. The proper interpretation of s. 43(5) at issue in this case is not a "polycentric" question. It is a question of whether s. 43(5), properly construed, gives the CRTC jurisdiction to hear the parties' dispute. Again, this factor points to a less deferential standard of review.

(4) Nature of the Problem

18 As I noted in my consideration of relative expertise, above, the problem before us is a purely legal one: what did Parliament intend by the phrase "the supporting structure of a transmission line"? This is a question of general importance to the telecommunications and electricity industries. I note Bastarache J.'s observation in *Pushpanathan* (at para. 37) that even pure questions of law may be granted a wide degree of deference where other factors suggest the legislature so intended. That is not the case here.

19 Applying the pragmatic and functional approach to the circumstances of this appeal, I conclude that all four factors point to a correctness standard of review. This is therefore not a case calling for deference to the decision of the CRTC on this issue.

B. *The Meaning of Section 43(5)*

(1) The Modern Approach

20 The starting point for statutory interpretation in Canada is E. A. Driedger's definitive formulation in his *Construction of Statutes* (2nd ed. 1983), at p. 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

In the case of federal legislation such as the Act in question, this modern approach to statutory interpretation is confirmed by s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, which provides that every enactment "is deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects" (see *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 26, *per* Iacobucci J.).

(2) The Grammatical and Ordinary Meaning of Section 43(5)

21 The disputed subsection reads as follows:

> Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.
>
> Lorsqu'il ne peut, à des conditions qui lui sont acceptables, avoir accès à la structure de soutien d'une ligne de transmission construite sur une voie publique ou un autre lieu public, le fournisseur de services au public peut demander au Conseil le droit d'y accéder en vue de la fourniture de ces services; le Conseil peut assortir l'autorisation des conditions qu'il juge indiquées.

In my view, there is no important difference between the English and French versions. Nor have the parties suggested otherwise.

22 Looking for the moment at the subsection alone, in its grammatical and ordinary meaning, three points arise.

23 First, it is clear that the phrase "a person who provides services to the public" in s. 43(5) includes, but is broader than, the phrase "Canadian carrier or distribution undertaking" found elsewhere in the section. Any provider of services to the public, it seems, may apply to the CRTC to gain access to the supporting structure of a transmission line constructed on a highway or other public place.

24 Second, the phrase "constructed on a highway or other public place" qualifies the phrase "transmission line". Therefore, on the grammatical and ordinary meaning of the provision, the CRTC may not grant access to transmission lines situated on private land. In its decision, the CRTC found otherwise, saying that the

contextual approach to statutory interpretation requires the interpreter to presume that Parliament knew that some support structures — not those constructed pursuant to s. 43, but others such as those owned by the Utilities — are located on public utility rights-of-way. This conclusion begs the question, for it assumes that "transmission line" includes the Utilities' power poles. If we refrain from that assumption, the grammatical and ordinary meaning of s. 43(5) is that the CRTC may not grant access to supporting structures located on private land.

25 Third, the phrase used in s. 43(5) and throughout s. 43 is "transmission line". The Utilities submit that a transmission line is to be distinguished from a distribution line. A transmission line carries electricity over large distances with minimum losses. A distribution line carries less than 50kV of electricity over short distances. The power poles to which the CCTA seeks access are not transmission lines but distribution lines. Parliament, say the Utilities, must be taken to have known of this distinction. Had Parliament intended to submit the Utilities' power poles to the jurisdiction of the CRTC by means of s. 43(5), it would have employed the phrase "distribution line".

26 In the Court of Appeal, Rothstein J.A. was of the view that the phrase "transmission line", read literally and in isolation, was capable of including distribution lines, but that analysis of the statutory context proved otherwise. I would go further. I am inclined to agree with the Utilities' submission that Parliament should be taken to know the distinction between transmission and distribution lines. I also agree that Parliament should be taken to know that some power poles are situated on private land and therefore cannot be captured by a provision referring to supporting structures "constructed on a highway or other public place". Even a literal and

isolated reading of s. 43(5) raises some doubt about the correctness of the CRTC's decision.

(3) The Context: Section 43

27 The disputed subsection is one of five provisions that make up s. 43. The entire section must be considered. The section is mainly concerned with the construction, maintenance and operation of transmission lines.

28 Section 43(1) adopts for the purposes of ss. 43 and 44 the definition of "distribution undertaking" set out in the *Broadcasting Act*, S.C. 1991, c. 11, namely "an undertaking for the reception of broadcasting and the retransmission thereof . . .". The other defined term of note when reading s. 43 is "Canadian carrier", defined in s. 2(1) of the Act as "a telecommunications common carrier that is subject to the legislative authority of Parliament". Section 43(2) grants "a Canadian carrier or distribution undertaking" the power to "enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines". Section 43(3) requires the consent of "the municipality or other public authority" in such cases. Section 43(4) provides that where a Canadian carrier or distribution undertaking cannot gain such consent on terms acceptable to it, it may apply to the CRTC for permission.

29 It is at this point in the section that s. 43(5) appears. The terminology and subject matter of this subsection are a notable break from the rest of s. 43. Rather than addressing the construction, maintenance and operation of transmission lines, s. 43(5) is concerned with gaining access to the supporting structures of pre-existing

transmission lines. Rather than referring to "a Canadian carrier or distribution undertaking", the subsection empowers "a person who provides services to the public" to apply to the CRTC for "a right of access".

30 The CCTA submits that the differences between s. 43(5) and the other subsections reveal Parliament's intent to empower the CRTC to grant cable service providers access to the Utilities' power poles. Elsewhere in s. 43, the phrase "transmission line" clearly means the transmission line of a Canadian carrier or distribution undertaking. But the phrase "Canadian carrier or distribution undertaking" is absent from s. 43(5). The CCTA says this means that the transmission lines referred to in s. 43(5) are not only the telecommunications and cable transmission lines of Canadian carriers and distribution undertakings, but also the electric power transmission lines of power providers such as the Utilities. The Court of Appeal erred in the CCTA's submission by reading the phrase "Canadian carrier or distribution undertaking" back in to s. 43(5) when Parliament clearly left it out.

31 The Utilities deny that the omission of "Canadian carrier or distribution undertaking" in s. 43(5) has such significance. That phrase, as it is used in s. 43(2) to (4), identifies who may construct transmission lines and under what terms; it does not, in the Utilities' submission, identify the owner of existing transmission lines. Therefore, the absence of the phrase "Canadian carrier or distribution undertaking" and the presence of the broader phrase "a person who provides services to the public" in s. 43(5) reveal nothing about the meaning of "the supporting structure of a transmission line". The broader wording indicates only that the applicant for access to the supporting structure of a transmission line under s. 43(5) need not be a "Canadian carrier or distribution undertaking" but may be any person providing

services to the public. By contrast, it is not any service provider who may construct, maintain or operate transmission lines by virtue of s. 43(2), (3) and (4); only Canadian carriers and distribution undertakings may do so. In short, the subject of s. 43(5), i.e., the applicant for access, is different but the object, i.e., transmission lines constructed pursuant to this section, remains the same.

32 I agree with this construction of the section. I would also observe that ss. 43(1) to 43(4) are entirely concerned with telecommunications matters and not at all concerned with other supporting structures such as the Utilities' power poles. For s. 43(5) to encompass power poles would be a surprising departure from the otherwise harmonious meaning of the section as a whole. This analysis of s. 43 as a whole raises further doubts as to the correctness of the CRTC's decision.

(4) The Context: Other Provisions

33 Other provisions of the Act may shed light on the meaning of s. 43(5). The phrase "transmission facility" is defined in s. 2(1) of the Act as follows:

> "transmission facility" means any wire, cable, radio, optical or other electromagnetic system, or any similar technical system, for the transmission of intelligence between network termination points, but does not include any exempt transmission apparatus.

A transmission facility is therefore a facility for the transmission of "intelligence". The phrase "transmission facility" does not, of course, occur in s. 43(5). Yet, the Utilities submit that the term "transmission" in s. 43(5) must be read harmoniously with the definition of "transmission facility" so that in both provisions the thing being

transmitted is "intelligence". The Utilities' power poles do not serve to transmit intelligence. They serve to transmit electricity.

34 I agree with the Utilities that a harmonious interpretation of these two provisions is to be preferred. While I do not consider this point to be conclusive, it is another factor suggesting that s. 43(5) does not encompass the Utilities' power poles.

35 In support of its approach, the CCTA relies on s. 45:

> On application by a municipality or other public authority, or by an owner of land, the Commission may authorize the construction of drainage works or the laying of utility pipes on, over, under or along a transmission line of a Canadian carrier or any lands used for the purposes of a transmission line, subject to any conditions that the Commission determines.

The CCTA points to this provision as an example of Parliament specifying that the transmission line in question must be that of a Canadian carrier. The CCTA says that had Parliament intended to impose a similarly narrow interpretation on the phrase "transmission line" in s. 43(5), it could easily have done so.

36 I read s. 45 rather differently. While most of s. 43 qualifies the phrase "transmission line" with the defined terms "Canadian carrier" and "distribution undertaking", s. 45 leaves "distribution undertaking" out. (Indeed, s. 43(1) defines "distribution undertaking" for the purposes of ss. 43 and 44 only.) The effect is that a municipality or other public authority, or an owner of land, may apply to the Commission as specified in s. 45 only in respect of a Canadian carrier's transmission line — not in respect of a distribution undertaking's transmission line. The meaning

of s. 45 has not yet been judicially considered, and this is not the case to consider it. I am satisfied, however, that s. 45 does not assist the CCTA in this case.

(5) Policy Objectives

37 In its decision, the CRTC relied heavily on the policy objectives enunciated by Parliament in s. 7 of the Act and s. 3 of the *Broadcasting Act*. These objectives help elucidate the purpose of the statutory regime as a whole and will often be relevant to the CRTC's decision making.

38 Section 7 of the Act sets out the objectives of Canadian telecommunications policy. The relevant objectives, in my view, are "the orderly development throughout Canada of a telecommunications system" (s. 7(*a*)), "reliable and affordable telecommunications services" (s. 7(*b*)), "efficiency and competitiveness . . . of Canadian telecommunications" (s. 7(*c*)), "efficient and effective" regulation where required (s. 7(*f*)), and responsiveness to "the economic and social requirements of users of telecommunications services" (s. 7(*h*)). In short, the purpose of the *Telecommunications Act* is to encourage and regulate the development of an orderly, reliable, affordable and efficient telecommunications infrastructure for Canada.

39 Section 3(1)(*t*)(ii) of the *Broadcasting Act* provides another relevant policy objective: "distribution undertakings . . . should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost". (The *Broadcasting Act* is not directly applicable to this appeal but is nevertheless relevant because it is the main statutory authority for the CRTC's regulatory powers over cable television.)

40 Considerations of efficiency and affordability played a significant part in the CRTC's decision. The CRTC was anxious to avoid an interpretation of s. 43(5) that would require the CCTA or others to construct their own supporting structures because they could not gain access to the Utilities' power poles. Such a result was described by the CRTC (at para. 126) as inconsistent with the orderly development of the Canadian telecommunications system, ultimately costly to end-users, a potential disincentive to new entrants into the telecommunications marketplace and inconvenient to the public. The CRTC concluded (at para. 131) that "an approach that forces each operator to construct its own duplicate infrastructure is not in the public interest".

41 I need not disagree with that conclusion. I do disagree, however, with the assumption that founds it. It is not at all clear to me that the erection of a province-wide duplicate infrastructure of cable television poles is the necessary or even the likely result of finding that the CRTC lacks jurisdiction over power poles. The CCTA originally sought access to the Utilities' power poles by contract. When it could not reach terms agreeable to it by those means, it opted for the untested avenue of a CRTC regulatory solution. If that avenue proves unavailable, there may yet be other avenues, be they contractual or regulatory.

42 The consideration of legislative objectives is one aspect of the modern approach to statutory interpretation. Yet, courts and tribunals must invoke statements of legislative purpose to elucidate, not to frustrate, legislative intent. In my view, the CRTC relied on policy objectives to set aside Parliament's discernable intent as revealed by the plain meaning of s. 43(5), s. 43 generally and the Act as a whole. In

effect, the CRTC treated these objectives as power-conferring provisions. This was a mistake.

(6) Conclusion

43 Section 43(5) cannot bear the broad meaning given to it by the CRTC. The subsection, taken alone, does not on its face include the Utilities' power distribution lines. Seen in the light of the rest of s. 43, the CRTC's broad interpretation is at odds with the scheme of the section. Likewise, such an interpretation is inexplicably inconsistent with the definition of "transmission facility" in s. 2(1). Nothing in s. 7 of the Act, or in the policy objectives of the *Broadcasting Act*, meets these objections.

44 As this appeal turns on a straightforward statutory interpretation of s. 43, I decline to address the constitutionality of any similar law purporting to grant the CRTC the authority to grant access rights to, or otherwise regulate, property within provincial jurisdiction, such as electrical poles.

V. Disposition

45 I would dismiss the appeal with costs.

The following are the reasons delivered by

46 BASTARACHE J. (dissenting) — I have read the reasons of my colleague Justice Gonthier. I am, however, unable to agree with his analysis and his conclusion. I am also concerned that his reasons fail to address and correct errors made by the

Federal Court of Appeal. I have two main concerns with the proposed disposition of this appeal.

47 First, the Court of Appeal erred by failing to separate the constitutional question from the statutory interpretation question. As I shall explain below, the constitutional question haunted Rothstein J.A.'s reasons and affected their outcome. More specifically, in my view, the constitutional question inappropriately influenced the Court of Appeal's determination of the standard of review and of the interpretation of s. 43(5) of the *Telecommunications Act*, S.C. 1993, c. 38 ("Act").

48 Second, treatment of the constitutional question aside, I believe that both the Court of Appeal and my colleague Gonthier J. erred in their determination of the standard of review. An expert tribunal interpreting a technical provision of its enabling legislation is entitled to some deference.

49 I am concerned that the reasoning in this appeal, in both respects I have mentioned, will influence judges in future cases. In what follows, I set out my understanding of the correct approach to determining the standard of review in this appeal. Then I apply what I find to be the appropriate standards of review to the questions. Finally, I discuss what I fear will be the effects of Gonthier J.'s reasoning. Since he does not criticize or reject the reasoning of the Court of Appeal, Rothstein J.A.'s approach is implicitly affirmed as correct, at least in cases where one party raises a constitutional concern.

50 In my view, the critical issues in this appeal come into focus only on reading Rothstein J.A.'s decision in the Court of Appeal. I thus begin there.

I. The Court of Appeal's Approach, [2001] 4 F.C. 237, 2001 FCA 236

51 Concerns about the jurisdiction of the Canadian Radio-television and Telecommunications Commission ("CRTC") and the legislative competence of Parliament appear throughout Rothstein J.A.'s reasons.

A. *Standard of Review*

52 In his discussion of the standard of review, Rothstein J.A. writes that the interpretation of s. 43(5) "involves the scope of the CRTC's regulatory authority" (para. 13). If "transmission line" includes all transmission lines, irrespective of ownership, he went on to say, s. 43(5) would "extend to transmission lines of power utilities and others not otherwise subject to the jurisdiction of the CRTC" (para. 13).

53 This is a peculiar concern. Sections 43(2) and 43(4), immediately preceding the provision at issue in this appeal, empower the CRTC to grant a Canadian carrier or distribution undertaking permission to "enter on and break up any highway or other public place" for construction, maintenance, and operation purposes. That power is granted irrespective of the ownership of the particular highway or public place. Indeed, the Act merely contemplates, broadly, that the land in question will be under the jurisdiction of some municipality or other public authority. There is thus no sense in which there is an identifiable set of parties who may be "subject to the jurisdiction of the CRTC" as it exercises its powers under s. 43.

54 Rothstein J.A. writes that the interpretation of s. 43(5) will have precedential importance. On the basis of the precedential importance of a decision potentially "extending" the CRTC's jurisdiction, he concluded that Parliament did not intend to leave determination of such a question to the exclusive decision of the CRTC (para. 13).

55 Rothstein J.A. then turned more specifically to the factors in the pragmatic and functional approach. He noted the statutory right of appeal with leave in s. 64(1) of the Act. On expertise, the most important of the factors, he said this, at para. 15:

> I accept that the CRTC has expertise with respect to telecommunications and broadcasting and that with respect to technical matters within that expertise, the CRTC may be better suited than the Court to interpret technical laws. However, there is no indication that the expertise of the CRTC is involved in the determination of the question at issue in this case.

I will return below to the question of the CRTC's expertise on the question at issue.

B. *Statutory Interpretation*

56 On the basis of his finding of a correctness standard of review, Rothstein J.A. approached the review of statutory interpretation from the question of what was the correct interpretation. It is unnecessary to undergo a thorough analysis of Rothstein J.A.'s approach to the statutory interpretation question. I wish here to focus on the extent to which constitutional concerns tainted his conclusions.

57 The possibility that s. 43(5), depending on its construction, might exceed Parliament's constitutional boundaries clearly troubled Rothstein J.A. He wrote at para. 21:

> Read literally, subsection 43(5) might be interpreted as conferring on the CRTC, the jurisdiction to grant to all persons who provide services to the public, access to support structures of all transmission lines, whether they are part of an undertaking that falls under federal jurisdiction or provincial jurisdiction. Such an interpretation would imply that Parliament was purporting to confer jurisdiction on the CRTC, not only outside Parliament's legislative jurisdiction under the *Constitution Act, 1867* . . . but also, well beyond the mandate of the CRTC to regulate telecommunications and broadcasting under the *Canadian Radio-television and Telecommunications Commission Act*, R.S.C. 1985, c. C-22.

He also noted that the CRTC rejected one possible reading of s. 43(5) so as to limit its effects to circumstances within federal and CRTC jurisdiction (paras. 22 and 24). Much later in his reasons, Rothstein J.A. returned to the question of provincial jurisdiction and constitutional limits. In the context of his discussion of the legislative history, he wrote, at para. 65:

> I find it hard to believe that if it had been the Government's intention that subsection 43(5) should confer jurisdiction on the CRTC over access by Canadian carriers or distribution undertakings to the support structures of the transmission lines of utilities subject to provincial jurisdiction, that such intent would not have been expressly made known and submissions invited. I do not say that Parliament could not enact such a provision; nor need I make any determination as to whether such a provision would be within the constitutional jurisdiction of Parliament. However, I would not attribute to the federal government or to Parliament an intention to confer such jurisdiction on a federal regulatory tribunal through the guise of an ambiguous provision that was enacted without express notice to the provinces or their utilities of such an intention.

58 Having set out this brief overview of Rothstein J.A.'s approach, I turn to what would have been the correct approach.

II. Determination of the Standard of Review

59 Judicial review of the CRTC's order requires a separation of that decision into two main questions. One is the constitutional question. The constitutional question is whether any interpretation argued for s. 43(5) of the Act would make that provision *ultra vires* the Parliament of Canada. The other is the more general question of the CRTC's interpretation of s. 43(5) and exercise of its power in issuing Telecom Decision CRTC 99-13.

60 Separating the two main questions is crucial. Failure to distinguish and resolve separately the two questions frustrates the appropriate process of judicial review in at least two ways. It may also, consequently, frustrate Parliament's intent.

61 First, combining a constitutional question and a statutory interpretation question may skew the standard of review for an agency's decision. As I shall develop below, a question with constitutional overtones will inevitably drive towards the correctness standard. Yet, where the constitutional argument is without merit, the agency's decision should not be viewed globally as a constitutional matter.

62 Second, where a constitutional question is raised, reviewing the agency's ordinary statutory interpretation without isolating the constitutional question can limit the agency's ability to give the legislation at issue the full import intended by the legislature. The mere unproven argument that one reading of a statute is unconstitutional may impel the decision maker erroneously to eliminate that reading by applying the interpretive doctrine of the presumption of constitutionality.

63 I turn now to the question of the standards of review for the two principal questions in this appeal.

A. *Constitutional Question*

64 On October 29, 2002, the Chief Justice stated the following constitutional question: "Is s. 43(5) of the *Telecommunications Act*, S.C. 1993, c. 38, *intra vires* Parliament pursuant to the *Constitution Act, 1867*?"

65 For present purposes, the constitutional question is better phrased as whether any interpretation argued for s. 43(5) of the Act would be *ultra vires* Parliament. In other words, is there a plausible construction of s. 43(5) that, instead of being valid federal legislation, would amount to legislation in relation to property and civil rights within a province under s. 92(13) of the *Constitution Act, 1867*?

66 The pragmatic and functional approach applies to this question, as it does to all matters of judicial review and all appeals from administrative tribunals: *Dr. Q v. College of Physicians and Surgeons of British Columbia*, [2003] 1 S.C.R. 226, 2003 SCC 19; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982. It is settled law, however, that application of the pragmatic and functional approach to a question of constitutional law will yield a correctness standard. As Iacobucci and Major JJ. wrote in *Westcoast Energy Inc. v. Canada (National Energy Board)*, [1998] 1 S.C.R. 322, at para. 40, "[i]t seems reasonable to accept the proposition that courts are in a better position than administrative tribunals to adjudicate constitutional questions". That appeal addressed the degree of deference

due a decision by a specialized agency, the National Energy Board. That agency had determined that certain gathering pipeline and processing plant facilities were not federal works or undertakings under s. 92(10)(*a*) of the *Constitution Act, 1867*. As a division of powers question, the issue in *Westcoast* thus resembles that in the present appeal. The same point is also made frequently when a tribunal answers a question relating to the *Canadian Charter of Rights and Freedoms*: *U.F.C.W., Local 1518 v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083; *Cooper v. Canada (Human Rights Commission)*, [1996] 3 S.C.R. 854; *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825; *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)*, [1991] 2 S.C.R. 22; *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5; *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038. The CRTC's constitutional determination is therefore reviewable by a correctness standard.

67 I turn now to the second question, the standard of review of the CRTC's decision, constitutional matters aside.

B. *The CRTC's Decision*

68 In determining the standard of review for the order, I note that it is important to distinguish the present case from one where an administrative agency simply applies the Constitution. Sometimes the sole question before an agency will be constitutional. For example, in *KMart Canada*, *supra*, the entire question was whether the statutory definition of "picketing" in a provincial labour code was unconstitutional as contrary to the *Charter*. Cory J. wrote for the Court, at para. 69:

> It has been recognized that where a Labour Board is acting within its jurisdiction its decision can only be overturned if it is patently unreasonable. However where the Board interpreted or applied the *Charter* the standard of review must be that of correctness.

Likewise, in *Cooper*, *supra*, the question before the Canadian Human Rights Commission was whether a provision in human rights legislation contravened s. 15(1) of the *Charter*. Those cases were very different from the present appeal. In the present appeal, the main question was the appropriateness of the CRTC's access order issued under s. 43(5). The constitutional question was raised only as an attack on the CRTC's order. If the constitutional question is meritless, it should not serve nevertheless to dictate the level of scrutiny by the court reviewing the administrative decision.

69 This question is more complicated than the standard of review for the constitutional question. It is appropriate to view the CRTC and s. 43(5) through the four factors set out in *Pushpanathan*, *supra*. Moreover, it is necessary to recognize that review of the administrative decision itself consists properly of two questions: *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249, 2002 SCC 11, at para. 41, *per* Arbour J. The first is the CRTC's interpretation of s. 43(5). This is a question of law. As noted by the parties, it will have some precedential value in the CRTC's future cases: *Canada (Director of Investigation and Research) v. Southam Inc.*, [1997] 1 S.C.R. 748, at para. 36, *per* Iacobucci J. The second is the appropriateness of the specific terms in Telecom Decision CRTC 99-13. It is a question of mixed law and fact.

70 On the basis that the CRTC's interpretation of the enabling provision was incorrect and vitiated the order, Gonthier J. does not review the specific terms or determine their appropriate standard of review. In my view, it is uncontroversial that the reviewing court owes the CRTC deference on the specific terms of an order. Dictation of such terms falls "squarely within its area of expertise", to use the words of Gonthier J. in reference to other CRTC decisions in *Bell Canada v. Canada (Canadian Radio-television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722, at p. 1746. See also *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739; *Federation of Canadian Municipalities v. AT&T Canada Corp.*, [2002] F.C.J. No. 1777 (QL), 2002 FCA 500 ("*Ledcor*"), at para. 30, *per* Létourneau J.A. The standard for review of the specific terms of Telecom Decision CRTC 99-13 is therefore reasonableness *simpliciter*.

71 It is the standard of review for the CRTC's interpretation of s. 43(5) that is controversial in this appeal, and for which it is important to apply the four factors from *Pushpanathan* with some care.

(1) Privative Clauses and Statutory Rights of Appeal

72 No privative clause protects the CRTC's decision in this case. Indeed, s. 64(1) provides that an appeal from a decision by the CRTC on any question of law or of jurisdiction may be brought in the Federal Court of Appeal with leave. A clause permitting appeals is a factor suggesting a more searching standard of review: *Pushpanathan, supra*, at para. 30. While this factor militates against deference, it is necessary to consider the other factors before making the final determination of the degree of deference.

(2) Relative Expertise

73 The second factor is the expertise of the tribunal. Expertise on the part of the tribunal warrants greater deference:

> If a tribunal has been constituted with a particular expertise with respect to achieving the aims of an Act, whether because of the specialized knowledge of its decision-makers, special procedure, or non-judicial means of implementing the Act, then a greater degree of deference will be accorded.
>
> (*Pushpanathan*, *supra*, at para. 32)

L'Heureux-Dubé J. explained the rationale for deference to expertise, writing for the Court in *Canadian Union of Public Employees, Local 301 v. Montreal (City)*, [1997] 1 S.C.R. 793, at para. 17:

> These bodies play a very important and special role in regulating social, economic, and political activities and relationships within an increasingly complex society. The administrative tribunal, with its specialized expertise, accumulated experience, and sensitivity as regards problems which arise in a particular field, is essential to the effective and fair implementation of state policy aimed at addressing these concerns.

Cory J. has written, similarly, that the basis for deference is that "administrative tribunals are set up to replace courts in areas where specific expertise and experience are required" (*Royal Oak Mines Inc. v. Canada (Labour Relations Board)*, [1996] 1 S.C.R. 369, at para. 53; see also *Bell Canada*, *supra*, at p. 1746, *per* Gonthier J.).

74 It was largely on this justification that Iacobucci J. described expertise as "the most important of the factors that a court must consider in settling on a standard

of review" (*Southam*, *supra*, at para. 50, cited in *Pushpanathan*, *supra*, at para. 32). This justification can apply even where there is a statutory right of appeal: see *Pezim v. British Columbia (Superintendent of Brokers)*, [1994] 2 S.C.R. 557, at p. 591.

75 Recall that expertise is to be understood as a relative, not an absolute, concept. In other words, is the tribunal expert *vis-à-vis* the reviewing court concerning the particular issue before it? *Pushpanathan*, *supra*, at para. 33.

76 I plan to assess the CRTC's expertise in three steps, using the approach suggested in *Pushpanathan*, at para. 33:

> Making an evaluation of relative expertise has three dimensions: the court must characterize the expertise of the tribunal in question; it must consider its own expertise relative to that of the tribunal; and it must identify the nature of the specific issue before the administrative decision-maker relative to this expertise.

77 First, what is the CRTC's expertise? This Court has recognized the CRTC as an expert body. In *Shaw*, *supra*, at para. 30, L'Heureux-Dubé J. characterized the CRTC as "a specialized administrative tribunal . . . which possesses considerable expertise over the subject matter of its jurisdiction". She also noticed "the broad and important policy mandate of the CRTC" (para. 43). As Major J. noted for the Court in *Canada (Deputy Minister of National Revenue) v. Mattel Canada Inc.*, [2001] 2 S.C.R. 100, 2001 SCC 36, at para. 28, a tribunal's role in policy development is a significant factor in considering its expertise and the deference appropriate. See also Wilson J.'s reference to the "specialized understanding" of administrative tribunals in the fields of labour relations, telecommunications, financial markets, and international economic relations: *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990]

2 S.C.R. 1324, at p. 1336, cited by Iacobucci J. in *Pezim*, *supra*, at p. 593. For the telecommunications field, Wilson J. was clearly referring to the CRTC. The Federal Court of Appeal has also noted that the "CRTC is a specialized, independent agency to which, precisely because of its expertise, Parliament has granted extensive powers for the supervision and regulation of the Canadian broadcasting system" (*Société Radio-Canada v. Métromédia CMR Montréal Inc.* (1999), 254 N.R. 266, at para. 2, *per* Létourneau J.A.).

78 I agree with Gonthier J. that the "CRTC's expertise lies in the regulation and supervision of Canadian broadcasting and telecommunications" (para. 15). We seem to differ, however, as to the extent to which this expertise extends generally to the CRTC's interpretation of its enabling legislation. (While it is the *Canadian Radio-television and Telecommunications Commission Act*, R.S.C. 1985, c. C-22, that established the CRTC, in the present context the *Telecommunications Act* is appropriately viewed as the enabling legislation, since the CRTC purported to act under s. 43(5) of that statute.) Gonthier J. suggests that the CRTC's special expertise in the regulation and supervision of Canadian broadcasting and telecommunications does not apply to statutory interpretation of the Act. In contrast, I am more inclined to think that interpretation of enabling legislation by a specialized tribunal is more akin to administration of that statute, a core part of the tribunal's mandate. As Dickson J., as he then was, wrote in *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227, at pp. 235-36:

> The labour board is a specialized tribunal which administers a comprehensive statute regulating labour relations. In the administration of that regime, a board is called upon not only to find facts and decide questions of law, but also to exercise its understanding of the body of jurisprudence that has developed around the collective bargaining system,

> as understood in Canada, and its labour relations sense acquired from accumulated experience in the area.

See also the discussion of how specialized agencies develop their own body of law and policy, arguably equivalent to a court's development of the common law, in R. A. Macdonald, "On the Administration of Statutes" (1987), 12 *Queen's L.J.* 488.

79 The CRTC is obviously not a labour board, and telecommunications policy is not labour relations. Nevertheless, the general rationale applies. Indeed, where the particular facts of an administrative scheme and its tribunal warrant, this Court has explicitly distinguished its general deferential approach, developed initially in the context of labour boards: *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554, at pp. 583-85, *per* La Forest J. But in the present appeal Gonthier J. distinguishes neither labour boards nor the general rule of deference to a specialized tribunal.

80 The CRTC may, in exercising its powers and performing its duties, determine any question of law or fact: s. 52(1) of the Act. CRTC members exercise their understanding of the body of decisions that has developed in the telecommunications field. Members will inevitably acquire a familiarity with technical terms and concepts prevalent in the telecommunications field. Moreover, the renewable five-year terms of CRTC members (*Canadian Radio-television and Telecommunications Commission Act*, ss. 3(2) and 3(3)) make clear that it is not only institutional, but also personal experience on the part of individual members that accumulates during the CRTC's work. CRTC members are thus sharply distinguishable from members of *ad hoc* tribunals in other domains.

81 I agree with Rothstein J.A. and Gonthier J. that the policy objectives of the relevant legislation are not *per se* power-conferring provisions. That said, I believe that the CRTC has expertise in advancing those policies and in administering the enabling statutes in furtherance of those policies. CRTC members, working full time with those policies and statutes, will acquire an expertise superior to that of generalist judges who from time to time sit in judicial review of telecommunications matters.

82 Second, what is the expertise of the court relative to that of the CRTC? The court has general expertise at statutory interpretation. The court is perhaps better positioned than the CRTC to interpret general legal terms of wide usage. See *Mattel*, *supra*, at para. 33, *per* Major J., where a critical factor in reaching the standard of correctness was that the question related to concepts intrinsic to basic commercial law. See also *U.E.S., Local 298 v. Bibeault*, [1988] 2 S.C.R. 1048, at p. 1097, *per* Beetz J., where a labour board had no relative expertise respecting alienation and operation by another, which are general concepts of the civil law. (But for the suggestion that once a board has developed sufficient expertise, it is due deference on precisely the same general legal concepts, see *Ivanhoe inc. v. UFCW, Local 500*, [2001] 2 S.C.R. 565, 2001 SCC 47; *Sept-Îles (City) v. Quebec (Labour Court)*, [2001] 2 S.C.R. 670, 2001 SCC 48.) A court may also have relative expertise where interpretation of an external statute, one that the specialized agency does not routinely administer, is at issue: *Canadian Broadcasting Corp. v. Canada (Labour Relations Board)*, [1995] 1 S.C.R. 157. Even this point is nuanced, however, and Iacobucci J. contemplates that an agency may develop expertise respecting the legal interpretation of an external statute linked to the tribunal's mandate and frequently encountered by it (*Canadian Broadcasting Corp.*, at para. 48). See *Toronto Catholic District School Board v. Ontario English Catholic Teachers' Assn. (Toronto Elementary Unit)* (2001), 55 O.R.

(3d) 737 (C.A.), leave to appeal refused, [2002] 2 S.C.R. ix. The point, however, is that the CRTC will have greater expertise *vis-à-vis* the reviewing court for technical and policy-related matters, including determination of legal questions, associated with the specialized statutes enabling the CRTC.

83 For judicial determinations that the CRTC is due deference on legal questions within its expertise, see *Shaw*, *supra*; *Ledcor*, *supra*; *Métromédia*, *supra*. These authorities are relevant only insofar as the question at issue turns out to be one within the CRTC's expertise. They stand, however, as a corrective against the reliance Gonthier J. places on the statutory interpretation character of the question and the courts' general expertise at that exercise.

84 The third inquiry here is this: What is the nature of the specific issue before the administrative decision maker relative to its expertise? To Gonthier J., the bare question "[W]hat did Parliament intend by the phrase 'the supporting structure of a transmission line'?" is a pure legal question best suited to final resolution by the courts, one that does not draw on the CRTC's core expertise. I cannot agree. In my view, the specific issue draws heavily on the CRTC's specialized expertise, indicating that deference is required.

85 The phrase "the supporting structure of a transmission line" in s. 43(5) is not one familiar to lawyers or judges. It has no standard legal meaning independent of the Act. Unlike concepts intrinsic to commercial law ("sale of goods for export to Canada", "condition of the sale of the goods": *Mattel*, *supra*) or to the civil law ("alienation", "operation by another": *Bibeault*, *supra*), the meaning of "the supporting structure of a transmission line" is not one that lawyers or judges would ever have

thought about or on which they would have any opinions. Nor does it derive from an area of law where the tribunal has been held to have no greater expertise than the court, as for example human rights: *Gould v. Yukon Order of Pioneers*, [1996] 1 S.C.R. 571, at para. 46, *per* La Forest J., and at para. 3, *per* Iacobucci J.; *University of British Columbia v. Berg*, [1993] 2 S.C.R. 353; *Mossop*, *supra*; *Zurich Insurance Co. v. Ontario (Human Rights Commission)*, [1992] 2 S.C.R. 321. Commentators have criticized the determination that tribunals do not have greater expertise than courts on matters of human rights law: D. Dyzenhaus, "The Politics of Deference: Judicial Review and Democracy", in M. Taggart, ed., *The Province of Administrative Law* (1997), 279, at p. 279; B. Ryder, "Family Status, Sexuality and 'The Province of the Judiciary': The Implications of *Mossop* v. *A.-G. Canada*" (1993), 13 *Windsor Y.B. Access Just.* 3; A. Harvison Young, "Human Rights Tribunals and the Supreme Court of Canada: Reformulating Deference" (1993), 13 Admin. L.R. (2d) 206. I need not address those criticisms here. I simply note that it strikes me as inadvisable to develop, in this appeal, the notion that courts have general expertise respecting telecommunications support structures and Parliament's policy intentions for the telecommunications domain.

86 In contrast with these examples of general questions or questions within the courts' expertise, the meaning of "the supporting structure of a transmission line" is a technical question best answered by the specialized agency in whose enabling legislation it arises. The question is not simply one "of statutory interpretation" (as *per* Gonthier J., at para. 14). Indeed, to characterize it so, and therefore to conclude that the court's expertise in matters of pure statutory interpretation exceeds the CRTC's, undermines the basis for deference to agencies in administration of their

enabling legislation. Wilson J. made the point nicely in *National Corn Growers*, *supra*, at p. 1336:

> Courts have also come to accept that they may not be as well qualified as a given agency to provide interpretations of that agency's constitutive statute that make sense given the broad policy context within which that agency must work.

This comment relates well to the definitive formulation of the modern approach to statutory interpretation:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.
>
> (E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87, cited in *Bell ExpressVu Limited Partnership v. Rex*, [2002] 2 S.C.R. 559, 2002 SCC 42, at para. 26; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21)

In other words, the broad policy context of a specialized agency infuses the exercise of statutory interpretation such that application of the enabling statute is no longer a matter of "pure statutory interpretation". When its enabling legislation is in issue, a specialized agency will be better equipped than a court to interpret words in "their entire context" in harmony with the Act, "the object of the Act, and the intention of Parliament".

87 I note several difficulties with Gonthier J.'s approach to the assessment of the specific issue *vis-à-vis* expertise. First, it prematurely introduces subsequent conclusions into the determination of the standard of review. Gonthier J. holds, at

para. 16, that the CRTC's expertise is not engaged because the "proper interpretation of the phrase" does not require "an understanding of technical language". As he puts it, at para. 14, "[t]his phrase has no technical meaning beyond the ken of a reviewing court". Yet, Gonthier J. rejected the finding by Rothstein J.A. that an ordinary construction of the phrase would include the respondents' poles (para. 26). Moreover, the statement that the phrase has no technical meaning is only a conclusion that can be reached after canvassing all possible interpretations of the phrase, presumably some technical, some not. Identifying all the possible interpretations of the phrase "the supporting structure of a transmission line" and then discriminating amongst them requires expertise. The standard of review cannot be contingent on what the reviewing court determines to be the correct interpretation.

88 Second, the degree of deference must be discerned from the question to be resolved, not the tools that the reviewing court has already used to reach the answer. In particular, this Court has already determined "that the CRTC is entitled to curial deference with respect to questions of law within its area of jurisdiction and expertise" (*Shaw*, *supra*, at para. 31, *per* L'Heureux-Dubé J.). Given *Pushpanathan*, the focus on reading that statement should shift towards the question of expertise. Indeed, Létourneau J.A. takes precisely this approach in citing the *Shaw* case in *Ledcor*, *supra*, at para. 30: "Consequently, this means the applicable standard of review of the CRTC's legal conclusions on matters within its expertise is that of reasonableness". The reasonableness standard on questions of law means that the CRTC is entitled to err in law in the exercise of its jurisdiction (*Ledcor*, at para. 30). Given the general rule that an expert tribunal will be due deference on its determinations of questions of law relating to its enabling statute (see *Tétreault-Gadoury*, *supra*, at p. 33, *per* La Forest J.) and this Court's specific conclusion that the CRTC is entitled to

deference on its answers to legal questions within its expertise, it is insufficient and, indeed, unhelpful to note that the interpretation of s. 43(5) is "a purely legal question" (as *per* Gonthier J., at para. 16). For tribunals expert at making legal determinations, such an observation adds little and need not, without more, drive towards correctness review. For example, in *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 24, it was the fact of the decision maker's lack of expertise as to the substantive issue that indicated correctness review, not a lack of expertise regarding legal questions as such. In the case of tribunals or administrative decision makers not empowered to make determinations of law, for example, or lacking expertise, the fact that a question is purely legal will of course be more significant. Yet, on purely legal questions within its expertise, the CRTC is owed deference. The analytical work in this appeal arises when determining whether the particular legal question is within the agency's expertise.

89 Third, by effectively holding that no deference is due where an ordinary, rather than technical, meaning prevails, Gonthier J. substantially reduces the likelihood that the pragmatic and functional approach will indicate deference to expert decision makers. As noted above, the correct approach to statutory interpretation requires that words be read "in their grammatical and ordinary sense". Gonthier J.'s approach suggests that a court will generally be as well equipped as a specialized agency to read words in their ordinary sense, in effect, most of the time.

90 Fourth, in his own analysis, Gonthier J. engages in technical reasoning of the kind he says is unwarranted by the question. While noting that consideration of legislative objectives is one aspect of the modern approach to statutory interpretation, Gonthier J. makes a policy assessment that there may be other avenues available to the

appellant for access to the respondents' poles, "contractual or regulatory" (para. 41). This indicates that the exercise is not a "pure" one best suited to judges. The CRTC would have been significantly better positioned than the court to assess the alternatives and the consequences of each possible interpretation of s. 43(5). Moreover, he determines that the interpretive exercise is aided by assuming that Parliament knew — and thus that the reviewing court knows — the technical distinctions between transmission and distribution lines, and that some power poles are situated on private land (para. 26). The distinction, as Gonthier J. notes (at para. 25), is that a transmission line carries electricity over large distances with minimum losses. In contrast, a distribution line carries less than 50kV of electricity over short distances. It strikes me that the distinction between transmission lines and distribution lines is not one to which any lawyer or judge, not having previously litigated or adjudicated in the telecommunications or energy sectors, would ever have turned his or her mind. It is a distinction with which the CRTC, as a specialized body regularly issuing orders respecting transmission facilities and transmission lines, is much more familiar than any judge. The CRTC, better than any judge, would know the extent to which Parliament regularly demonstrates its knowledge of technical distinctions in its legislation respecting the telecommunications sector. Reliance on these technical distinctions and facts further indicates how far the question is from a general question of law. If knowledge of all the technical meanings of terms such as "transmission" and the factual situation of poles is relevant, the issue appears no longer to be a pure question of statutory interpretation. Instead, it is one deeply enmeshed in the context and the domain of the CRTC's expertise.

91 In conclusion, this second factor militates for deference. Determining the definition of "the supporting structure of a transmission line" falls squarely within the CRTC's expertise.

(3) Purpose of the Act as a Whole, and the Provision in Particular

92 The purpose of the Act as a whole is to advance the "essential role in the maintenance of Canada's identity and sovereignty" of telecommunications and to advance certain specified objectives: s. 7. The CRTC, as a specialized agency, plays a crucial role in this scheme. Nevertheless, as noted above, the provision for an appeal on questions of law or jurisdiction with leave indicates that, under the Act, the CRTC is less clearly the final and exclusive decision maker than expert agencies fully shielded by privative clauses under other regimes, such as labour boards. I have several comments as to the provision in particular.

93 First, Gonthier J. suggests, at para. 17, that interpretation of s. 43(5) is a jurisdictional question: "It is a question of whether s. 43(5), properly construed, gives the CRTC jurisdiction to hear the parties' dispute." Such an observation hints at the defunct notion of the jurisdictional question as such. Yet, according to this Court's recent jurisprudence, the fact that a provision seems to limit a tribunal's powers does not lead to a less deferential standard of review. Rather, "the functional and pragmatic approach for determining the legislator's intent should be applied equally to questions which, at first blush, appear to limit a tribunal's jurisdiction" (*Canadian Union of Public Employees v. Montreal*, *supra*, at para. 19, *per* L'Heureux-Dubé J.). See also *Pushpanathan*, *supra*, at para. 28: "But it should be understood that a question which 'goes to jurisdiction' is simply descriptive of a provision for which the proper standard

of review is correctness, based upon the outcome of the pragmatic and functional analysis." See also *Pasiechnyk v. Saskatchewan (Workers' Compensation Board)*, [1997] 2 S.C.R. 890, at paras. 18-19, *per* Sopinka J., which also makes clear that a "jurisdictional question" is one that the legislator did not intend to leave to the board, not one that on its face defines the board's powers.

94 Second, Gonthier J. finds that the CRTC's telecommunications policy function is much less in evidence in s. 43(5) than elsewhere in the Act. He notes that s. 43(5) accords the CRTC "the essentially adjudicative role of considering applications from, and providing redress to, public service providers who cannot gain access to the supporting structure of a transmission line on terms acceptable to them" (para. 17). This subsection is not unique in this respect. Indeed, s. 43(4), in a strikingly similar way, empowers the CRTC to grant a Canadian carrier or distribution undertaking permission to enter on and break up any highway or other public place for the purpose of constructing a transmission line. Section 43(4) is triggered only where the Canadian carrier or distribution undertaking has failed to obtain the consent of the municipality or other public authority, according to s. 43(3). Thus, s. 43(4) has an equivalent "adjudicative" role.

95 More important, however, is the point that it is impossible to extricate this question of whether the CRTC was statutorily authorized to hear the parties' dispute from matters of policy. The reach of the CRTC's power to grant permission under s. 43(5) connects directly with the CRTC's ability to implement its policy objectives. I disagree with Gonthier J. that the proper interpretation of s. 43(5) is not a "polycentric" question (para. 17). Obviously the question affects, bilaterally, the parties in this appeal. But the question reaches much further. In interpreting and

applying s. 43(5), the CRTC is required to advance the complex policy objectives set out in s. 7 of the Act. The Federal Court of Appeal has observed the polycentric character of the CRTC's role in implementing similarly complex legislative objectives set out in s. 3 of the *Broadcasting Act*, S.C. 1991, c. 11: *Métromédia*, *supra*, at paras. 3-5, *per* Létourneau J.A. Moreover, Canadian telecommunications policy in s. 7 of the Act indicates that Canadians generally — by virtue of the role of telecommunications respecting Canada's identity and sovereignty — have a stake in the effectiveness of the tools given the CRTC. Parliament has made a determination that ordinary citizens are stakeholders in Canada's telecommunications policy. This indirect involvement by citizens thus distinguishes the present situation from a case in which, say, a public corporation and thus its shareholders are involved. Furthermore, the proper interpretation of s. 43(5) affects the municipalities and other public authorities, whose land may be broken up for the construction of duplicative transmission structures under s. 43(4). This is because, in practical terms, an order under s. 43(5) is an alternative to an order under s. 43(4). Therefore, in interpreting s. 43(5), as in exercising its discretion under s. 43(4), "the CRTC has to strike a delicate balance between public, private and municipal interests" (*Ledcor*, *supra*, at para. 28, *per* Létourneau J.A.). The environmental repercussions flowing from construction of such duplicative structures may have an impact upon those municipalities and their residents more generally. Indeed, the legislative history of s. 43 indicates the multiple complex concerns implicated. Interpretation of the CRTC's scope to issue orders under s. 43(5) implicates much more than the private rights of the two parties. Compare cases where instead of a polycentric balancing of competing interests, the decision maker was required to resolve an issue in which an individual's rights were at stake *vis-à-vis* the state: *Chieu*, *supra*, at para. 26, *per* Iacobucci J.; *Baker v. Canada*

(Minister of Citizenship and Immigration), [1999] 2 S.C.R. 817, at para. 60, *per* L'Heureux-Dubé J.

96 The purpose of s. 43(5), as evident from its inclusion with the other subsections of s. 43, is clearly to provide an alternative to the construction of new structures on public land. At this stage, in determining the standard of review, this does not on its own dictate a substantive outcome. It suggests, nonetheless, deference to the extent that the question is one best answered by the expert tribunal in appreciation of the real-life consequences for other provisions in the statute.

(4) The "Nature of the Problem": A Question of Law or Fact?

97 I agree with Gonthier J. that the interpretation of s. 43(5) is a question of law. The nature of the problem thus suggests, at first blush, less deference. It is established, however, that even pure questions of law may be granted deference where other factors of the pragmatic and functional approach suggest that the legislature intends such deference (*Pushpanathan*, *supra*, at para. 37).

98 To sum up, two factors suggest a low degree of deference, the statutory appeal and the legal nature of the problem. Two factors suggest substantial deference, the CRTC's relative expertise on an issue drawing on its technical knowledge and role in policy development and the purpose of the provision and the Act as a whole. I have already noted this Court's determination that expertise is the most compelling of the factors in arriving at the appropriate standard of review (*Southam*, *supra*). I conclude that the appropriate standard is reasonableness *simpliciter*.

III. Application of Standards of Review

A. *Constitutional Question*

99 If the provision at issue has only one plausible construction, the constitutional question is simple: is the provision *ultra vires* its legislator? If the provision is genuinely ambiguous, however, greater care is required. The presumption of compliance with constitutional norms is a well-established principle of statutory interpretation, but it does not apply unless one possible interpretation would render the legislation invalid: R. Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994), at p. 322. Iacobucci J. makes a similar point about the use of *Charter* values in *Bell ExpressVu*, *supra*. In other words, where an interpreter is choosing between versions, neither one of which is constitutionally invalid, there is no reason to prefer one over the other.

100 Rothstein J.A. read s. 43(5) restrictively so as to avoid possible unconstitutionality. He did not, however, make a prior determination that the possible interpretation he was excluding would, in fact, have rendered the legislation unconstitutional.

101 The interpretation Rothstein J.A. eliminated was the one that had been selected by the CRTC in its decision below, and is the one sought by the appellant before this Court. This is the construction of s. 43(5) that permits the CRTC to order access, for a federal undertaking, to poles owned by provincially regulated electric companies. The best approach is to determine whether that interpretation would render s. 43(5) *ultra vires* Parliament. As nobody argued for it, it is unnecessary to

access a construal by which a "person who provides [a] servic[e] to the public" could mean poles of a competing provincial hydro company. Without reference to constitutional precepts, the basic contextual approach to statutory interpretation would appear to rule out such a construction of the federal *Telecommunications Act*.

102 Gonthier J. declines to address the constitutional question. Nevertheless, I propose to answer the question briefly. The CRTC undertook a thorough constitutional analysis, spreading over some 70 paragraphs in its decision, and for future cases it may assist the CRTC to have comments from this Court on its reasoning. Moreover, my analysis may be helpful to Parliament should it decide, in light of the majority's decision, to amend s. 43(5).

103 In my view, the CRTC decided correctly that this construction of s. 43(5) is constitutionally valid (Telecom Decision CRTC 99-13, at paras. 89-106).

104 There are two stages to the division of powers analysis. The first step asks: What is the essential character of the law? The second step asks whether that character relates to an enumerated head of power granted to the enacting legislature by the *Constitution Act, 1867*. If it does, the law is valid: *Ward v. Canada (Attorney General)*, [2002] 1 S.C.R. 569, 2002 SCC 17; *Reference re Firearms Act (Can.)*, [2000] 1 S.C.R. 783, 2000 SCC 31; *Global Securities Corp. v. British Columbia (Securities Commission)*, [2000] 1 S.C.R. 494, 2000 SCC 21; *General Motors of Canada Ltd. v. City National Leasing*, [1989] 1 S.C.R. 641.

105 First, what is the pith and substance, or essential character, of the impugned law? Here we are seeking the "true meaning or dominant feature" of s.

43(5): *Ward*, *supra*, at para. 17, *per* McLachlin C.J. "The effects of the legislation may also be relevant to the validity of the legislation in so far as they reveal its pith and substance": *Global Securities*, *supra*, at para. 23; see also *Saumur v. City of Quebec*, [1953] 2 S.C.R. 299. Indeed, in some cases, the effects of the law suggest a purpose other than that stated in the law: *R. v. Morgentaler*, [1993] 3 S.C.R. 463; *Attorney-General for Alberta v. Attorney-General for Canada*, [1939] A.C. 117 (P.C.). In other words, a law may say that it intends to do one thing and actually do something else: *Firearms Reference*, *supra*, at para. 18. Here, for example, the respondents argue that the pith and substance of s. 43(5) is actually the minimization of disruption of roadways.

106 In my view, the dominant characteristic is that s. 43(5), construed for argument's sake as suggested by the appellant and as found by the CRTC, empowers the CRTC to aid federal undertakings by granting them access to the infrastructure of provincially regulated utilities when they have otherwise failed to obtain access on acceptable terms. I cannot accept the argument by the respondents and a number of the interveners that the dominant characteristic is that the provision would permit the CRTC to minimize disruption of roadways or to regulate hydro-electricity within a province. Any impact the CRTC can have on a provincially regulated hydro utility arises only through the fact of granting a federal undertaking access to transmission lines in resolution of a particular dispute. This is not a plenary regulatory power. See the relevant discussion of the constitutional validity of s. 43(4) of the Act, which, despite its incidental effects, is not in pith and substance legislation in respect of "control and management of traffic on municipal roadways" (*Ledcor*, *supra*, at para. 24).

107 Turning to the second step, it should be obvious that, in my view, the essential character of s. 43(5) relates to an enumerated head of power granted to Parliament by the *Constitution Act, 1867*. The pith and substance of the law is properly assigned to s. 92(10)(*a*) of the *Constitution Act, 1867*. The impugned provision cannot credibly be described as a law in respect of a provincial matter such as property and civil rights under s. 92(13). According to the authorities of this Court, the analysis stops here: *Firearms Reference*, *supra*; *GM Canada*, *supra*. There is no need to consider whether the impugned provision is part of a valid legislative scheme, nor if so, whether it is sufficiently integrated into that legislative scheme. Since the impugned law is valid federal law, incidental effects upon matters of provincial jurisdiction are constitutionally irrelevant.

108 My conclusion is unsurprising, since the validity of federal laws granting access to or rights upon property otherwise regulated under the head of s. 92(13) for the purposes of federal undertakings is long established. See *Toronto Corporation v. Bell Telephone Co. of Canada*, [1905] A.C. 52 (P.C.); *Attorney-General for British Columbia v. Canadian Pacific Railway Co.*, [1906] A.C. 204 (P.C.); *City of Toronto v. Grand Trunk Railway Co. of Canada* (1906), 37 S.C.R. 232. Indeed, the Federal Court of Appeal recently affirmed the constitutionality of s. 43(4) of the Act, including the power of the CRTC to authorize federal undertakings to enter on and break up municipal highways for their purposes: *Ledcor*, *supra*.

109 While my colleague Gonthier J. does not explicitly raise the constitutional issue, he refers indirectly to a misconception of the division of powers raised by several interveners.

110 The Attorney General of Ontario, the Federation of Canadian Municipalities, and the Attorney General of Alberta appear to believe that, by granting the provinces the exclusive power to make laws in relation to matters within the enumerated classes of subjects, s. 92 of the *Constitution Act, 1867* precludes the federal Parliament from passing legislation imposing any ancillary effects on matters under s. 92 (Attorney General of Ontario, at para. 7; Federation of Canadian Municipalities, at para. 25; Attorney General of Alberta, at para. 28). This is the only sense to be given to arguments that "jurisdiction over access . . . must also fall within exclusive provincial jurisdiction" (Attorney General of Ontario, at para. 7). Such an argument confuses the doctrine of interjurisdictional immunity protecting federally regulated undertakings with an equivalent doctrine protecting provincially regulated undertakings. The weight of authority is against any such equivalent doctrine protecting provincially regulated undertakings from intrusion (*Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3, at pp. 68-69, *per* La Forest J.; *Alberta Government Telephones v. Canada (Canadian Radio-television and Telecommunications Commission)*, [1989] 2 S.C.R. 225, at p. 275, *per* Dickson C.J. See also P. W. Hogg, *Constitutional Law of Canada* (loose-leaf ed.), at p. 15-34).

111 In his account of the facts, Gonthier J. states that "[i]t is not disputed that the Utilities are subject to the legislative jurisdiction of the Province of Ontario" (para. 4). If no constitutional question lurks, somewhere, it is difficult to understand the significance of this fact. Moreover, even under a constitutional analysis, the fact of provincial legislative jurisdiction is irrelevant. The highways or other public places targeted by ss. 43(2) to 43(4) are, similarly, subject to provincial regulation. To be complete and accurate, Gonthier J.'s factual statement should specify that the Utilities

are subject to the legislative jurisdiction of the Province of Ontario for valid provincial purposes and to the legislative jurisdiction of Parliament for valid federal purposes.

112 In conclusion, construing s. 43(5) so as to allow the CRTC to permit access to the poles of provincially regulated utilities would not render the provision *ultra vires* Parliament.

B. *Review of Statutory Interpretation and the Terms of the Order*

113 The first question here is whether the CRTC's interpretation of s. 43(5) was reasonable. As Iacobucci J. wrote in *Southam*, *supra*, at para. 56, "[a]n unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it." Where the appropriate standard is reasonableness *simpliciter*, "a court must not interfere unless the party seeking review has positively shown that the decision was unreasonable" (*Law Society of New Brunswick v. Ryan*, [2003] 1 S.C.R. 247, 2003 SCC 20, at para. 48, *per* Iacobucci J.).

114 Further, as Iacobucci J. noted in *Southam*, *supra*, a reviewing court operating on a reasonableness *simpliciter* standard must not intervene on the sole basis that it would have come to a conclusion opposite to or different from the tribunal's (para. 80). The question is not whether I would have reached the same decision, or done so by the same reasoning, but whether the CRTC's decision is reasonable.

115 In my view, it was. The CRTC, in its approximately 250 paragraphs, justified its interpretation of s. 43(5) with reasons that stand up to scrutiny. The CRTC identified the proper approach to statutory interpretation (paras. 107-8). It noted further that s. 12 of the *Interpretation Act*, R.S.C. 1985, c. I-21, mandates the fair, large and liberal construction and interpretation that best attains the remedial character of s. 43(5) (para. 109). The CRTC considered the provision's legislative history, including a government report recognizing the "good economic, environmental and aesthetic reasons for sharing support structures between the telephone and cable industries, as well as others, notably electrical power utilities" (para. 113). It noted reference to the need for regulators to intervene to ensure the development of co-operative mechanisms (para. 114). The CRTC interpreted s. 43(5) in light of Canadian telecommunications policy and other public interest concerns (paras. 125 *et seq.*). The CRTC concluded that the construction of duplicative distribution infrastructures was not in the public interest (para. 131). The CRTC then conducted a more detailed interpretive analysis of elements of s. 43(5).

116 In keeping with the deferential approach to reasonableness review, I will not assess each of the CRTC's reasons in detail. I will instead focus on the most convincing suggestion in Gonthier J.'s analysis that a defect vitiates the reasons supporting the CRTC's decision. I refer to his analysis of the phrase "highway or other public place".

117 The CRTC concluded that it had power to grant access to poles located on a public utility easement or right-of-way running across privately owned land (para. 153). It noted that the meaning of "public place" depends on the specific purpose and legislative context (para. 150). The CRTC noted that the majority of

utility poles are located on a "highway" or other publicly owned land, interspersed with a minority of poles located on public utility rights-of-way or easements on private land (para. 151). If "highway or other public place" did not reach the poles located on privately owned land, the result would be what it called a "jurisdictional hopscotch" with s. 43(5) applying to the majority of support structures, but not to the exceptional few (para. 151). The CRTC presumed that Parliament would have known that some support structures were located on public utility rights-of-way or easements (para. 151), but would not have wanted its objective to be frustrated. A purposive interpretation of the words "public place" would, arguably, suggest that land over which a public utility has a right-of-way and has built its infrastructure has become a public place for the pursuit of public goals. The CRTC therefore concluded that s. 43(5) extended to poles located on private land.

118 The CRTC's interpretation of the phrase "highway or other public place" was not a justification supporting its conclusion that "transmission line" included the poles of provincially regulated utility companies. That conclusion stands independently of the meaning of "highway or other public place". There are therefore two possibilities: (1) the CRTC's interpretation of "highway or other public place" may be reasonable; (2) the CRTC's interpretation may be unreasonable, such that its decision must be narrowed so as to eliminate the possibility of access to poles on privately owned land. Even an unreasonable interpretation of "highway" cannot spoil the entire decision.

119 Gonthier J. notes that on the grammatical and ordinary meaning of "constructed on a highway or other public place", the CRTC may not grant access to transmission lines situated on private land (para. 24). He writes that the CRTC's

presumption that Parliament knew that some support structures owned by utilities are located on public utility rights-of-way begs the question. In other words, that presumption took for granted that "transmission line" includes utilities' power poles. He writes, at para. 24: "If we refrain from that assumption, the grammatical and ordinary meaning of s. 43(5) is that the CRTC may not grant access to supporting structures located on private land."

120 Gonthier J. is correct in this limited respect, but he too begs the question. He understands that "transmission line" excludes utilities' power poles. He takes "transmission line" to mean the transmission line of a Canadian carrier or distribution undertaking (paras. 31-32). Assuming that Gonthier J. is correct that the grammatical and ordinary meaning applies to "highway or other public place", this simply excludes from the CRTC's scope all transmission lines located on private property. It says nothing about whether those transmission lines are themselves owned by federally regulated undertakings or by provincially regulated utilities. If the CRTC is reasonable and "transmission line" includes poles of provincially regulated utilities, utility poles located on private property are excluded. If Gonthier J. is correct and "transmission line" means only structures of federal undertakings, support structures on private property are still excluded. The CRTC could then only order access to transmission lines of federal undertakings located on public property. In effect, there might still be a hopscotch pattern of structures to which access could be granted and structures to which access could not be granted. This time, however, the hopscotch would not be jurisdictional. Rather, it would be one of alternating public and private property. The qualifier "highway or other public place" therefore adds nothing to the debate as to whether "transmission line" includes both federally and provincially regulated support structures or only federally regulated structures. In other words,

irrespective of the content given to "transmission line", there are purposive arguments to be made concerning the purposive definition of "public place".

121 It remains necessary to consider the reasonableness of the CRTC's interpretation of "highway or other public place" as including support structures built on private land by virtue of rights-of-way or easements. I have observed that Gonthier J.'s interpretations of "transmission line" and "highway or other public place" still leave open the possibility of only partial, patchwork access to networks of support structures. It is unnecessary to determine whether the CRTC's contextual approach to "public place" is correct, but on the basis of the pragmatic reasons given, I conclude that it is at least reasonable.

122 The second question is whether the details of the order made, notably the rate, were reasonable. The CRTC ordered access to the respondents' poles at the rate of $15.89 per year. The previous negotiated rate was $10.42 per pole. The rental rate paid by cable companies for access to telephone company poles, set by the CRTC in Telecom Decision CRTC 99-13, was $9.60 per pole in 1997. On the basis of the evidence and arguments submitted in this appeal, I am unable to conclude that the CRTC's decision was not supported by reasons that could stand up to a somewhat probing examination: *Southam*, *supra*, at para. 56.

123 I would therefore conclude that the CRTC's order was reasonable, and that the Federal Court of Appeal erred in allowing the appeal.

IV. Effects of the Majority's and Court of Appeal's Approaches

124 In conducting my analysis, I have already to some extent indicated my general concerns with the approaches taken by Gonthier J. and Rothstein J.A. In light of the importance of these concerns, I will elaborate briefly.

125 By failing to separate out the constitutional issue from the ordinary judicial review process, Rothstein J.A. introduced constitutional concerns into the standard of review. He held that the question could not have been intended to be left to the exclusive determination of the CRTC because it might extend the CRTC's power to entities not otherwise subject to its jurisdiction. This is a veiled constitutional concern. The result was a determination of a correctness standard for an expert agency's interpretation of its enabling legislation. Neither Rothstein J.A. nor Gonthier J. conducted a full constitutional analysis. Had they done so, they would have concluded that the CRTC's interpretation of s. 43(5) was not *ultra vires* Parliament. In effect, Rothstein J.A.'s decision demonstrates to parties dissatisfied with an administrative decision that they need only frame a constitutional argument — it need not be a sound one — in order to have the decision reviewed by a court on a correctness basis. The mere suggestion of unconstitutionality is enough.

126 Worried by the possibility that s. 43(5) might exceed Parliament's legislative competence, Rothstein J.A. eliminated the CRTC's reading of "transmission line" (para. 65). I cited earlier his conclusion that Parliament would not have conferred jurisdiction on the CRTC over the support structures of utilities subject to provincial jurisdiction in an ambiguous provision. I have already noted that the fact that the utilities are subject to provincial jurisdiction for valid provincial purposes is constitutionally irrelevant when they are, incidentally, subject to the effects of valid federal legislation. I note further that ss. 43(2) to (4), the adjacent provisions, give

federal undertakings and the CRTC limited power over the structures of provincially regulated highways. What matters here, however, is that if Rothstein J.A. had done a full constitutional analysis and determined that Parliament may authorize the CRTC to grant access to provincially regulated utilities, the alleged ambiguity of the provision would have been irrelevant. Instead, Rothstein J.A. would simply have attempted to find the legislative intent and read the provision as best he could in its context and in light of the *Interpretation Act*. Indeed, had he found a reasonableness standard of review, he would only have examined the CRTC's decision to see if its interpretation was reasonable, rather than attempting to reach his own correct interpretation.

127 It is a serious mistake to eliminate a possible interpretation of a provision, under the preference for a valid interpretation, where both or all options are constitutionally valid. There are not degrees of constitutional validity, such that a judge in constructing a statute is authorized to choose the interpretation that, while in pith and substance valid legislation *intra vires* its legislator, intrudes incidentally the least in the other legislative domain. Valid legislation is entitled to impose its ancillary effects. Courts do not limit an enacting legislature's jurisdiction by "reading down" to avoid intruding upon areas of jurisdiction of the other legislature. As I noted earlier, favouring one construction as constitutional when the alternative is also constitutional misapplies this Court's recent decision in *Bell ExpressVu*, *supra*. It also denies the legislator the full effect of the legislation it passes. Moreover, if even valid legislation is to be read down, in a misguided effort to render it yet more constitutional, there will be considerable uncertainty on the part of legislators, judges, administrative decision makers, and parties attempting to order their conduct by that legislation.

128 Finally, the constitutional question aside, in my view the determination that the CRTC's interpretation of its own statute is reviewable on correctness is a regressive step by this Court. It is worth recalling the general rationale for deference to specialized administrative decision makers. L'Heureux-Dubé J. stated this justification helpfully, for a unanimous Court, in *Domtar Inc. v. Quebec (Commission d'appel en matière de lésions professionnelles)*, [1993] 2 S.C.R. 756, at pp. 774-75. She is referring to the patently unreasonable test in respect of a specialized agency protected by a privative clause, but this Court's decisions in *Pezim* and *Southam* indicate that her comments apply in the present case, where there is a limited right of appeal.

> As it relates to matters within the specialized jurisdiction of an administrative body protected by a privative clause, this standard of review has a specific purpose: ensuring that review of the correctness of an administrative interpretation does not serve, as it has in the past, as a screen for intervention based on the merits of a given decision. The process by which this standard of review has progressively been accepted by courts of law cannot be separated from the contemporary principle of curial deference, which is, in turn, closely linked with the development of extensive administrative justice (see Cory J.'s reasons in *PSAC No. 1* and *PSAC No. 2*, *supra*, and *National Corn Growers Assn. v. Canada (Import Tribunal)*, [1990] 2 S.C.R. 1324 (*per* Wilson J.)). Substituting one's opinion for that of an administrative tribunal in order to develop one's own interpretation of a legislative provision eliminates its decision-making autonomy and special expertise. Since such intervention occurs in circumstances where the legislature has determined that the administrative tribunal is the one in the best position to rule on the disputed decision, it risks, at the same time, thwarting the original intention of the legislature. For the purposes of judicial review, statutory interpretation has ceased to be a necessarily "exact" science and this Court has, again recently, confirmed the rule of curial deference set forth for the first time in *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.* . . .

Gonthier J.'s conclusion, at para. 16, that the interpretation of s. 43(5) is a matter of "pure statutory interpretation" unconnected with the general policy informing the entire Act and developed by the CRTC is a setback for this Court's jurisprudence on deference to administrative decision makers. The conclusion that a court's residual expertise at statutory interpretation trumps a specialized agency's interpretation of a provision that on its face has no general legal meaning but is entirely technical and context-specific squares badly with "the reluctance courts should feel in interfering in decisions of administrative tribunals" (*Canada (Attorney General) v. Public Service Alliance of Canada*, [1993] 1 S.C.R. 941, at p. 961, *per* Cory J.) or the "restrained approach to disturbing the decisions of specialized administrative tribunals" (*Fraser v. Public Service Staff Relations Board*, [1985] 2 S.C.R. 455, at p. 464, *per* Dickson C.J.).

129 This Court has recently affirmed that *Pushpanathan* did not modify the decisions of this Court in *Pezim* and *Southam* (*Committee for the Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)*, [2001] 2 S.C.R. 132, 2001 SCC 37, at para. 48, *per* Iacobucci J.; *Trinity Western University v. British Columbia College of Teachers*, [2001] 1 S.C.R. 772, 2001 SCC 31, at para. 17, *per* Iacobucci and Bastarache JJ.). It is, of course, necessary to read the discussions in those cases about jurisdiction and jurisdictional questions through the lens of *Pushpanathan*. As the context of those remarks makes clear, their thrust was that *Pushpanathan* did not diminish this Court's commitment to the notion of deference to an expert decision maker, even absent a privative clause. This is most obvious in the *Asbestos* case, since, like *Pezim*, that appeal dealt with a provincial securities commission. I am concerned that the reasoning of Gonthier J. in the present appeal does, in fact, indicate a shift in this Court's approach towards lesser deference.

130 In *New Brunswick Liquor Corp.*, *supra*, Dickson J. stated that courts, in his view, "should not be alert to brand as jurisdictional, and therefore subject to broader curial review, that which may be doubtfully so" (p. 233). Reformulated in light of *Pushpanathan*, the caution would run against branding as reviewable on correctness questions that are doubtfully so. In my view, the majority's approach in this appeal warrants such a caution.

V. Disposition

131 For the reasons given, I would allow this appeal. I would answer the constitutional question as it was stated by the Chief Justice in the affirmative.

Appeal dismissed with costs, BASTARACHE J. *dissenting.*

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TAB 11

Barrie Public Utilities v. Canadian Cable Television Assn., 2001 FCA 236, [2001] 4 FC 237

Date:	2001-07-13
Docket:	A-117-00
Parallel citations:	2001 FCA 236 (CanLII); 202 DLR (4th) 272
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A-117-00

2001 FCA 236

Barrie Public Utilities, Essex Public Utilities Commission, Guelph Hydro, Innisil Hydro, Leamington Public Utilities Commission, Markham Hydro Electric Commission, Mississauga Hydro Electric Commission, Niagara-On-The-Lake Hydro Electric Commission, The Hydro Electric Commission of North Bay, Oakville Hydro, Orillia Water, Light and Power, Perth Public Utilities Commission, Richmond Hill Hydro Electric Commission, Shelburne Hydro, Stoney Creek Hydro-Electric Commission, Stratford Public Utility Commission, Toronto Hydro-Electric Commission (Formerly Hydro Electric Commission of the City of North York and the Public Utilities Commission of the City of Scarborough), Waterloo North Hydro and Kitchener-Wilmot Hydro (*Appellants*)

v.

Canadian Cable Television Association (*Respondent*)

and

Canadian Radio-television and Telecommunications Commission, Saskatchewan Power Corporation and **Attorney General of New Brunswick** (*Interveners*)

Indexed as: Barrie Public Utilitiesv. Canadian Cable Television Assn. (C.A.)

Court of Appeal, Desjardins, Rothstein and Sharlow JJ.A.--Toronto, June 13 and 14; Ottawa, July 13, 2001.

Construction of Statutes -- Telecommunications Act, s. 43(5) permitting person who provides services to public and who cannot gain access to supporting structure of transmission line constructed on highway or other public place to apply to CRTC for right of access to supporting structure -- Appeal from CRTC order granting cable television companies access to poles owned by provincially regulated power utilities -- Interpretation of "transmission line" must be justified in terms of plausibility, efficacy, acceptability -- "Transmission line" capable of general meaning, including transmission lines used to distribute electrical power, and technical meaning (high voltage lines carrying electricity over long distances with minor losses) -- Generally presumption non-technical meaning intended unless context requiring otherwise -- S. 43(5) requiring reading down -- CRTC reading down either "person who provides services to public" or "transmission line", depending on which necessary to ensure compliance with constitutional, jurisdictional limits -- CRTC not having read down words consistently -- Parliament held not to intend flexible reading down when not so expressly stating -- "Person who provides services to the public" necessarily applicant

for access, not subject of CRTC's regulatory jurisdiction -- Since Parliament must have intended such term be unrestricted, "transmission line" must refer to transmission line constructed by undertakings subject to CRTC jurisdiction, i.e. Canadian carriers, distribution undertakings -- S. 43 as whole supporting this construction -- Similarity in wording with other subsections strong indicator Parliament intended same transmission lines i.e. those of Canadian carrier, distribution undertaking -- Presumption against redundancy not persuasive -- Argument by using different words in s. 43(5) from those used elsewhere dealing with transmission lines, Parliament intending different thing, overlooking relationship between s. 43(5), balance of s. 43 -- Implicit, unless context requiring contrary interpretation, transmission lines in subsequent subsection of same section similarly qualified (presumption of consistency of expression) -- Presumption not rebutted -- S. 43(5) should not inject whole new meaning into term -- Scheme of s. 43(5), sequence after s. 43(4) make it unlikely Parliament intended access to support structures of existing transmission lines would be consideration resulting in CRTC refusing permission for construction -- Policy objectives not conferring powers not bestowed by enabling statutes -- Legislative history supporting interpretation.

Telecommunications -- Appeal from CRTC decision under Telecommunications Act, s. 43(5) granting cable companies access to poles owned by provincially regulated electric power utilities at fixed annual price per pole -- S. 43(5) permitting person who provides services to public and who cannot gain access to supporting structure of transmission line constructed on highway or other public place to apply to CRTC for right of access to supporting structure -- In context of s. 43(5), s. 43 as whole, and having regard to legislative history, "transmission line" in s. 43(5) referring to transmission lines of Canadian carriers and distribution undertakings only -- Policy objectives in Telecommunications Act, Broadcasting Act implemented only in accordance with powers conferred by Acts -- Policies themselves not conferring jurisdiction -- Efficiency, avoidance of duplication of infrastructures could be attained through agreement or by regulation by provincial utility boards -- S. 43(5) not conferring on CRTC jurisdiction to regulate access, terms of access to support structures of transmission lines owned by appellants.

Administrative Law -- Statutory Appeals -- Appeal from CRTC decision under Telecommunications Act, s. 43(5) granting cable companies access to poles owned by provincially regulated electric power utilities at fixed annual price per pole -- Pragmatic, functional approach to determination of standard of review -- Whether "transmission lines" in s. 43(5) referring only to transmission lines of Canadian carriers and distribution undertakings as in s. 43 (2), (3), (4) or including all transmission lines, question of statutory interpretation, question of law -- Involves scope of CRTC's regulatory authority -- Determination of question having precedential importance -- Parliament not intending to leave determination of such question to exclusive decision of CRTC -- Other factors supporting finding: statutory right of appeal on question of law with leave, nature of question not involving CRTC's expertise -- Appropriate standard of review correctness.

This was an appeal from an order made by the CRTC under *Telecommunications Act*, subsection 43(5) granting television cable companies access to poles owned by the appellants at a fixed annual rate per pole. The appellants are provincially regulated electric power utilities that distribute electricity in various Ontario municipalities. As part of that business, they erect and maintain support structures, mainly poles, which provide support for above-ground electric wires. The members of the respondent Association provide cable television service to more than 7 million households. Subsection 43(5) permits a person who provides services to the public and who cannot gain access to the supporting structure of a transmission line constructed on a highway or other public place to apply to the CRTC for a right of access to the supporting structure. CRTC held that according to the ordinary dictionary meaning, "transmission line" includes lines used to distribute electricity. The term was not narrowed as it was in other subsections of section 43, as being a transmission line of a Canadian carrier (by definition a telecommunications carrier such as a telephone company) or distribution undertaking (in this case, the undertaking of a cable company). In the CRTC's opinion, the legislative history leading to the enactment of subsection 43(5) supported the view that it should be construed broadly to include the support structures of all utilities including the appellants and other power utilities. According to the CRTC, this view was supported by the telecommunications policy objectives in *Telecommunications Act*, section 7 and the broadcasting policy objectives in *Broadcasting Act*, section 3 and the broader public interest such as environmental impact and aesthetic consequences of avoidable duplicate infrastructures.

The issue was whether subsection 43(5) confers on the CRTC the authority to grant cable television companies access to the poles owned by provincially regulated power utilities.

Held, the appeal should be allowed.

Subsection 43(5) did not authorize the CRTC to make Telecom Decision CRTC 99-13.

A determination of the appropriate standard of review of a decision of an administrative tribunal calls for the application of the pragmatic and functional approach, according to which the central question is whether the legislators intended the question raised by the provision to be left to the exclusive decision of the administrative tribunal. Whether "transmission lines" in subsection 43(5) refers only to transmission lines of Canadian carriers and distribution undertakings, or to all transmission lines, irrespective of ownership, is a question of statutory interpretation and therefore a question of law. If "transmission line" is held to apply to all transmission lines regardless of ownership, that would empower the CRTC to order access to support structures owned by utilities not otherwise within the Commission's jurisdiction. Since the decision herein involves the scope of the CRTC's regulatory authority and will stand as a precedent, it could not be thought that Parliament intended to leave the determination of such a question to the exclusive decision of the CRTC. Having regard to the question of statutory interpretation under consideration, the fact that there is a statutory right of appeal on a question of law upon leave being granted, and the fact that the nature of the question is not one that involves the expertise of the CRTC, the appropriate standard of review is that of correctness.

The words of subsection 43(5) must be read in their statutory context to arrive at an interpretation of "transmission line" that is justified in terms of plausibility, efficacy and acceptability. According to the appellants, power utilities recognize a distinction between transmission lines, which are high voltage lines carrying electricity over long distances with minor losses, and distribution lines, which carry electricity relatively inefficiently over short distances. The support structures in issue are the poles supporting what the power utilities refer to as "distribution lines", not "transmission lines". "Transmission line", read literally and in isolation, is capable of bearing either meaning. Generally, where words may bear either a technical or non-technical meaning, the Court will presume that the non-technical meaning was intended unless the context requires otherwise.

Neither the term "person who provides services to the public" nor the term "transmission line" in subsection 43(5) is qualified. Because it is obvious that subsection 43(5) does not confer on the CRTC the authority to grant access to any poles supporting transmission lines whenever any person applies for access (thus exceeding federal and CRTC jurisdiction), subsection 43(5) must be read down. The CRTC read down either the term "person who provides services to the public" or the term "transmission line" in subsection 43(5) on a case-by-case basis, depending on which is necessary to ensure compliance with its constitutional and jurisdictional limits. While reading down legislation to comply with jurisdictional limits is an acceptable strategy, the CRTC has not read down the words consistently. It could not be held that Parliament intended this flexible reading down, depending upon the facts of individual cases, when this was not expressly stated.

Also, the term "person who provides services to the public" in subsection 43(5) refers to the applicant for access and not to the person that is subject to the regulatory jurisdiction of the CRTC, i.e. the person against whom the access order is made. In this context, there is no reason to apply jurisdictional or constitutional constraints to the term. It is reasonable to conclude that the term "person who provides services to the public" was intended by Parliament to be unrestricted. Therefore "transmission line" must be a transmission line constructed by undertakings subject to CRTC jurisdiction, namely Canadian carriers or distribution undertakings and cannot include the transmission lines of the appellants.

This construction is supported by the context of section 43 as a whole. In subsections 43(2), (3) and (4), the transmission lines at issue are clearly those to be constructed, maintained or operated by a Canadian carrier or distribution undertaking on a highway or other public place. Subsection 43(5) is not concerned with granting Canadian carriers or distribution undertakings permission to construct transmission lines, but with access by persons who provide services to the public to support structures of transmission lines already constructed on a highway or other public place. However, the word formula "transmission line constructed on a highway or other public place" in subsection 43(5) bears a remarkable similarity to the words describing the transmission lines contemplated in subsections 43(2), (3) and (4). This similarity in wording is a strong indicator that Parliament had in mind the same transmission lines, i.e. the transmission lines of a Canadian carrier or distribution undertaking in all subsections.

The argument that access to transmission lines of Canadian carriers and distribution undertakings is already provided for and Parliament should not be presumed to enact a redundancy, was not accepted. First, subsection 43(5) authorizes the CRTC to grant access to the support structures of distribution undertakings, something the CRTC did not have jurisdiction to do without subsection 43(5). Second, subsection 43(5) makes the CRTC's jurisdiction to

grant access to the support structures of Canadian carriers explicit. It was not clear that, in the absence of subsection 43(5) the CRTC would have such authority.

The respondent stated that by using different words in subsection 43(5) from those used elsewhere dealing with transmission lines, Parliament must have intended a different thing. This argument overlooked the relationship between subsection 43(5) and the balance of section 43. Where, in prior subsections, transmission lines are those of Canadian carriers or distribution undertakings, it is implicit, unless the context requires a contrary interpretation, that the transmission lines in a subsequent subsection of the same section would be similarly qualified. This is the presumption of consistency of expression. As subsections 43(2), (3) and (4) each deal with transmission lines constructed by Canadian carriers or distribution undertakings on highways or other public places, the reference in subsection 43(5) to a transmission line constructed on a highway or other public place, is intended to mean the same transmission line. The presumption of consistency of expression was not rebutted. Finally, had Parliament intended that the CRTC be authorized to grant access to all kinds of transmission lines, including those of power utilities, it is more likely that it would have framed a free-standing section of the Act to that effect. It would not have drafted a subsection as the final element of a section which deals exclusively with transmission lines of Canadian carriers and distribution undertakings.

The scheme of subsection 43(5) and its sequence after subsection 43(4) makes it unlikely that Parliament intended that access to support structures of existing transmission lines would be a consideration that could result in the CRTC refusing permission for construction under subsection 43(4). If such were the case, subsection 43(5) would not require an access application to engage the CRTC's jurisdiction. The legislation would provide that the CRTC, in considering a construction application by a Canadian carrier or distribution undertaking under subsection 43(4), could either make an order permitting construction or having regard to the use and enjoyment of the highway or other public place by others, order that the Canadian carrier or distribution undertaking be given access to support structures of existing transmission lines.

It is not the Court's function to approve or disapprove of policy objectives. But the CRTC does not have plenary power to implement policies. Its power is established under the Acts and other relevant legislation, and the policy objectives of those Acts may be implemented by the CRTC only in accordance with the powers and duties conferred on it under those Acts. The policies themselves do not confer jurisdiction on the CRTC and they cannot be used as a basis for exercising a power that the CRTC has not been granted by the statutes. Subsection 43(5) does not confer on the CRTC the power to grant access to support structures of all transmission lines. The policies of the *Telecommunications Act* and *Broadcasting Act* must therefore be implemented by the CRTC having regard to that constraint.

Efficiency and avoidance of duplication of infrastructures may be attained without the CRTC having jurisdiction to make access orders to the transmission lines of power utilities, either by entering into agreements with power utilities or by access regulated by provincial utility boards. If a power utility has capacity on its support structures to accommodate the transmission lines of Canadian carriers and there are no technical reasons for not doing so, it is logical that the utility would grant access as rates acceptable to it and that carriers would find this preferable to constructing their own support structures.

Finally, the legislative history supported the view that, in response to submissions of the provinces regarding the proliferation of undertakings to "dig up highways", and in order to regulate access to support structures of transmission lines as between Canadian carriers and distribution undertakings, subsection 43(5) was enacted to grant access to support structures of the transmission lines of Canadian carriers and distribution undertakings by each other and by other persons who provide services to the public.

statutes and regulations judicially considered

Broadcasting Act, S.C. 1991, c. 11, ss. 2(1) "distribution undertaking", 3, 5(1).

Canadian Radio-television and Telecommunications Commission Act, R.S.C., 1985, c. C-22.

Constitution Act, 1867, 30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act, 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5].

National Transportation Act, R.S.C. 1970, c. N-17 , s. 51.

Ontario Energy Board Act, 1998, being Sch. B of the *Energy Competition Act, 1998*, S.O. 1998, c. 15, s. 70.

Public Utilities Act, R.S.N. 1990, c. P-47, s. 53.

Public Utilities Board Act, R.S.A. 1980, c. P-37, s. 88.

Railway Act, R.S.C. 1970, c. R-2 , s. 317.

Telecommunications Act, S.C. 1993, c. 38, ss. 7, 25, 27, 42, 43(1),(2),(3),(4),(5), 44, 47(*a*), 52(1), 64(1).

Utilities Commission Act, R.S.B.C. 1996, c. 473, s. 27.

cases judicially considered

applied:

U.E.S., Local 298 v. Bibeault, 1988 CanLII 30 (SCC), [1988] 2 S.C.R. 1048; (1988), 35 Admin. L.R. 153; 95 N.R. 161; *Pezim v. British Columbia (Superintendent of Brokers)*, 1994 CanLII 103 (SCC), [1994] 2 S.C.R. 557; (1994), 114 D.L.R. (4th) 385; [1994] 7 W.W.R. 1; 92 B.C.L.R. (2d) 145; 22 Admin. L.R. (2d) 1; 14 B.L.R. (2d) 217; 4 C.C.L.S. 117; *Canada (Director of Investigation and Research) v. Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748; (1997), 144 D.L.R. (4th) 1; 50 Admin. L.R. (2d) 199; 71 C.P.R. (3d) 417; 209 N.R. 20; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC), [1998] 1 S.C.R. 982; (1998), 160 D.L.R. (4th) 193; 11 Admin. L.R. (3d) 1; 43 Imm. L.R. (2d) 117; 226 N.R. 201; amended reasons 1998 CanLII 787 (SCC), [1998] 1 S.C.R. 1222; (1998), 11 Admin. L.R. (3d) 130; *Thomson v. Canada (Deputy Minister of Agriculture)*, 1992 CanLII 121 (SCC), [1992] 1 S.C.R. 385; (1992), 89 D.L.R. (4th) 218; 3 Admin. L.R. (2d) 242; 133 N.R. 345.

referred to:

Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission) 2001 SCC 37 (CanLII), (2001), 199 D.L.R. (4th) 577 (S.C.C.); *Canada (Deputy Minister of National Revenue -- M.N.R.) v. Mattel Canada Inc.* 2001 SCC 36 (CanLII), (2001), 199 D.L.R. (4th) 598 (S.C.C.); *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, 1995 CanLII 101 (SCC), [1995] 2 S.C.R. 739; (1995), 125 D.L.R. (4th) 443; 31 Admin. L.R. (2d) 169; 183 N.R. 184; *Transvision (Magog) Inc. v. Bell Canada*, [1975] C.T.C. 463.

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APPEAL from a CRTC order made under *Telecommunications Act*, s. 43(5) granting television cable companies access to poles owned by provincially regulated power utilities at a fixed annual rate per pole (*CCTA v. MEA et al.*, Telecom Decision CRTC 99-13). Appeal allowed on the ground that the CRTC exceeded the jurisdiction conferred by subsection 43(5).

appearances:

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The following are the reasons for judgment rendered in English by

Rothstein J.A.:

INTRODUCTION

[1]The appellants are provincially regulated electric power utilities in Ontario. They are appealing Telecom Decision CRTC 99-13 [*CCTA v. MEA et al.*], a September 28, 1999 order of the Canadian Radio-television and Telecommunications Commission (CRTC) made under subsection 43(5) of the *Telecommunications Act*, S.C. 1993, c. 38. The order grants television cable companies access to poles owned by the appellants at a rate of $15.89 per pole per year. Leave to appeal was granted by this Court under subsection 64(1) of the *Telecommunications Act*.

ISSUES

[2]The issues raised by the appellants on appeal are:

1. Does subsection 43(5) of the *Telecommunications Act* confer on the CRTC the authority to grant cable television companies access to the poles owned by provincially regulated power utilities?

2. If so, is subsection 43(5) constitutionally valid as being within the legislative jurisdiction of the Parliament of Canada?

3. If so, was there evidence before the CRTC to support the rate of $15.89?

[3]As I have concluded that subsection 43(5) does not authorize the CRTC to make Telecom Decision CRTC 99-13, it will not be necessary to address the second and third issues.

FACTS

[4]At all relevant times, the appellants were power utilities that distributed electricity in certain Ontario municipalities. For the purpose of their business, the appellants erect and maintain support structures, mainly poles, which provide support for above-ground electric wires. There is no dispute that the appellants are subject to the legislative jurisdiction of the Province of Ontario.

[5]The members of the Canadian Cable Television Association provide cable television service to more than 7 million households in Canada. Before the CRTC, the Association represented Cablenet (a division of Cogeco Cable Inc.), Pierre Juneau (as trustee for 3305911 Canada Inc. in respect of certain cable distribution undertakings that were to be sold by Rogers Cable Systems Ltd.), Rogers Cable Systems Limited and its subsidiaries, and Shaw Cable Systems Ltd. and its subsidiaries.

[6]For many years, cable companies and power utilities entered into agreements which provided the cable companies with access to the utilities' poles for the purpose of supporting cable television transmission lines. Such access allowed cable companies to provide their services without installing their own support structures.

[7]The most recent agreements expired on or before December 31, 1996. Negotiations did not result in new agreements and as a result, the Canadian Cable Television Association applied to the CRTC for an order for access to the appellants' poles at rates to be fixed by the CRTC.

[8]The application resulted in Telecom Decision CRTC 99-13, granting the cable companies access to the appellants' poles at the rate of $15.89 per year. That decision is the subject of this appeal.

SECTION 43 OF THE *TELECOMMUNICATIONS ACT*

[9]Section 43 of the *Telecommunications Act* provides:

43. (1) In this section and section 44, "distribution undertaking" has the same meaning as in subsection 2(1) of the *Broadcasting Act*.

(2) Subject to subsections (3) and (4) and section 44, a Canadian carrier or distribution undertaking may enter on and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines and may remain there for as long as is necessary for that purpose, but shall not unduly interfere with the public use and enjoyment of the highway or other public place.

(3) No Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.

(4) Where a Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct a transmission line, the carrier or distribution undertaking may apply to the Commission for permission to construct it and the Commission may, having due regard to the use and enjoyment of the highway or other public place by others, grant the permission subject to any conditions that the Commission determines.

(5) Where a person who provides services to the public cannot, on terms acceptable to that person, gain access to the supporting structure of a transmission line constructed on a highway or other public place, that person may apply to the Commission for a right of access to the supporting structure for the purpose of providing such services and the Commission may grant the permission subject to any conditions that the Commission determines.

THE CRTC DECISION

[10]In making Telecom Decision CRTC 99-13, the CRTC relied on subsection 43(5) of the *Telecommunications Act*. In interpreting subsection 43(5), the CRTC considered that terms and phrases must be interpreted based on their ordinary meanings as well as the context of the Act. The CRTC found that "transmission line", as defined in ordinary dictionaries, would include lines used to distribute electricity. The term was not narrowed, as it was in other subsections of section 43, as being a transmission line of a Canadian carrier (by definition a telecommunications carrier such as a telephone company) or distribution undertaking (in this case, the undertaking of a cable company).

[11]In the opinion of the CRTC, the legislative history leading to the enactment of subsection 43(5) supports the view that the subsection should be construed broadly to include the support structures of all utilities including the appellants and other power utilities. According to the CRTC, this interpretation of subsection 43(5) is further supported by the telecommunications policy objectives in section 7 of the *Telecommunications Act* and the broadcasting policy objectives in section 3 of the *Broadcasting Act*, S.C. 1991, c. 11 and the broader public interest, such as detrimental environmental and aesthetic consequences of avoidable duplicate infrastructures.

ANALYSIS

Standard of Review

[12]A determination of the appropriate standard of review in respect of a decision of an administrative tribunal calls for the application of the pragmatic and functional approach first adopted by the Supreme Court of Canada in *U.E.S., Local 298 v. Bibeault*, 1988 CanLII 30 (SCC), [1988] 2 S.C.R. 1048 and as further developed in *Pezim v. British Columbia (Superintendent of Brokers)*, 1994 CanLII 103 (SCC), [1994] 2 S.C.R. 557; and *Canada (Director of Investigation and Research) v. Southam Inc.*, 1997 CanLII 385 (SCC), [1997] 1 S.C.R. 748. The recent jurisprudence of the Supreme Court was summarized by Bastarache J. in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 778 (SCC), [1998] 1 S.C.R. 982. The focus of the inquiry is on the particular provision being interpreted by the tribunal and the central question is: is the question that the provision raises one that was intended by the legislators to be left to the exclusive decision of the administrative tribunal? (See *Committee for Equal Treatment of Asbestos Minority Shareholders v. Ontario (Securities Commission)* 2001 SCC 37 (CanLII), (2001), 199 D.L.R. (4th) 577 (S.C.C.), at paragraph 47; and *Canada (Deputy Minister of National Revenue--M.N.R.) v. Mattel Canada Inc.* 2001 SCC 36 (CanLII), (2001), 199 D.L.R. (4th) 598 (S.C.C.), at paragraph 24.)

[13]Based on these authorities, it is necessary to consider the appropriate standard of review in relation to the CRTC's interpretation of subsection 43(5), which, as I have said, is the only issue that requires consideration in this appeal. Whether the term "transmission line" in subsection 43(5) refers only to transmission lines of Canadian carriers and distribution undertakings or to all transmission lines, irrespective of ownership, is one of statutory interpretation and is therefore a question of law. It involves the scope of the CRTC's regulatory authority. If the term "transmission line" is found to include all transmission lines, irrespective of ownership, the regulatory authority of the CRTC to make an access order will, according to the statute, not be limited to ordering access to the support structures of Canadian carriers and distribution undertakings, but will extend to transmission lines of power utilities and others not otherwise subject to the jurisdiction of the CRTC. The determination of this question will have precedential importance; its impact will not be limited to the appellants only. In light of this consideration, I do not think that Parliament intended to leave the determination of such a question to the exclusive decision of the CRTC.

[14]However, since no individual factor in the pragmatic and functional analysis is alone dispositive of the question of standard of review (see *Mattel*, *supra*, at paragraph 24), it is necessary to consider others that are relevant. While findings of fact by the CRTC are subject to a privative clause (subsection 52(1) of the *Telecommunications Act*), there is a statutory right of appeal, upon leave being granted, on questions of law or jurisdiction (subsection 64(1) of the *Telecommunications Act*). However, even where there is a statutory right of appeal, deference will be shown where the legal question at issue is one squarely within the expertise of the tribunal (see *Mattel*, *supra*, at paragraph 27).

[15]I accept that the CRTC has expertise with respect to telecommunications and broadcasting and that with respect to technical matters within that expertise, the CRTC may be better suited than the Court to interpret technical laws. However, there is no indication that the expertise of the CRTC is involved in the determination of the question at issue in this case.

[16]It is not necessary to go further. Having regard to the question of statutory interpretation under consideration, the statutory right of appeal on a question of law with leave, and the nature of the question which is not one that involves the expertise of the CRTC, the appropriate standard of review is one of correctness.

The Approach to Interpreting Subsection 43(5)

[17]The statutory interpretation question arises because subsection 43(5) is not explicit as to whether the term "transmission line" refers only to the lines of Canadian carriers or distribution undertakings or, as the CRTC found, includes the transmission lines of the appellants.

[18]To answer the question, the analysis must focus on the words of subsection 43(5) read in their statutory context. The objective of the analysis is to arrive at an interpretation of the term "transmission line" that is justified in terms of plausibility, efficacy and acceptability (see Ruth Sullivan, ed., *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994), at page 131).

The Literal Meaning of the Words

[19]There was considerable debate before the CRTC and in this appeal as to the meaning of the term "transmission line" in subsection 43(5). According to the appellants, power utilities recognize a distinction between transmission lines, which are high voltage lines carrying electricity over long distances with minor losses, and distribution lines, which carry electricity relatively inefficiently over short distances. The support structures in issue in this case are the poles supporting what the power utilities refer to as "distribution lines", not "transmission lines". The appellants argue, on that basis, that subsection 43(5) cannot be read as applying to their distribution lines. The CRTC, having regard to dictionary definitions, found that the ordinary meaning of the term "transmission line" includes transmission lines used to distribute electrical power.

[20]I agree that the term "transmission line", read literally and in isolation, is capable of bearing either the general meaning adopted by the CRTC or the technical meaning propounded by the appellants. Generally, where words may bear either a technical or a non-technical meaning, the Court will presume that the non-technical meaning was intended unless the context requires otherwise (*Driedger*, *supra*, at page 17). For the reasons explained below, my analysis of the statutory context leads me to conclude that Parliament, in using the words "transmission lines" in

subsection 43(5), did not intend to refer to any lines that carry electricity, including the lines that the power utilities in this case would refer to as "distribution lines".

The Term "Transmission Line" in the Context of Subsection 43(5)

[21]Subsection 43(5) authorizes the CRTC to grant access, on conditions that it determines, to the support structures of transmission lines constructed on a highway or other public place to a person who provides services to the public and who cannot gain access to the support structures on terms acceptable to that person. Neither the term "person who provides services to the public" nor the term "transmission line" is qualified. Read literally, subsection 43(5) might be interpreted as conferring on the CRTC, the jurisdiction to grant to all persons who provide services to the public, access to support structures of all transmission lines, whether they are part of an undertaking that falls under federal jurisdiction or provincial jurisdiction. Such an interpretation would imply that Parliament was purporting to confer jurisdiction on the CRTC, not only outside Parliament's legislative jurisdiction under the *Constitution Act, 1867* [30 & 31 Vict., c. 3 (U.K.) (as am. by *Canada Act, 1982*, 1982, c. 11 (U.K.), Schedule to the *Constitution Act, 1982*, Item 1) [R.S.C., 1985, Appendix II, No. 5]] but also, well beyond the mandate of the CRTC to regulate telecommunications and broadcasting under the *Canadian Radio-television and Telecommunications Commission Act*, R.S.C., 1985, c. C-22. That obviously could not have been the intention of Parliament.

[22]Recognizing this problem, the CRTC interpreted subsection 43(5) so that it would apply only to circumstances within federal and CRTC jurisdiction. At paragraph 92 of its reasons, the CRTC found that subsection 43(5) "applies when the applicant or, the respondent or both are federal undertakings contemplated by either the *Telecommunications Act* or the *Broadcasting Act*". The "federal undertakings" being referred to are Canadian carriers (such as telephone companies) and distribution undertakings (such as cable television companies). Therefore, according to the CRTC, subsection 43(5) applies when a telephone company or a television cable company seeks access to poles erected by a telephone company or cable company. It would also apply when a telephone company or a cable company seeks access to poles erected by a provincially regulated power utility, or when a power utility seeks access to poles erected by a telephone company or a cable company. It would not apply when a power utility seeks access to poles erected by another power utility, or in any other case where neither the applicant nor the respondent is a telephone company or a cable company.

[23]With respect, I think the CRTC's construction presents some difficulties. I do not say that words in a statute cannot have different meanings depending upon the context in which they are used. However, it seems unlikely that Parliament intended that a term in a single subsection should have different meanings depending upon different factual circumstances.

[24]Because it is obvious that subsection 43(5) does not confer on the CRTC the authority to grant access to any poles supporting transmission lines whenever any person applies for access, subsection 43(5) must be read down. The CRTC's approach (at paragraph 92) was to read down either the term "person who provides services to the public" or the term "transmission line" in subsection 43(5), on a case-by-case basis, depending upon which is necessary to ensure compliance with its constitutional and jurisdictional limits.

[25]I accept that reading down legislation to comply with jurisdictional limits is an acceptable interpretive strategy. However, the CRTC has not read down the words consistently for all purposes. Under the CRTC's approach, reading down the scope of one of the terms is dependent on the scope attributed to the other term. Thus, if a transmission line is outside the CRTC's jurisdiction, the term "person who provides services to the public" is read down to mean a distribution undertaking or Canadian carrier. However, if the transmission line in question is one of a distribution undertaking or Canadian carrier, the term "person who provides services to the public" is not necessarily read down but may apply to any person without restriction. I find it difficult to think that this flexible reading down, depending upon the facts of individual cases, is what Parliament intended in enacting subsection 43 (5). The complexity of such an interpretation leads me to conclude that had that been Parliament's intention, it would have been expressed more explicitly.

[26]There is another reason for this conclusion. The word "person" is, by its nature, a term of wide application. It is limited only in that the person contemplated in subsection 43(5) is one who provides services to the public. As the term "person who provides services to the public" is used in subsection 43(5), that person is not the person that is to be the subject of the regulatory jurisdiction of the CRTC. Rather, "person" must refer to the applicant for access and not the person against whom the access order is made. In this context, there is no reason to apply jurisdictional or constitutional constraints to the term "person who provides services to the public". I think it is reasonable to

conclude that the term "person who provides services to the public" was intended by Parliament to be unrestricted. Therefore the term "transmission line" must be a transmission line constructed by undertakings subject to CRTC jurisdiction, namely, Canadian carriers or distribution undertakings and cannot include the transmission lines of the appellants.

Context of Section 43

[27]I think the conclusion I have reached construing the term "transmission line" in the context of subsection 43(5) is supported by the context of section 43 as a whole.

[28]The term "distribution undertaking" is used in section 43. It is not defined in the *Telecommunications Act* itself, but subsection 43(1) provides that in sections 43 and 44, the term has the same meaning as in subsection 2(1) of the *Broadcasting Act*. Distribution undertaking is defined in subsection 2(1) of the *Broadcasting Act* as follows:

2. (1) . . .

"distribution undertaking" means an undertaking for the reception of broadcasting and the retransmission thereof by radio waves or other means of telecommunication to more than one permanent or temporary residence or dwelling unit or to another such undertaking;

[29]Subject to subsections 43(3) and (4), subsection 43(2) permits a Canadian carrier, or a distribution undertaking, to enter and break up any highway or other public place for the purpose of constructing, maintaining or operating its transmission lines.

[30]Subsection 43(3) provides that no Canadian carrier or distribution undertaking shall construct a transmission line on, over, under or along a highway or other public place without the consent of the municipality or other public authority having jurisdiction over the highway or other public place.

[31]In subsection 43(4), Parliament provides for those circumstances in which the Canadian carrier or distribution undertaking cannot, on terms acceptable to it, obtain the consent of the municipality or other public authority to construct its transmission line. In such a case, the Canadian carrier or distribution undertaking may apply to the CRTC for permission to construct the transmission line. Subsection 43(4) confers on the CRTC the authority to grant permission to the Canadian carrier or distribution undertaking to construct the transmission line on a highway or other public place and to determine the conditions under which the construction may take place. In subsections 43(2), (3) and (4), the transmission lines at issue are clearly those to be constructed, maintained or operated by a Canadian carrier or distribution undertaking on a highway or other public place.

[32]Subsection 43(5) is not concerned with granting Canadian carriers or distribution undertakings permission to construct transmission lines. Rather, it is concerned with access by persons who provide services to the public to support structures of transmission lines already constructed on a highway or other public place. However, the word formula "transmission line constructed on a highway or other public place" in subsection 43(5) bears a remarkable similarity to the words describing the transmission lines contemplated in subsections 43(2), (3) and (4), which are transmission lines of Canadian carriers or distribution undertakings. The similarity in the description of the transmission lines between subsections 43(2), (3) and (4) on the one hand, and subsection 43(5) on the other, is a strong indicator that Parliament had in mind the same transmission lines, that is, the transmission lines of a Canadian carrier or distribution undertaking in all subsections.

[33]Despite this strong indicator, the respondent makes a number of arguments supporting the contrary conclusion, i.e. that the term "transmission line" in subsection 43(5) cannot mean only transmission lines of Canadian carriers and distribution undertakings but must include all transmission lines.

[34]First, the respondent says that, prior to the enactment of subsection 43(5), the CRTC had exercised powers under predecessors to sections 25 and 27 of the *Telecommunications Act* to grant access to support structures of telecommunication transmission lines. The argument is that if the term "transmission line" in subsection 43(5) only refers to those of Canadian carriers and distribution undertakings, it is unnecessary, as access to such transmission lines is already provided for and Parliament should not be presumed to enact a redundancy.

[35]I cannot accept this argument, for two reasons. First, subsection 43(5) authorizes the CRTC to grant access to the support structures of distribution undertakings, something the CRTC did not have jurisdiction to do without subsection 43(5).

[36]Second, it makes the jurisdiction of the CRTC to grant access to the support structures of Canadian carriers explicit. This is significant because it is not at all certain that the CRTC would have that jurisdiction without subsection 43(5). Contrary to the respondent's argument, the predecessors of sections 25 and 27 of the *Telecommunications Act* did not confer on the CRTC the authority to grant access to the support structures of telephone lines. Sections 25 and 27 and their predecessors are rate-setting provisions. The predecessors had been held to confer jurisdiction on the CRTC to regulate the terms of support structure agreements, but not access (see *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, 1995 CanLII 101 (SCC), [1995] 2 S.C.R. 739, at paragraph 36). Access had been found to be regulated under section 317 of the *Railway Act*, R.S.C. 1970, c. R-2 and section 51 of the *National Transportation Act*, R.S.C. 1970 c. N-17 (see *Transvision (Magog) Inc. v. Bell Canada*, [1975] C.T.C. 463).

[37]Section 42 of the *Telecommunications Act* appears to incorporate some aspects of section 317 of the *Railway Act* and section 51 of the *National Transportation Act*. However, section 42 is sufficiently different that it is not certain that the interpretation of section 317 of the *Railway Act* and section 51 of the *National Transportation Act* would apply to section 42. In other words, it is by no means clear that, in the absence of subsection 43(5) of the *Telecommunications Act*, the CRTC would have authority to grant access to the support structures of transmission lines of Canadian carriers. For these reasons I do not find the redundancy argument of the respondent to be persuasive.

[38]Second, the respondent says that throughout the Act, the term "transmission line" is expressly qualified as being a transmission line of a Canadian carrier or distribution undertaking. If the unqualified reference to "transmission line" in subsection 43(5) is intended to mean only the transmission line of a Canadian carrier or distribution undertaking, then the reference to Canadian carrier and distribution undertaking as qualifying the term "transmission line" elsewhere in the Act is surplusage. Put another way, the respondent says that by using different words in subsection 43(5) from those used elsewhere dealing with transmission lines, Parliament must have intended a different thing.

[39]With respect, this argument overlooks the relationship between subsection 43(5) and the balance of section 43. The terms "transmission line" or "transmission lines" are found in subsections 43(2), (3), (4) and (5). Where, in prior subsections, transmission lines are those of Canadian carriers or distribution undertakings, I would think it implicit, unless the context requires a contrary interpretation, that the transmission lines in a subsequent subsection of the same section would be similarly qualified. This is known as the presumption of consistency of expression. As subsections 43(2), (3) and (4) each deal with transmission lines constructed by Canadian carriers or distribution undertakings on highways or other public places, the reference in subsection 43(5) to a transmission line constructed on a highway or other public place, is intended to mean the same transmission line, that is, a transmission line of a Canadian carrier or distribution undertaking.

[40]In dealing with the presumption of consistency of expression, Cory J. in *Thomson v. Canada (Deputy Minister of Agriculture)*, 1992 CanLII 121 (SCC), [1992] 1 S.C.R. 385, stated at pages 400 and 401:

The word is used in other provisions of the Act. Unless the contrary is clearly indicated by the context, a word should be given the same interpretation or meaning whenever it appears in an act . . . .

Parliament could not have intended the word "recommendations" in the subsequent subsection of the same section to receive a different interpretation. The word must have the same meaning in both subsections.

In *Driedger on the Construction of Statutes*, *supra*, at page 164, Ruth Sullivan summarizes the approach of Cory J. in *Thomson* in the following words:

The reasoning of Cory J. is exemplary. He first notes that elsewhere in the legislation the word or expression to be interpreted has a single clear meaning; he then invokes the presumption of consistent expression to justify his conclusion that this meaning must prevail throughout. Finally, he points out that the presumption applies with particular force where the provisions in which the repeated words appear are close together or otherwise related. This way of resolving ambiguity is often relied on in the cases.

I adopt the approach of Cory J. in *Thomson* in my analysis.

[41]Of course, consistency of expression is a presumption and it may be rebutted by the context in which an expression is used. That is not the case here. As I have already explained, in the context of subsection 43(5), for the term "transmission line" to apply to all lines, the term "person" must be read down in circumstances in which the transmission lines in question are not those of undertakings otherwise subject to the regulatory jurisdiction of the CRTC; alternatively when the person applying for access is not otherwise subject to the regulatory jurisdiction of the CRTC, the term "transmission line" must be read down to be a transmission line of a Canadian carrier or distribution undertaking. For the reasons I have given, I do not accept this flexible interpretation of the term "transmission line" in subsection 43(5) and would conclude that the presumption of consistent expression has not been rebutted.

[42]Finally, on this point, the absence of express reference to a Canadian carrier or distribution undertaking in subsection 43(5) should not be seen as injecting a wholly new meaning of the term "transmission line" in that subsection. I agree with the submission of counsel for the intervener Saskatchewan Power Corporation that if it had been Parliament's intention that the CRTC be authorized to grant access to all kinds of transmission lines, including those of power utilities, it is more likely it would have framed a free-standing section of the Act to that effect. It would not have drafted a subsection as the final element of a section which deals exclusively with transmission lines of Canadian carriers and distribution undertakings.

[43]A third argument of the respondent was made orally at the hearing of the appeal and derives from the reasons of the CRTC. The argument is that interpreting subsection 43(5) to include all transmission lines, and not just those of Canadian carriers and distribution undertakings, complements the CRTC's jurisdiction under subsection 43(4). Under subsection 43(4), the CRTC decides whether to permit a Canadian carrier or distribution undertaking to construct a transmission line, having regard to the use and enjoyment of the affected highway or other public place by others. In making this assessment, it is argued that the CRTC should have regard to whether, as an alternative to entering and breaking up the highway or other public place, the Canadian carrier or distribution undertaking may access the support structures of other existing transmission lines, including the transmission lines of power utilities. If that alternative is preferable to the construction of a transmission line by the Canadian carrier or distribution undertaking, subsection 43(5) confers on the CRTC the power to order access to the support structures of a transmission line that is already in place, even if the transmission line is one belonging to an electric utility.

[44]While this interpretation has some appeal, the scheme of subsection 43(5) and its sequence after subsection 43 (4), makes it unlikely that this was Parliament's intention. Subsection 43(5) requires an application by a person who provides services to the public before the CRTC may grant an access order. If access to support structures of existing transmission lines was a consideration that could result in the CRTC refusing permission for construction under subsection 43(4), subsection 43(5) would not require an access application to engage the CRTC's jurisdiction. In other words, the legislation would provide that the CRTC, in considering a construction application by a Canadian carrier or distribution undertaking under subsection 43(4), could either make an order permitting construction or, having regard to the use and enjoyment of the highway or other public place by others, order that the Canadian carrier or distribution undertaking be given access to support structures of existing transmission lines. That is not the scheme of the legislation.

[45]I conclude that in the context of section 43 as a whole, the term "transmission line" in subsection 43(5) refers to a transmission line of a Canadian carrier or distribution undertaking and not to all transmission lines.

The Policies in Section 7 of the *Telecommunications Act* and Subsection 3(1) of the *Broadcasting Act*

[46]In interpreting subsection 43(5) as including all transmission lines, the CRTC relied heavily on the telecommunications policies in paragraphs 7(*a*), (*b*), (*c*) and (*f*) of the *Telecommunications Act* and the broadcasting policy in subparagraph 3(1)(*t*)(ii) of the *Broadcasting Act*. (See Telecom Decision CRTC 99-13, paragraphs 125-132.)

[47]Under paragraph 47(*a*) of the *Telecommunications Act*, the CRTC is required to:

47. . . . perform its duties under this Act and any special Act

(*a*) with a view to implementing the Canadian telecommunications policy objectives . . .;

[48]Under subsection 5(1) of the *Broadcasting Act*:

5. (1) Subject to this Act . . ., the Commission shall regulate and supervise all aspects of the Canadian broadcasting system with a view to implementing the broadcasting policy set out in subsection 3(1) . . . .

[49]The telecommunications policies to which the CRTC referred in its reasons were:

7. It is hereby affirmed that telecommunications performs an essential role in the maintenance of Canada's identity and sovereignty and that the Canadian telecommunications policy has as its objectives

(*a*) to facilitate the orderly development throughout Canada of a telecommunications system that serves to safeguard, enrich and strengthen the social and economic fabric of Canada and its regions;

(*b*) to render reliable and affordable telecommunications services of high quality accessible to Canadians in both urban and rural areas in all regions of Canada;

(*c*) to enhance the efficiency and competitiveness, at the national and international levels, of Canadian telecommunications;

. . .

(*f*) to foster increased reliance on market forces for the provision of telecommunications services and to ensure that regulation, where required, is efficient and effective;

The CRTC found that duplicate infrastructures were a cost that had to be borne by subscribers and could act as a barrier to entry and a disincentive to the development of networks, contrary to the telecommunications policies in paragraphs 7(*a*), (*b*), (*c*) and (*f*). It therefore interpreted subsection 43(5) so as to avoid the construction of duplicate infrastructures.

[50]The broadcasting policy objective to which the CRTC referred was:

3. (1) It is hereby declared as the broadcasting policy for Canada that

(*t*) distribution undertakings,

. . .

(ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,

The CRTC determined that the use of support structures of existing transmission lines by distribution undertakings was consistent with this policy.

[51]The CRTC also had regard for environmental and aesthetic consequences linked to the construction of avoidable duplicate infrastructures.

[52]The respondent adopted these arguments in its submissions on appeal.

[53]It is not for the Court to approve or disapprove of policy objectives expressed in legislation. They must be accepted as being the objectives Parliament had in mind in enacting the *Telecommunications Act* and *Broadcasting Act*. However, the CRTC does not have plenary power to implement these policies. The CRTC's power is established under the Acts (and other relevant legislation) and the policy objectives of those Acts may be implemented by the CRTC only in accordance with the powers and duties conferred on it under those Acts. The policies themselves do not confer jurisdiction on the CRTC and they cannot be used as a basis for exercising a power that the CRTC has not been granted by the power conferring provisions of the statutes.

[54]For the reasons I have given, I am of the opinion that subsection 43(5) does not confer on the CRTC the power to grant access to support structures of all transmission lines. The policies of the *Telecommunications Act* and *Broadcasting Act* must therefore be implemented by the CRTC having regard to that constraint.

[55]I acknowledge that from the point of view of the respondent and CRTC, efficiency and the avoidance of duplication of infrastructures for Canadian carriers and distribution undertakings might be more effectively achieved if the CRTC had jurisdiction to make access orders to the support structures of the transmission lines of the power utilities and others. However these objectives may still be attainable without such CRTC jurisdiction. As the evidence before the CRTC has demonstrated, up to 1996, Canadian carriers and distribution undertakings obtained access to support structures of the transmission lines of the power utilities by agreement. If the power utilities have capacity on their support structures to accommodate the transmission lines of Canadian carriers and distribution undertakings, and if there are no technical reasons for not doing so, it would seem logical for the utilities to grant such access at rates acceptable to them and that the Canadian carriers and distribution undertakings would find preferable to the alternative of constructing their own support structures.

[56]In addition, the appellants point out that in a number of provinces, the provincial public utility boards appear to have jurisdiction to regulate access to the support structures of transmission lines of the utilities they regulate. See for example, *Public Utilities Board Act*, R.S.A. 1980, c. P-37, s. 88; *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 27; *Public Utilities Act*, R.S.N. 1990, c. P-47, s. 53. Indeed, by its decision 2000-86 dated December 27, 2000, in *Transalta Utilities Corporation*, the Alberta Energy and Utilities Board fixed a rate of $18.35 per pole per year for the use by communications or cable companies who attach equipment to Transalta poles. I would also note that in its decision, the Board disagreed with the reasons and conclusion of CRTC decision 99-13.

[57]The appellants represented that the Ontario Energy Board has such authority under section 70 of the *Ontario Energy Board Act, 1998*, being Schedule B of the *Energy Competition Act, 1998*, S.O. 1998, c. 15 in connection with its power to impose conditions on licenses granted to owners or operators of electric transmission or distribution systems.

[58]In any event, where agreement cannot be reached with the utilities or the access and conditions established by provincial utility boards are not consonant with Canadian telecommunications policy or broadcasting policy, or there is no applicable provincial regulatory jurisdiction with respect to access, Canadian carriers or distribution undertakings may resort to subsections 42(2) and (3) and, if necessary, to the regulatory jurisdiction of the CRTC under subsection 43(4) of the *Telecommunications Act* to enable them to construct their own transmission lines.

Legislative History

[59]I turn, finally, to the legislative history of subsection 43(5). The CRTC found that relevant legislative history supported the view that it was appropriate to construe subsection 43(5) broadly to include the transmission lines of all utilities including those of the appellants. It first referred to the *Report of the Co-chairs of the Local Networks Convergence Committee*, entitled, *Convergence: Competition and Co-operation. Policy and Regulation Affecting Local Telephone and Cable Networks* (Ottawa: Minister of Supply and Services Canada, 1992) appointed under the authority of the Minister of Communications in 1991. The Committee developed recommendations for changes to government policy and regulation to govern the future evolution of the local telecommunications markets infrastructure and the increasing convergence of the services and markets of telephone companies and cable operators.

[60]The report of the Committee referred to the historic sharing of infrastructures. Its recommendations refer to regulation, when necessary, to ensure such sharing. Recommendations 7, 8 and 9 provide [at page 128]:

7. Canadian policy and regulation should continue to promote the sharing of support structures by telephone companies, cable operators and other support structure providers. In this regard, the concept of support structures should be defined more broadly in the future, taking into account new technologies such as fibre optic cables, for which sharing arrangements can improve the efficiency of the local network infrastructure.

8. Government policy and regulation should not prevent the development of joint ventures between telephone companies and cable operators that are aimed at achieving more effective and efficient sharing of support structures.

9. Telephone companies and cable operators should, in conjunction with electrical power utilities, and other providers of support structures, establish better cooperative mechanisms to plan the shared construction and use of support structures. Where necessary, regulators should intervene to ensure that such cooperative mechanisms are developed and implemented and that they function effectively.

[61]I do not read these recommendations or anything in the report of the Convergence Committee to which the respondent referred, as indicating that such regulation should necessarily be under the authority of the CRTC. On the contrary, the report appears circumspect about the identity of the regulators to which the Committee was referring. There is no express reference to any particular regulator. Nor is there any suggestion that Parliament should enact legislation to confer regulatory power on the CRTC over infrastructures of utilities not otherwise subject to CRTC jurisdiction when Canadian carriers' or distribution undertakings' access is at issue.

[62]By contrast, the Committee appears to have recognized the necessity, if distribution undertakings could not negotiate access to support structures of existing transmission lines owned by others, that they be given the same right of access to public rights-of-way to construct their own transmission lines as Canadian carriers. Express reference to recognizing the requirements of distribution undertakings to such rights in federal legislation was made by the Committee and cited by the CRTC at paragraph 115 of its decision:

> In order to prevent unnecessary duplication of support structures, as well as potential environmental disruption and aesthetic problems, government policy and regulation should continue to require cable operators to negotiate with other potential suppliers of support structures to obtain suitable facilities. However, where these negotiations are unsuccessful, it would be reasonable to grant cable operators similar rights to access to public rights of way as telephone companies. At the federal level, these rights, which are currently set out in the Railway Act, are proposed to be simplified and updated by means of clauses 48 and 49 of Bill C-62.

Incorporating distribution undertakings in section 43 would appear to be the legislative response to the observations and recommendations of the Convergence Committee.

[63]The CRTC also made reference to submissions before the House of Commons Sub-Committee on Bill C-62 (leading to the *Telecommunications Act*) of the Standing Committee on Communications and Culture. Submissions by the cable companies seem to have been focussed on granting them the same rights as telephone companies to obtain an order of the Commission granting them authority to construct their own transmission lines on public highways and other public places. The Sub-Committee also noted that the provinces had raised concerns about a proliferation of undertakings trying to "dig up highways". The Minister of Industry responded to the Sub-Committee as follows at page 8:7 of Canada, House of Commons, Sub-Committee on Bill C-62, *Minutes of Proceedings and Evidence of the Sub-Committee on Bill C-62 of the Standing Committee on Communications and Culture*, (11 May 1993):

If the subcommittee agrees, clauses 48 and 49 [now sections 43 and 44 of the Act], will be amended so that they apply equally to broadcasting distribution undertakings as defined under the Broadcasting Act. In addition, we will propose an amendment to clause 48 of the bill that will provide for efficient use, by those serving the public, of support structures constructed on public rights of way and require the CRTC to take account of all uses of the right-of-way or other public place prior to issuing any orders under this clause.

The CRTC concluded at paragraphs 121 and 122 of its decision 99-13:

Accordingly, the section was amended to include reference to distribution undertakings in subsections 43(1) to (4), and subsection 43(5) was added in its entirety. The amendments were adopted on Third Reading without any further discussion.

Based on the concerns expressed and the comments and recommendations made prior to the addition of subsection 43(5), the Commission is of the view that the underlying intent in adding that provision was to ensure that the granting of construction rights to Canadian carriers and distribution undertakings to build their own infrastructure did not represent the only alternative available to these undertakings where a more efficient use of existing support structures could be made available.

The respondent adopted the CRTC's interpretation of Parliament's reason for subsection 43(5), that construction of their own transmission lines was not to be the only alternative available to distribution undertakings and Canadian carriers.

[64]I am unable to draw the same inference as have the CRTC and the respondent from the Minister's statement. On the point at issue here, I am of the respectful view that the comments are ambiguous. It is not obvious to whom the Minister was referring when he used the words "those serving the public" or "support structures". I do not think the

Minister's statement assists in determining whether subsection 43(5) was intended to confer jurisdiction on the CRTC over access to support structures of transmission lines of power utilities or others that are not undertakings subject to the regulatory jurisdiction of the CRTC.

[65]Of relevance to the issue in this appeal, there seems to be one glaring omission in the legislative history. It is the absence of any submissions by the utilities not under the jurisdiction of Parliament or the CRTC to the Parliamentary Sub-Committee on the application of subsection 43(5). I find it hard to believe that if it had been the Government's intention that subsection 43(5) should confer jurisdiction on the CRTC over access by Canadian carriers or distribution undertakings to the support structures of the transmission lines of utilities subject to provincial jurisdiction, that such intent would not have been expressly made known and submissions invited. I do not say that Parliament could not enact such a provision; nor need I make any determination as to whether such a provision would be within the constitutional jurisdiction of Parliament. However, I would not attribute to the federal government or to Parliament an intention to confer such jurisdiction on a federal regulatory tribunal through the guise of an ambiguous provision that was enacted without express notice to the provinces or their utilities of such an intention. There is nothing in the legislative history before the Court that indicates it did so.

[66]The legislative history supports the view that, in response to submissions of the provinces regarding the proliferation of undertakings to "dig up highways", and in order to regulate access to support structures of transmission lines as between Canadian carriers and distribution undertakings, subsection 43(5) was enacted to grant access to support structures of the transmission lines of Canadian carriers and distribution undertakings by each other and by other persons who provide services to the public.

CONCLUSION

[67]The term "transmission line" in subsection 43(5) is unqualified and in the abstract might apply to transmission lines of the appellants. However, when read in the context of subsection 43(5) and section 43 as a whole, and having regard to the legislative history, I am satisfied that the term, as used in subsection 43(5), refers to the transmission lines of Canadian carriers and distribution undertakings only. I conclude that the CRTC erred in interpreting subsection 43(5) as conferring on it the jurisdiction to regulate access and terms of access to support structures of transmission lines owned by the appellants. I would allow this appeal with costs, I would set aside Telecom Decision CRTC 99-13 and I would dismiss the respondent Canadian Cable Television Association's application before the CRTC.

Desjardins J.A.: I concur.

Sharlow J.A.: I concur.

TAB 12

1932 CarswellNat 1, [1932] 1 W.W.R. 563

1932 CarswellNat 1, [1932] 1 W.W.R. 563

Regulation & Control of Radio Communication in Canada, Re

Reference re Regulation and Control of Radio Communication

Attorney-General for Quebec (Appellant) v. Attorney-General for Canada et al (Respondents)

Judicial Committee of the Privy Council

Viscount Dunedin, Lords Blanesburgh, Merrivale, Russell of Killowen and Sir George Lowndes

Judgment: February 9, 1932

Counsel: *Aimé Geoffrion, K.C., D. N. Pritt, K.C.*, and *M. Alexander*, for Attorney-General for Quebec.

W. N. Tilley, K.C., and *F. P. Varcoe, K.C.*, for Attorney-General for Canada.

Frank Gahan, for Attorney-General for Ontario.

Brooke Claxton, K.C., for Canadian Radio League.

Subject: Public; Constitutional; International

Communications Law --- Constitutional jurisdiction — Broadcasting.

International Law --- Treaties — Implementation of treaties.

Constitutional Law — Radio — Jurisdiction of Dominion Parliament — S. 92 (10) B.N.A. Act — "Telegraphs" — "Undertakings Connecting Province ..." — Radio Convention as Within S. 132 B.N.A. Act — Effect of Statute of Westminster.

The Dominion Parliament has jurisdiction to regulate and control radio communication including both transmission and reception and including the right to determine the character, use and loca-

tion of apparatus employed.

Radio broadcasting falls under clause (*a*) of sec. 92 (10) of the *B.N.A. Act*, since it comes within both the words "Telegraphs" and the general words "Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province."

Moreover, the Radio Convention signed at Washington on November 25, 1927, and ratified by the Canadian Government, although not such a treaty as is defined by sec. 132 of the *B.N.A. Act*, amounts to the same thing as a result of the gradual development of the position of Canada *vis-à-vis* to Great Britain which is now expressed in the *Statute of Westminster*. It is Canada as a whole which is amenable to the other powers for the proper carrying out of the Convention; and to prevent individuals in Canada infringing the stipulations of the Convention it is necessary that the Dominion should pass legislation which should apply to all the dwellers in Canada.

Reference re Aeronautics in Canada, [1931] 3 W.W.R. 625, and *Montreal City v. Montreal St. Ry.*, [1912] A.C. 333, at 342, 81 L.J.P.C. 145, referred to.

Appeal from a judgment of the Supreme Court of Canada ([1931] S.C.R. 541). Appeal dismissed.

The judgment of their Lordships was delivered by *Viscount Dunedin*:

1 This is an appeal from a judgement of the Supreme Court of Canada ([1931] S.C.R. 541) answering questions referred to it by His Excellency the Governor-General in Council, for hearing and consideration, pursuant to the authority of sec. 55 of the *Supreme Court Act*, R.S.C., 1927, ch. 35, touching the jurisdiction of the Parliament of Canada to regulate and control radio communication. The questions so referred were as follows:

> 1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?
>
> 2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

2 The answers of the Chief Justice and the other Judges of whom the Court was composed were as follows:

> *Anglin, C.J.C.* — Q. 1. In view of the present state of radio science as submitted, Yes.
>
> Q. 2. No answer.

Newcombe, J. — Q. 1. I should be answered in the affirmative.

Q. 2. No answer.

Rinfret, J. — Q. 1. Construing it as meaning jurisdiction in every respect, the answer is in the negative.

Q. 2. The answer should be ascertained from the reasons certified by the learned judge.

Lamont, J. — Q. 1. Not exclusive jurisdiction.

Q. 2. The jurisdiction of Parliament is limited, as set out in the learned judge's reasons.

Smith, J. — Q. 1. Should be answered in the affirmative.

Q. 2. No answer.

3 The learned Chief Justice and Rinfret, J. expressed their regret that at the time of delivering judgment they had not had the advantage of knowing what was the conclusion reached by this Board on the question referred as to aviation. It is however unnecessary to speculate as to what would have been the result had the learned Judges known as we know now that the judgment of this Board (*Reference re Aeronautics in Canada; Atty.-Gen. for Can. v. Atty.-Gen. for Ont.*, [1931] 3 W.W.R. 625) settled that the regulation of aviation was a matter for the Dominion. It would certainly only have confirmed the majority in their opinions. And as to the minority, though it is true that reference is made in their opinions to the fact that as the case then stood aviation had been decided not to fall within the exclusive jurisdiction of the Dominion, yet had they known the eventual judgment it is doubtful whether that fact would have altered their opinion. For this must at once be admitted: The leading consideration in the judgment of the Board was that the subject fell within the provisions of sec. 132 of the *British North America Act, 1867*, ch. 3, which is as follows:

> The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof as Part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries.

4 And it is said with truth that, while as regards aviation there was a treaty, the Convention here is not a treaty between the Empire as such and foreign countries, for Great Britain does not sign as representing the Colonies and Dominions. She only confirms the assent which had been signified by the Colonies and Dominions who were separately represented at the meetings which drafted the Convention. But while this is so, the aviation case in their Lordships' judgment cannot be put on one side. Counsel for the province felt this and sought to avoid any general deduction by admitting that many of the things provided by the Convention and the regulations thereof

fell within various special heads of sec. 91. For example, provisions as to beacon signals he would refer to article 10 of sec. 91 — navigation and shipping. It is unnecessary to multiply instances, because the real point to be considered is this manner of dealing with the subject. In other words, the argument of the province comes to this: Go through all the stipulations of the Convention and each one you can pick out which fairly falls within one of the enumerated heads of sec. 91, that can be held to be appropriate for Dominion legislation; but the residue belongs to the province under the head either of head ing 13 of sec. 92 — property and civil rights — or heading 16 — matters of a merely local or private nature in the province. Their Lordships cannot agree that the matter should be so dealt with. Canada as a Dominion is one of the signatories to the Convention. In a question with foreign powers the persons who might infringe some of the stipulations in the Convention would not be the Dominion of Canada as a whole but would be individual persons residing in Canada. These persons must so to speak be kept in order by legislation and the only legislation that can deal with them all at once is Dominion legislation. This idea of Canada as a Dominion being bound by a convention equivalent to a treaty with foreign powers was quite unthought-of in 1867. It is the outcome of the gradual development of the position of Canada *vis-à-vis* to the mother country Great Britain, which is found in these later days expressed in the *Statute of Westminster*. It is not therefore to be expected that such a matter should be dealt with in explicit words in either sec. 91 or sec. 92. The only class of treaty which would bind Canada was thought of as a treaty by Great Britain, and that was provided for by sec. 132. Being therefore not mentioned explicitly in either sec. 91 or sec. 92, such legislation falls within the general words at the opening of sec. 91 which assign to the Government of the Dominion the power to make laws "for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." In fine, though agreeing that the Convention was not such a treaty as is defined in sec. 132, their Lordships think that it comes to the same thing. On August 11, 1927, the Privy Council of Canada with the approval of the Governor-General chose a body to attend the meeting of all the powers to settle international agreements as to wireless. The Canadian body attended and took part in deliberations. The deliberations ended in the Convention with general regulations appended being signed at Washington on November 25, 1927, by the representatives of all the powers who had taken part in the reference on July 12, 1928. The result is in their Lordships' opinion clear. It is Canada as a whole which is amenable to the other powers for the proper carrying out of the Convention; and to prevent individuals in Canada infringing the stipulations of the Convention it is necessary that the Dominion should pass legislation which should apply to all the dwellers in Canada.

5 At the same time, while this view is destructive of the view urged by the province as to how the observance of the inter national Convention should be secured, it does not they say dispose of the whole of the question. They say it does not touch the consideration of interprovincial broadcasting. Now, much the same might have been said as to aeronautics. It is quite possible to fly without going outside the province, yet that was not thought to disturb the general view, and once you come to the conclusion that the Convention is binding on Canada as a Dominion, there are various sentences of the Board's judgment in the aviation case which might be literally transcribed to this. The idea pervading that judgment is that the whole subject of aeronautics is so

completely covered by the treaty ratifying the Convention between the nations that there is not enough left to give a separate field to the provinces as regards the subject. The same might at least very easily be said on this subject but even supposing that it were possible to draw a rigid line between interprovincial and Dominion broadcasting, there is something more to be said. It will be found that the argument for the provinces really depends on a complete difference being established between the operations of the transmitting and the receiving instruments. The province admits that an improper use of a transmitting instrument could by invasion of a wave-length not assigned by international agreement to Canada bring into effect a breach of a clause of the Convention. But it says this view does not apply to the operation of a receiving instrument. Now it is true that a dislocation of a receiving instrument will not in usual cases operate a disturbance beyond a comparatively limited circular area, although their Lordships understand that a receiving instrument could be so manipulated as to make its area of disturbance much larger than what is usually thought of. But the question does not end with the consideration of the Convention. Their Lordships draw special attention to the provisions of heading 10 of sec. 92. These provisions as has been explained in several judgments of the Board have the effect of reading the excepted matters into the preferential place enjoyed by the enumerated subjects of sec. 91 and the exception runs that the works or undertakings are to be other than such as are of the following classes:

> (*a*) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
>
> (*b*) Lines of Steam Ships between the Province and any British or Foreign Country:
>
> (*c*) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.

6 Now does broadcasting fall within the excepted matters? Their Lordships are of opinion that it does, falling in (*a*) within both the words "Telegraphs" and the general words "Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province."

7 The argument of the province really depends on making, as already said, a sharp distinction between the transmitting and the receiving instrument. In their Lordships' opinion this cannot be done. Once it is conceded, as it must be, keeping in view the duties under the Convention, that the transmitting instrument must be, so to speak, under the control of the Dominion, it follows in their Lordships' opinion that the receiving instrument must share its fate. Broadcasting as a system cannot exist without both a transmitter and a receiver. The receiver is indeed useless without a transmitter and can be reduced to a nonentity if the transmitter closes. The system cannot be divided into two parts, each independent of the other. Their Lordships cannot but think that much of the argument depends on an unwarranted deduction taken from a sentence to be

found in the judgment delivered by Lord Atkinson in the case of *Montreal City v. Montreal Street Ry.*, [1912] A.C. 333, at 342, 81 L.J.P.C. 145. His Lordship after saying "the matters thus transferred are ...," quotes the pars. (*a*), (*b*) and (*c*) and then adds, "These works are physical things, not services." Mignault, J.[FN1] in the aviation case assumed that this sentence applied not only to (*c*) which deals with "Works" only, but also to (*a*) and (*b*), and this view has obviously influenced the conclusions of the minority in this case. Now in the first case their Lordships see no reason why the word "Works" should not be referred to the same word standing alone in (*c*) and not be extended to (*a*) where it is conjoined with "Undertaking," and to (*b*) where it is not used at all. But if their Lordships' surmise as to the view of the Board as expressed by Lord Atkinson is wrong, then they are not bound by and would not agree with the widened proposition. In the wider sense it was in no way necessary for the judgment in the case. What was being dealt with was a street railway which in itself formed no part of a through system and only became so by the legislation which was impugned. "Undertaking" is not a physical thing but is an arrangement under which of course physical things are used. Their Lordships have therefore no doubt that the undertaking of broadcasting is an undertaking "connecting the Province with other Provinces and extending beyond the Limits of the Province." But further, as already said, they think broadcasting falls within the description of "telegraphs." No doubt in everyday speech telegraph is almost exclusively used to denote the electrical instrument which by means of a wire connecting that instrument with another instrument makes it possible to communicate signals or words of any kind. But the original meaning of the word "telegraph" as given in the *Oxford Dictionary* is:

> An apparatus for transmitting messages to a distance usually by signs of some kind.

8 Now a message to be transmitted must have a recipient as well as a transmitter. The message may fall on deaf ears, but at least it falls on ears. Further, the strict reading of the word "telegraph," making it identical with the ordinary use of it, has already been given up in *Toronto Corpn. v. Bell Telephone Co. of Canada*, [1905] A.C. 52, 74 L.J.P.C. 22. There are several words of Lord Macnaghten in delivering the judgment of the Board in that case which *mutatis mutandis* might well be applied to the argument of the province here:

> It was argued [says he, p. 59] that the Company was formed to carry on and was carrying on two separate and distinct businesses — a local business and a long-distance business. And it was contended that the local business and the undertaking of the Company so far as it dealt with local business fell within the jurisdiction of the provincial legislature. But there, again, the facts do not support the contention of the appellants. The undertaking authorized by the Act of 1880 was one single undertaking, though for certain purposes its business may be regarded as falling under different branches or heads. The undertaking of the Bell Telephone Company was no more a collection of separate and distinct businesses than the undertaking of a telegraph company which has a long-distance line combined with local business, or the undertaking of a railway company which may have a large suburban traffic and miles of railway communicating with distant places.

9 Now it is true that that case was dealing with an established system, while the question here is as to the scope of legislation. But none the less the argument for the appellants there was that the legislation under which the system had been established was *ultra vires*. Consequently the words of Lord Macnaghten do carry a lesson as to the futility of trying to split what really is one undertaking into two.

10 As their Lordships' views are based on what may be called the pre-eminent claims of sec. 91, it is unnecessary to discuss the question which was raised with great ability by Mr. Tilley, namely, whether, if there had been no pre-eminent claims as such, broadcasting could have been held to fall either within "Property and Civil Rights," or within "Matters of a merely local or private Nature."

11 Upon the whole matter, therefore, their Lordships have no hesitation in holding that the judgment of the majority of the Supreme Court was right and their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed. No costs will be awarded, this being a question to be decided between the Dominion and the provinces.

12 Although the question had obviously to be decided on the terms of the statute, it is a matter of congratulation that the result arrived at seems consonant with common sense. A divided control between transmitter and receiver could only lead to confusion and inefficiency.

FN1 Mignault, J. does not appear to have been a member of the Court in the aviation case. Apparently the judgment of Cannon, J. (at p. 716 [1931] S.C.R.) is referred to. — Ed.

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TAB 13

1931 CarswellNat 56, [1931] S.C.R. 541, [1931] 4 D.L.R. 865, 39 C.R.C. 49

1931 CarswellNat 56, [1931] S.C.R. 541, [1931] 4 D.L.R. 865, 39 C.R.C. 49

Regulation & Control of Radio Communication in Canada, Re

In the Matter of a Reference as to the Jurisdiction of Parliament to Regulate and Control Radio Communication

The Supreme Court of Canada

Anglin C.J.C. and Newcombe, Rinfret, Lamont and Smith JJ.

Judgment: May 6, 1931
Judgment: May 7, 1931
Judgment: June 30, 1931

Counsel: *W.N. Tilley K.C.* and *J.L. St. Jacques K.C.*, for the Attorney-General of Canada.

Charles Lanctôt K.C. and *Aimé Geoffrion K.C.* for the Attorney-General of Quebec.

Joseph Sedgwick for the Attorney-General for Ontario.

F.H. Chrysler K.C. for the Attorneys-General for Manitoba and Saskatchewan.

R.B. Hanson K.C. for the Attorney-General for New Brunswick.

Brooke Claxton for the Canadian Radio League.

Subject: Public; Constitutional; International

Communications Law --- Constitutional jurisdiction — Broadcasting.

International Law --- Treaties — Implementation of treaties.

***Anglin C.J.C.*:**

1 The Governor General in Council, under the authority of section 55 of the *Supreme Court Act*, has referred to this court the following questions:

> 1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?
>
> 2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

1931 CarswellNat 56, [1931] S.C.R. 541, [1931] 4 D.L.R. 865, 39 C.R.C. 49

2 Personally I should have preferred to withhold judgment on the present reference until the determination by the Privy Council of the Aviation Reference now pending before it on appeal from this court, especially in view of the insistence by counsel representing the province of Quebec that light would be thrown on the issues involved in the present reference by that decision. The majority of my colleagues, however, take the view that the public interest demands that judgment should be given during the present term, in order that the Government may be in a position to obtain the views of the Privy Council on the questions involved in this reference in time to enable it to bring down legislation at the next session of the Dominion Parliament. I somewhat reluctantly defer to that view.

3 I have had the advantage of reading the carefully prepared opinions of my colleagues.

4 Dealing with the first question, the most important thing to observe would seem to be its subject matter. It does not concern the rights of property in the instruments used for communication, their ownership, or civil rights in regard to them, but has to do entirely with the effects produced by them. In other words, it is "radio communication" that is dealt with by this question, rather than the instruments employed in making it, which are alluded to merely incidentally.

5 After giving the matter such consideration as time and circumstances have permitted, I am of the opinion that question no. 1 should be answered generally in the affirmative. My reason for so concluding is largely that overwhelming convenience — under the circumstances amounting to necessity — dictates that answer. In dealing with this reference, however, I desire it to be clearly understood that I do so solely in the light of the present knowledge of Hertzian waves and radio and upon the facts disclosed in the record. I fully accept the following paragraph from the judgment of my brother Newcombe:

> I interpret the reference as meant to submit the questions for consideration in the light of the existing situation and the knowledge and use of the art, as practically understood and worked, and, having regard to what is stated in the case, assumed as the basis for the hearing. Therefore I proceed upon the assumption that radio communication in Canada is practically Dominion-wide; that the broadcasting of a message in a province, or in a territory of Canada, has its effect in making the message receivable as such, and is also effective by way of interference, not only within the local political area within which the transmission originates, but beyond, for distances exceeding the limits of a province, and that, consequently, if there is to be harmony or reasonable measure of utility or success in the service, it is desirable, if not essential, that the operations should be subject to prudent regulation and control.

6 Without entering into any lengthy discussion of the constitutional issues involved, it seems to be certain that Hertzian waves and radio were not only unknown to, but undreamt of by, the framers of the *British North America Act*. It is, therefore, not to be expected that language should be found in that Act explicitly covering the subject matter of the present reference. On the other hand, if the Act is to be viewed, as recently suggested by their Lordships of the Privy Council in *Edwards v. Attorney-General of Canada*[FN1].

> as a living tree, capable of growth and expansion within its natural limits,

and if it

> should be on all occasions interpreted in a large, liberal and comprehensive spirit, considering the magnitude of the subjects with which it purports to deal in very few words,

and bearing in mind that

> we are concerned with the interpretation of an Imperial Act, but an Imperial Act creating a constitution for a new country,

every effort should be made to find in the B.N.A. Act some head of legislative jurisdiction capable of including the subject matter of this reference. If, however, it should be found impossible to assign that subject matter to any specifically enumerated head of legislative jurisdiction, either in section 91 or in section 92 of the B.N.A. Act, it would seem to be one of the subjects of residuary power under the general jurisdiction conferred on the Dominion by the opening paragraph of section 91.

7 It is also obvious that, for certain purposes and within certain limitations, there are several specific heads of legislative jurisdiction in section 91 broad enough to cover, in part at least, the subject of radio communication and that, in so far as the subject matter falls within those several heads, Dominion legislative jurisdiction as to it is exclusive. I refer to

> 5. Postal Service.
>
> 7. Militia, Military and Naval Service, and Defence.
>
> 9. Beacons, Buoys, Lighthouses, and Sable Island.
>
> 10. Navigation and Shipping, (and)
>
> 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

It seems to me that, under this last head, which really brings the exceptions set out in subsection 10 of section 92 into section 91, as distinctive heads of Dominion legislative jurisdiction (*City of Toronto v. Bell Telephone Co.*[FN2]), more particularly under the word "telegraphs" in clause (*a*) thereof, giving to that word a reasonably broad construction of which it is susceptible (*ibid* and *Attorney-General v. Edison Telegraphs of London*[FN3] — we find a sound basis for holding that "radio communication" is subject to the exclusive legislative jurisdiction of the Dominion Parliament.

8 Reading through the various subsections of section 92, no one of them do I find broad enough to cover the subject matter of radio communication. The two subsections of section 92 relied on by counsel for the provinces were nos. 13 and 16. No doubt, in some aspects, radio communication has to do with "property and civil rights in the province"; but so have many other subjects which have been held to fall within some one of the enumerated heads of section 91, and as to which the concluding paragraph of that section establishes the exclusiveness of Dominion legislative jurisdiction over them. (*The Fisheries Case*[FN4]; *Toronto Electric Commissioners v. Snider*[FN5]). Radio communication in this respect does not differ from any of such other subjects.

9 Bearing in mind what Lord Watson said in *Attorney-General of Ontario v. Attorney-General of Canada*[FN6], that legislation by the Dominion

> in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92.

and that it is not competent to the Dominion to make laws

> in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion.

I fail to find anything of a "local or private" nature in radio communication such as would exclude Dominion jurisdiction over it. I agree with Mr. Justice Newcombe that

> "radio communication," in the state of the science and development which it has attained, is not, substantially or otherwise, a local or private matter in the province.

Of course, it may some day become so, should radio science develop to such an extent that it will be possible so to control the effects of Hertzian waves, that those effects may be confined within the limits of a province, both as to their use and interference by them.

10 Subject to such possible further scientific development, I am, for the foregoing reasons, of the opinion that question no. 1 should be presently answered in the affirmative. It is, therefore, unnecessary to answer question no. 2, which is based on the assumption of a negative answer to no. 1.

11 My formal answers to the questions are,

12 Question no. 1. In view of the present state of radio science as submitted, Yes.

13 Question no. 2. No answer.

***Newcombe J.*:**

14 My trouble with this case is to know the facts. Although the narrative of the order of reference and the printed statement of principles were not at the hearing seriously disputed, one is apt to suspect that the knowledge of the art of radio, which we have derived from the submissions and what was said in the course of argument, is still incomplete and, perhaps, in some particulars, not free from error; that some accepted theories are still experimental or tentative, and that there may be possibilities of development and use, not only in the Dominion but also in a provincial field, which have not yet been fully ascertained or tested.

15 A difficulty also arises from the fact that the questions propounded do not apply themselves to actual legislation, but seek generally the definition of Dominion authority to "regulate and control radio communication," in, perhaps, its widest sense.

16 In these conditions, it is expedient to proceed with great care and certainty, or caution, and, in affirming or denying a legislative power, wisely to say nothing which may be construed to express or imply an intention to extend a ruling upon the assumed or hypothetical case submitted to a state of actual facts that may prove to be materially different, and which, though at present no more than imaginary, may yet be realized.

17 I interpret the reference as meant to submit the questions for consideration in the light of the existing situation and the knowledge and use of the art, as practically understood and worked, and, having regard to what is stated in the case, assumed as the basis for the hearing. Therefore I must proceed upon the assumption that radio communication in Canada is practically Dominion-wide; that the broadcasting of a message in a province, or in a territory of Canada, has its effect in making the message receivable as such, and is also effective by way of interference, not only in the local political area within which the transmission originates, but beyond, for distances exceeding the limits of a province, and that, consequently, if there is to be harmony or reasonable measure of utility or success in the service, it is desirable, if not essential, that the operations should be subject to prudent regulation and control.

18 Now, the power of the Dominion to regulate or control is denied, upon two grounds, by the province of Que-

bec and other provinces which have associated themselves with the argument of Quebec; they say that the exercise of the power, as broadly suggested by the first question, would offend against the provincial enumeration of "Property and Civil Rights in the Province"; and, secondly, or, perhaps, alternatively, that it would be obnoxious to the concluding paragraph of section 92, "Generally all Matters of a merely local or private Nature in the Province." Exceptions are, however, conceded, and these may be introduced no better than by a quotation from Lord Herschell's great judgment in the first *Fisheries Case*[FN7], where, referring to section 91, he said

> The earlier part of this section read in connection with the words beginning "and for greater certainty," appears to amount to a legislative declaration that any legislation falling strictly within any of the classes specially enumerated in s. 91, is not within the legislative competence of the provincial legislatures under s. 92. In any view the enactment is express that laws in relation to matters falling within any of the classes enumerated in s. 91 are within the "exclusive" legislative authority of the Dominion Parliament. Whenever, therefore, a matter is within one of these specified classes, legislation in relation to it by a provincial legislature is in their Lordships' opinion incompetent. It has been suggested, and this view has been adopted by some of the judges of the Supreme Court, that although any Dominion legislation dealing with the subject would override provincial legislation, the latter is nevertheless valid, unless and until the Dominion Parliament so legislates. Their Lordships think that such a view does not give their due effect to the terms of s. 91, and in particular to the word "exclusively." It would authorize for example, the enactment of a bankruptcy law or a copyright law in any of the provinces unless and until the Dominion Parliament passed enactments dealing with those subjects. Their Lordships do not think this is consistent with the language and manifest intention of the *British North America Act*.

19 Now, referring to the text of section 91 for the enumerations that may, for present purposes, be invoked, it is enacted by the concluding words of the section that

> Any matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And it is, I would think, not doubtful that the regulation of radio communication has a Dominion aspect, or at least an overlapping relation, capable of being worked as incidental or ancillary, with respect to some of the subjects specially enumerated in section 91; for example: "2. The Regulation of Trade and Commerce; 5. Postal Service; 7. Military and Naval Service and Defence; 9. Beacons, Buoys, Lighthouses and Sable Island; 10. Navigation and Shipping; 11. Quarantine and the Establishment and Maintenance of Marine Hospitals, and 29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces." Most obviously in this true as applied to the three enumerations that are concerned with the safety of ships and navigation. It follows that a provincial legislature could not sanction or uphold any sort of radio communication which would interfere or conflict with competent Dominion regulations, enacted with relation to these enumerated subjects. It is expressly, and most justly, conceded by the factum of the Attorney-General of Quebec that

> Where any subject is under its exclusive legislative authority the Dominion Parliament has power to regulate by substantive and by ancillary and necessary incidental legislation.

20 Also, by section 132, which has been judicially considered in other cases,

> The Parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada, or of any province thereof as part of the British Empire, towards foreign countries, arising under treaties between the Empire and such foreign countries.

21 There is the International Radiotelegraph Convention, "Done at Washington, 27th November, 1927," be-

tween the Governments therein mentioned, including Canada, Great Britain and the United States of America, and ratified on behalf of Canada, 12th June, 1928; also an agreement between Canada, the United States, Newfoundland and Cuba, relative to the assignment of "frequencies" on the North American continent, effective as from 1st March, 1929. These and other international agreements or regulations, to which Canada adheres, are printed in the appendix of the case; and, in so far as they answer the description of the last quoted section, the Parliament and Government of Canada have, by the express enactment, all powers necessary or proper for performing the obligations of Canada, or of any province thereof, arising thereunder.

22 But, while Mr. Geoffrion concedes that interference internationally may be avoided under the powers conferred by section 132, he suggests that, if it be necessary to provide against interprovincial interference, the objects should be attained by arrangement between the provinces, and he refers to *City of Montreal v. Montreal Street Railway*[FN8]. That case is mentioned in the recent *Aviation Case*[FN9]; and it is distinguishable upon all the points debated with relation to the questions now submitted. I refer to it here by way of reminder that, as shewn by Lord Atkinson's remark at the foot of page 345, the power of Parliament to acquire jurisdiction by the exercise of its authority to make a declaration under paragraph (*c*) of the 10th enumeration of section 92, was not without a persuasive influence in the result which His Lordship reached; and I think all are agreed that paragraph (*c*) has no application to the radio powers which are now in difference.

23 But while the Dominion has at least the authority to regulate and control radio activities, and to provide against confusion or interference, as affecting its own enumerated subjects, and for the performance of treaty obligations, it also has the comprehensive power involved in the declaration of its authority

> in relation to all matters not coming within the classes of subjects by the *British North America Act* assigned exclusively to the legislatures of the provinces;

and Quebec, in effect, contends that the classes so excepted include "radio communication," within the meaning of the first question submitted. As to this, the provincial case seems to depend upon the interpretation of the two provincial powers which I have quoted; and my view is that the subject in question has not the prescribed limitation of locality. It is said that "radio communication," as explained by the reference, is a matter of "Property and Civil Rights in the Province," or of a "merely local or private Nature in the Province"; and this I deny, because, upon the assumptions involved in the case, the matter substantially extends beyond provincial limits.

24 The words "Matters of a merely local or private Nature" are also used in the last paragraph of section 91, and Lord Watson interpreted them as meant to include and correctly to describe all the matters enumerated in the heads of section 92 as being, from a provincial point of view, of a local or private nature. *Attorney-General for Ontario v. Attorney-General for the Dominion*[FN10]; and, on the next two pages of the same case His Lordship said, referring to the general authority of Parliament under the introductory enactments of section 91,

> But to those matters which are not specified among the enumerated subjects of legislation, the exception from s. 92, which is enacted by the concluding words of s. 91, has no application; and, in legislating with regard to such matters, the Dominion Parliament has no authority to encroach upon any class of subjects which is exclusively assigned to provincial legislatures by s. 92. These enactments appear to their Lordships to indicate that the exercise of legislative power of the Parliament of Canada in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92. To attach any other construction to the general power which, in supplement of its enumerated powers, is conferred upon the Parliament of Canada by s. 91, would, in their Lordships' opinion, not only be contrary to the intendment of the Act, but would practically destroy the autonomy of the provinces. If it were once conceded that the Parliament of Canada has authority to make laws applicable to the whole Dominion, in relation to matters which in each province are substantially of local or private interest, upon the assumption that these matters also concern the peace, order, and good government of the Dominion, there is hardly a subject enumerated in s. 92 upon

> which it might not legislate, to the exclusion of the provincial legislatures.

And, as I interpret the case submitted, "radio communication," in the state of the science and development which it has attained, is not, substantially or otherwise, a local or private matter in a province. In the course of discussion an attempt was made to distinguish between the transmission of a message and the reception of it; and it was said that the receiving instrument is property in a province, and that a message is received in a province when the instrument, being there, is adapted and worked for that purpose. But the question is directed, not to rights of property in goods or chattels situate within a province, but to "radio communication" — an effect which is not local, but interprovincial. There must be two parties to a communication; there may be many more; and, if the sender be in a foreign country, or in a province or territory of Canada, and the receiver be within another province, it is impossible, as I see it, to declare that the communication, is local, either to the transmitting or to the receiving province.

25 As usual, in cases where the validity of provincial legislation is attacked as engaged with a subject matter not local, the *Manitoba Liquor* case[FN11], is cited in support of the power. The passages are at pages 77-80 of Lord McNaghten's judgment, and the meaning is relieved of some obscurity when the reasons are considered. Manifestly, His Lordship's conclusion depends upon the text of the particular Act and he quoted and emphasized the recital and the 119th section by which there is introduced a legislative declaration that the object is to suppress the liquor traffic in Manitoba by prohibiting provincial transactions, and that, while the act is intended to prohibit transactions in liquor which take place wholly within the province, except as otherwise specially provided, and to restrict the consumption of liquor within the limits of the province,

> it shall not affect and is not intended to affect *bona fide* transactions in liquor between a person in the province of Manitoba and a person in another province or in a foreign country, and the provisions of this Act shall be construed accordingly.

That section, his Lordship said, was as much part of the Act as any other section contained in it, and must have its full effect in exempting from the operation of the Act the transactions which came within its terms. Their Lordships were not satisfied that the legislature of Manitoba had transgressed the limits of its jurisdiction in passing the *Liquor Act*. But provincial legislation for the regulation and control of radio communication is a much more expansive matter and cannot, upon present information, be constructed in a manner to qualify as relating to matters of a local or private nature in the province.

26 The subject is one which, undoubtedly, relates to the peace, order and good government of Canada; and I am not satisfied, for any of the reasons which have been submitted, or which I have been able to discover, that it falls within any of the classes of subjects assigned exclusively to the legislatures of the provinces.

27 For these reasons I certify to the Governor in Council, for his information, my opinion that the first question submitted should be answered in the affirmative; and, of course, in view of that conclusion, I am not required to answer the second question.

***Rinfret J.*:**

28 En donnant son opinion sur les questions déférées au sujet de la loi autorisant le contrôle de l'aéronautique[FN12], mon collègue, Monsieur le Juge Duff, avec qui j'ai concouru, commence son jugement par l'exposé suivant:

> The view presented by the Solicitor General of the questions raised by the interrogatories, which it is our duty to answer, was based primarily upon the proposition that the Dominion possesses authority to legislate upon the subject of aeronautics, in every respect, and that this authority is exclusive, or, at all events, overrides any law of a province.

> This proposition is supported upon a variety of grounds. It is contended that, in their very nature, the matters embraced within that subject cannot be local, in the provincial sense, and that accordingly the subject is beyond the ambit of section 92; that, in the alternative, it falls within one of the enumerated heads of section 91, no. 10 Navigation and Shipping; that, as a sort of further alternative, so many aspects and incidents of the subject fall within various enumerated heads of section 91, such as the regulation of trade and commerce, undertakings extending beyond the limits of a province, customs, aliens, beacons and lighthouses, postal service, defence, ferries, or under immigration (s. 95), that the subject must as a whole be treated as within Dominion jurisdiction, that being, it is argued, the only interpretation under which the undoubted authority of the Dominion over the various aspects of the subject can be effectively exercised. Still again, it is said, the authority of the Dominion under section 132, to legislate for the performance of its obligations under the Convention relating to Aerial Navigation, 1919, extends over the whole field.

29 En substituant la radiocommunication à l'aviation, et en retranchant la mention relative au paragraphe 10 de l'article 91 de l'*Acte de l'Amérique Britannique du Nord* concernant "Navigation and Shipping", nous avons dans le passage cité un exact résumé de l'argumentation qui a été faite de la part du procureur général du Canada dans l'affaire qui nous est actuellement soumise.

30 D'autre part, les procureurs généraux des provinces, pour réclamer la juridiction en faveur des gouvernements qu'ils représentaient, dans cette cause de l'aviation comme dans la présente, se sont surtout appuyés sur le paragraphe 13 ("property and civil rights in the province") et sur le paragraphe 10 ("local works and undertakings") de l'article 92 de l'Acte constitutionnel.

31 Il en est résulté, entre la cause de l'aviation et la présente cause de la radiocommunication, une très grande analogie, au moins dans la manière dont la question nous a été présentée. On peut donc regretter que nous soyons appelés à nous prononcer sur les questions qui nous sont actuellement soumises avant d'avoir eu l'avantage de connaître la décision finale du Conseil Privé dans l'affaire de l'aviation, car il me paraît évident que cette décision nous aurait apporté une aide considérable dans la solution du problème que nous avons maintenant à trancher.

32 De même que dans la référence sur l'aviation, il nous faut ici adapter une loi constitutionnelle datant de 1867 à un sujet qui non seulement n'avait aucune existence, mais dont on ne soupçonnait même pas la possibilité à cette époque. Il est exact de dire cependant que l'*Acte de l'Amérique Britannique du Nord* "is always speaking" et que ses dispositions doivent recevoir un sens de plus en plus étendu, au fur et à mesure que les inventions scientifiques et les développements de la vie nationale exigent de nouvelles solutions constitutionnelles[FN13].

33 A la question nouvelle soulevée par la découverte de l'aviation, cette cour a répondu que la juridiction primordiale appartenait aux provinces. Il me semble qu'il existe à l'égard de cette question nouvelle qui est maintenant soulevée par l'invention de la radio des raisons encore plus fortes pour décider dans le même sens.

34 La radiocommunication, telle qu'elle est connue et telle que la science nous la présente jusqu'à date, consiste dans un appareil émetteur, des ondes radioélectriques (que le dossier appelle "Hertzian waves") circulant dans l'éther, et un appareil récepteur.

35 En soi, l'appareil émetteur et l'appareil récepteur sont des objets de propriété "d'une nature locale" situés dans la province, au sens de l'article 92.

36 Qu'on les envisage comme objets de propriété purs et simples, ou comme des travaux couverts par le paragraphe 10 de l'article 92, ils tombent de prime abord sous la juridiction provinciale.

37 En plus, la personne qui opère un appareil émetteur ou la personne qui opère un récepteur, exerce un droit

civil dans la province; et l'une ou l'autre opération, prise isolément, est indiscutablement matière à contrôle provincial.

38 De ce point de vue, il existe sans doute une différence entre l'opération de l'appareil récepteur et l'opération de l'appareil émetteur. Alors que la réception ne peut d'aucune façon être envisagée comme étant autrement que d'une nature purement locale, il est exact de dire que, suivant les données actuelles de la science, l'émission ne peut pas être circonscrite dans un rayon précis et les ondes qui sont mises en mouvement par l'appareil émetteur se propagent dans toutes les directions, sans qu'on puisse les limiter aux frontières d'un territoire.

39 Je ne crois pas cependant que cette dernière particularité enlève à l'opération de l'appareil émetteur son caractère de droit civil dans la province, suivant la portée qu'il faut donner au paragraphe 13 de l'article 92. Un droit civil ne perd pas sa nature de droit civil contrôlable par la province simplement parce qu'il peut produire des effets au delà de la province. Un contrat passé dans une province produit des résultats en dehors de cette province, sans que pour cela il soit soustrait à l'autorité provinciale. Une firme, à Montréal, qui fait avec un voyageur de commerce un contrat de louage de ses services, verra sa responsabilité engagée vis-à-vis d'une personne à Vancouver, dans la Colombie-Britannique, par l'acte de ce voyageur de commerce, et cette responsabilité résultant du contrat d'abord fait à Montréal continuera d'être régie par la loi provinciale.

40 Pour prendre un exemple encore plus frappant, un journal publié à Toronto et dont la circulation est répandue dans tout le Dominion ne cessera pas pour cela d'être de la part de ses propriétaires l'exercice d'un droit de propriété et d'un droit civil dans la province d'Ontario et d'être subordonné à la législation de la province.

41 Supposons encore une fanfare qui jouerait un concert dans une province, sur les bords de la frontière. Elle ne tomberait pas sous le contrôle fédéral parce que les sons de sa musique seraient entendus dans une autre province.

42 On pourrait donner ainsi des exemples presque à l'infini.

43 Si maintenant l'on traite l'appareil émetteur ou l'appareil récepteur comme des "travaux... d'une nature locale", je ne crois pas qu'on puisse prétendre que, par le seul fait que ces travaux ont une répercussion au delà des frontières d'une province, ils perdent leur caractère local.

44 Je suppose un phare qui serait érigé sur le territoire d'une province mais suffisamment près de la frontière pour que ses feux et sa lumière soient projetés sur le territoire d'une autre province. Il me semble que l'on ne pourrait en conclure que ce phare cesse d'être un ouvrage d'une nature locale au sens du paragraphe 10 de l'article 92.

45 J'écarte donc la prétention qui voudrait que par cela seul qu'un droit civil ou un ouvrage local produit des effets en dehors d'une province, il acquiert *ipso facto* un caractère qui a pour effet de le soustraire à la juridiction provinciale.

46 Mais on objecte que le sujet dont il s'agit n'est pas l'appareil émetteur ou l'appareil récepteur en soi, que la véritable question est la communication qui s'établit entre les deux appareils et que, comme il est impossible de restreindre cette communication aux limites d'une province, il en résulte qu'elle tombe dans le domaine fédéral.

47 Sur ce point, on invoque les sous-paragraphes du paragraphe 10 de l'article 92 qui sont des exceptions et qui, en vertu du paragraphe 29 de l'article 91, doivent être envisagés comme faisant partie des catégories de sujets réservés au pouvoir législatif fédéral.

48 Il y a là trois sous-paragraphes: (*a*), (*b*) et (*c*). (*b*) s'occupe des lignes de bateaux à vapeur entre les provinces et les pays dépendant de l'Empire britannique ou tout autre pays étranger. Il n'a donc rien à voir avec la question actuelle. (*c*) traite des travaux qui, bien qu'entièrement situés dans la province, sont déclarés par le parlement du

Canada être pour l'avantage général du Canada ou pour l'avantage de deux ou d'un plus grand nombre de provinces. Il ne s'agit pas d'une déclaration de ce genre dans la question qui nous est soumise.

49 Reste le sous-paragraphe (*a*). Il s'applique à "lines of steam or other ships, railways, canals, telegraphs and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province".

50 L'interprétation souveraine qui doit nous guider dans la portée qu'il faut donner à ce sous-paragraphe a été donnée par le Conseil Privé dans la cause de *Montreal v. Montreal Street Railway*[FN14]. Il y est dit, en référant aux travaux dont il s'agit dans ce sous-paragraphe: "These works are physical things, not services." Or, la distinction fondamentale entre la radiocommunication et la communication par télégraphe, téléphone ou autres travaux du même genre auxquels s'applique le sous-paragraphe (*a*) du paragraphe 10 est précisément que la radiocommunication peut être un "service", mais elle n'est pas un "physical thing".

51 En outre, il n'existe pas de connexion physique entre l'appareil émetteur et l'appareil récepteur, comme le fil qui, dans le télégraphe et le téléphone, relie l'endroit d'où sont émis les sons ou les signaux à l'endroit où ils sont reçus.

52 A la rigueur, une ligne de radiocommunication établie par une firme commerciale pour le service du public partant d'une ou de plusieurs stations d'émission fixes qu'elle possèderait dans une province et qui transmettrait des messages de toutes natures à l'aide des ondes hertziennes à des stations de réception fixes, dont la firme serait également propriétaire, et qui seraient situées dans d'autres provinces, constitueraient un "undertaking" tombant sous la juridiction fédérale. Il semblerait cependant que, dans ce cas, le pouvoir fédéral procèderait non pas du sous-paragraphe (*a*) du paragraphe 10 de l'article 92, mais du paragraphe 2 de l'article 91 concernant "The regulation of trade and commerce".

53 Nous avons eu tout dernièrement un exemple de l'application de ce principe de juridiction dans l'arrêt de cette cour Re: *Lawson v. Interior Tree Fruit and Vegetable Committee of Direction*[FN15].

54 Il est juste toutefois de faire remarquer que même l'attribution de la juridiction fédérale sur une entreprise commerciale, comme celle dont nous venons de parler, reliant deux ou plusieurs provinces, laisserait quand même intacte la juridiction provinciale sur des entreprises du même genre établies entre des stations fixes exclusivement à l'intérieur d'une province, et surtout sur tous les appareils opérés par des amateurs ou par des gouvernements locaux, ou de toute autre façon qui ne serait pas pour des fins de profit.

55 Mais tous les cas mentionnés au sous-paragraphe (*a*) du paragraphe 10 sont des cas où il s'agit d'une connexion physique continue dans les travaux ou l'entreprise (sauf peut-être les lignes de bateaux à vapeur ou autres bâtiments, avec lesquels la radiocommunication n'a aucune espèce d'analogie) et d'un "physical thing" tout entier sous le même contrôle, sinon de propriété, au moins d'opération. La plus récente décision sur ce point se trouve dans l'arrêt du Conseil Privé dans la cause de *Luscar Collieries v. McDonald*[FN16], où Lord Warrington of Clyffe, qui a prononcé le jugement, revient à deux reprises sur le caractère de continuité de la voie de chemin de fer dont il s'agissait dans cette cause et dit (p. 932):

> A part of a continuous system of railways operated together by the Canadian National Railways Company and connecting the province of Alberta with other provinces of the Dominion; (puis p. 933): There is a continuous connection by railway between the point of the Luscar Branch farthest from its junction with the Mountain Park Branch and parts of Canada outside the province of Alberta.

56 Ces expressions semblent bien marquer que, pour tomber sous l'effet du sous-paragraphe (*a*) du paragraphe 10, il faut le double caractère de continuité dans le "physical thing" et de propriété, de contrôle, ou, au moins, d'opé-

ration par la même personne ou la même compagnie, sans quoi l'on ne se trouve plus en présence d'un seul "undertaking", mais l'on a plusieurs "undertakings" distincts.

57 Ces deux caractères manquent à la radiocommunication, dont la nature habituelle et la plus ordinaire est de procéder d'un appareil émetteur qui appartient à un propriétaire vers des appareils récepteurs qui appartiennent à d'autres propriétaires complètement indépendants, sans aucune espèce de relations avec le propriétaire de l'appareil émetteur, et que ce dernier ne connaît même pas. Du point de vue légal, il est difficile de voir la distinction qu'on peut faire entre la radiocommunication opérée dans ces conditions et la transmission des sons de toute autre façon (comme, par exemple, par la fanfare dont nous parlions tout à l'heure) d'une province à l'autre. Et il est assez juste, sous ce rapport, d'assimiler l'appareil récepteur à une simple amplification de l'appareil auditif humain, puisque sa fonction n'est rien autre chose que de rendre perceptibles à l'oreille des sons ou des signaux transmis à travers l'éther par la propagation de vagues intangibles.

58 De toutes façons, par conséquent, et sauf les exceptions que j'ai mentionnées au cours de ce jugement jusqu'ici, le sujet de la radiocommunication me paraît tomber essentiellement dans la catégorie des sujets de "Property and civil rights in the province" ou de "Local works and undertakings", tels que prévus au paragraphe 10 de l'article 92.

59 Dans ces conditions, la juridiction primordiale réside donc dans les provinces, et cette juridiction ne peut être entamée qu'en autant que l'on peut trouver dans l'article 91 des sujets de juridiction fédérale qui donneraient, dans les limites de leur application particulière, le pouvoir d'empiéter sur cette juridiction provinciale primordiale.

60 En effet, dès qu'un sujet tombe sous le contrôle provincial en vertu de l'une des clauses de l'article 92, il ne peut être transféré au domaine fédéral qu'à la condition de tomber expressément sous l'une des clauses de l'article 91; et il est absolument fallacieux de prétendre que, sauf dans un cas de "national emergency", le Dominion pourrait s'emparer de ce contrôle en vertu de la clause résiduaire et sous prétexte que l'autorité provinciale n'a pas l'ampleur voulue pour contrôler effectivement le sujet qui est attribué à sa juridiction.

61 Pour mieux exprimer ma pensée, je me permettrai de citer sur ce point un passage du jugement de notre collègue, Monsieur le juge Duff, dans la cause de *The King v. Eastern Terminal Elevator Company*[FN17]:

> The other fallacy is (the two are, perhaps, different forms of the same error) that the Dominion has such power because no single province, nor, indeed, all the provinces acting together, could put into effect such a sweeping scheme. The authority arises, it is said, under the residuary clause because of the necessary limits of the provincial authority. This is precisely the view which was advanced in the *Board of Commerce Case*[FN18], and, indeed, is the view which was unsuccessfully put forward in the *Montreal Street Railway Case*[FN19], where it was pointed out that in a system involving a division of powers such as that set up by the *British North America Act*, it may often be that subsidiary legislation by the provinces or by the Dominion is required to give full effect to some beneficial and necessary scheme of legislation not entirely within the powers of either.

62 Cela m'amène à examiner de plus près la véritable base sur laquelle, de la part du procureur général du Canada, on a voulu placer l'argumentation en faveur de la juridiction fédérale.

63 L'on nous a dit que, à cause de sa nature même, la radio-communication échappait au domaine provincial et qu'elle ne pouvait être contrôlée d'une façon efficace que par le pouvoir fédéral, parce qu'elle exige un contrôle central et unique.

64 A mon humble avis, c'est là porter la discussion exactement sur le terrain dont parle Monsieur le juge Duff dans le passage que je viens de citer, et c'est nous ramener, une fois de plus, à cet argument si souvent offert et autant de fois rejeté par les tribunaux que, parce qu'il serait plus avantageux de concentrer toute la législation sur un

sujet entre les mains du pouvoir central, c'est-à-dire, en l'espèce, du pouvoir fédéral, il en résulte que le fédéral devrait avoir juridiction. Il n'y a pas le moindre doute que s'il existait un seul parlement, tous ces conflits de juridiction seraient évités. Mais cet argument de "convenience" ou de "inconvenience" ne saurait évidemment constituer une règle d'interprétation. La constitution du Canada a créé une union fédérale en distribuant les pouvoirs législatifs entre un parlement central et des parlements provinciaux. C'est uniquement par l'interprétation du texte de cette constitution que l'on doit être guidé lorsqu'il s'agit d'attribuer un sujet à l'une ou l'autre juridiction. La question de savoir s'il serait plus avantageux que les choses fussent autrement ne saurait entrer en ligne de compte et, à tout événement, ne saurait trouver place devant une cour de justice. Le principe que, par suite du fait qu'une législation fédérale serait pour le plus grand avantage du Canada, ou rencontrerait d'une façon plus efficace les exigences de la situation, il en résulterait que le pouvoir central a la compétence pour l'adopter a reçu son coup de grâce dans le jugement de *Toronto Electric Commissioners v. Snider*[FN20].

65 L'autre point soulevé de la part du procureur général du Canada, et l'on peut dire sans doute le pivot de son argumentation, c'est que, dans l'état actuel de la science de la radio, il est absolument impossible d'empêcher les inconvénients résultant des interférences, et que, à moins d'une législation uniforme ayant pour but de répartir ce que j'appellerai les bandes de communication ("channels of communication"), il se produira une telle confusion que tous les bénéfices de la radiodiffusion seront absolument annihilés. On en conclut que cela nécessite le contrôle unique du parlement fédéral.

66 De la part des provinces, on a nié le danger de cette interférence et on a assuré, à tout événement, qu'il y avait exagération dans la prétention émise par le Dominion. En la prenant pour acquise, je ne vois pas comment ce fait peut venir modifier la question de juridiction.

67 Si j'ai bien compris le développement de cet argument, le brouillage peut avoir lieu à la source, c'est-à-dire au poste émetteur, ou au moment de la réception. De toutes manières, c'est le récepteur qui est empêché de recevoir utilement la radiocommunication. Si l'interférence provient d'une cause locale située dans la même province que l'appareil récepteur, la province qui a juridiction sur l'appareil récepteur peut également adopter la législation nécessaire pour empêcher cette interférence. Si la difficulté provient d'une répartition des "channels" entre les provinces, il m'est impossible de voir pourquoi la solution ne pourrait pas être trouvée dans une entente entre les provinces, ainsi qu'il est suggéré par le Conseil Privé dans la cause de *City of Montreal v. Montreal Street Railway*[FN21].

68 Mais il semble admis que l'interférence peut tout autant provenir d'une source extérieure non seulement à l'une des provinces, mais d'une source extérieure au pays lui-même. Je déduirais même de l'exposé scientifique qui est au dossier et de l'argumentation qui a été faite devant nous que la principale, pour ne pas dire l'unique, difficulté de toute la situation vient des Etats-Unis, pays voisin, et de l'exploitation du nombre considérable de postes émetteurs qui se trouvent dans ce pays. Or, l'on ne peut éviter de faire remarquer que s'il en est ainsi, ce n'est pas par une législation fédérale qu'on empêchera cette interférence. Le parlement du Canada sera tout aussi impuissant que n'importe quel parlement des provinces pour légiférer sur une situation de ce genre. Aucune loi du Canada ne pourrait empêcher les postes émetteurs des Etats-Unis de causer dans notre pays, ou dans chacune des provinces, toutes les interférences que la science prévoit.

69 La réponse à l'argument du Dominion serait donc:

1° Ce n'est pas parce qu'une personne située ailleurs dans le Dominion vient causer dans une province une interférence avec l'exercice d'un droit civil dans cette province que le Dominion acquerra de ce fait une juridiction sur ce droit civil. Cette interférence constitue un conflit entre deux droits civils. Un conflit de ce genre n'a pas pour résultat de soustraire les droits civils à la juridiction provinciale et de les transférer au domaine fédéral.

2° Si la source de l'interférence est située dans le pays, bien que dans une autre province, la véritable manière pour les provinces de régler le conflit entre les droits civils qui sont respectivement de leur domaine, est par une

entente entre les provinces. Le Dominion n'acquiert aucune juridiction comme conséquence d'un conflit de ce genre.

3° Si la source est située en dehors du pays, le Dominion, par sa propre législation, est tout aussi impuissant que n'importe laquelle des provinces pour y mettre fin; et la seule ressource en pareil cas: c'est le traité avec le ou les pays voisins.

70 Au point de vue pratique, je crois bien que, en donnant à l'objection fédérale la plus ample portée que l'on puisse lui attribuer, la vraie question qui résulte du danger de l'interférence est en réalité une question internationale. Or, du moment qu'on en arrive à cette conclusion, la difficulté de juridiction ne se présente plus. Une question internationale ne peut se régler que par un traité; et, dans ce domaine, le parlement fédéral a toute la latitude nécessaire. L'article 132 de l'*Acte de l'Amérique Britannique du Nord* établit ses pouvoirs en pareil cas; et, dans le jugement que cette cour a rendu sur la question d'aviation[FN22], nous avons défini les droits du parlement fédéral en matière de traités, tant dans leur adoption que dans leur exécution, de façon à ce qu'il n'y ait pas lieu d'y revenir, sujet naturellement à ce que pourra dire le Conseil Privé sur cette question.

71 Dans la cause actuelle, il est résulté de l'argumentation de part et d'autre que l'étendue des pouvoirs du parlement fédéral, agissant en vertu de l'article 132 de l'acte constitutionnel, ne faisait pas l'objet de la moindre discussion. Il suffit peut-être de faire remarquer, par conséquent, que c'est là, en définitive, que le parlement fédéral va trouver le remède à la principale difficulté qui semble le préoccuper à l'heure qu'il est, c'est-à-dire cette question d'interférence. Elle ne peut se régler que par traité; et, en matière de traités, les pouvoirs fédéraux sont probablement illimités.

72 Et tout ce que je viens de dire au sujet de l'interférence provenant de l'étranger s'applique avec autant de force, au Canada, à la règlementation de la radiodiffusion et de la radiocommunication venant de l'étranger. Là encore, c'est une question de traité; et sur ce point le fédéral est souverain.

73 Mais, si l'on se borne au domaine national, mon opinion est que, pour les raisons que j'ai exposées, la base de la juridiction en matière de radiocommunication est primordialement entre les mains des provinces.

74 Il reste évidemment que, nonobstant cette juridiction provinciale primordiale, le parlement fédéral conserve la juridiction prépondérante chaque fois qu'il s'agit d'un des sujets qui lui sont expressément attribués par l'article 91. Cela est admis dans le factum qui nous a été soumis de la part de la province de Québec:

It may be at once conceded that where any subject is under its exclusive legislative authority the Dominion Parliament has power to legislate by substantive and by ancillary and necessarily incidental legislation.

75 Cela comprendrait, au moins, les sujets suivants:

1° "The regulation of Trade and Commerce", dans les limites qui ont été assignées à ce sujet dans les arrêts de *Citizens Insurance Company v. Parsons*[FN23]; *The Insurance Reference*[FN24]; *The Board of Commerce Act, 1919*, et *The Combines and Fair Prices Act, 1919*[FN25];

2° "Postal service";

3° "Militia, Military and Naval Service, and Defence";

4° "Beacons, buoys, lighthouses and Sable Island";

5° "Navigation and Shipping";

6° "Sea coast and inland fisheries";

7° Les catégories de sujets expressément exceptés dans l'énumération des catégories de sujets exclusivement assignés par la loi constitutionnelle aux législatures des provinces, conformément au paragraphe 29 de l'article 91, dans les limites que j'ai expliquées au cours de ce jugement.

76 Ce que j'ai dit jusqu'ici me dispenserait de traiter plus amplement de la juridiction provinciale. Je crois cependant devoir ajouter que même si, contrairement à la conclusion à laquelle j'en arrive, le sujet de la radiocommunication appartient primordialement au domaine fédéral, l'on ne pourrait quand même dire que son contrôle est absolu, ou, pour employer une expression que nous avons adoptée lors de la référence sur l'aviation, que ce contrôle existe "in every respect".

77 Il me paraît certain que pour la réparation des dommages moraux et matériels qui pourraient être causés par la radiocommunication, pour la responsabilité civile en matière de radiodiffusion, il y aura lieu de recourir aux règles du droit civil, et, par conséquent, à la législation provinciale. Les droits des propriétaires de postes émetteurs, ou les droits des propriétaires d'appareils de réception devront quand même être régis par le droit civil. En plus, il y a, entre les divers émetteurs, ou entre les émetteurs et les compositeurs, écrivains, auteurs de tous genres, orateurs, conférenciers, artistes ou exécutants, fournisseurs d'information, annonceurs, toutes les personnes désireuses de transmettre des communications ou de faire de la réclame, des rapports éventuels de droit privé, civil ou commercial qui devront trouver leur solution dans le droit commun des provinces et dans la législation provinciale. (Voir Revue Juridique internationale de la radio-électricité, 1930, n^{o} 24, p. 234.)

78 Enfin, toujours si le sujet de la radiodiffusion appartient de prime abord à la juridiction fédérale, je ne vois pas bien comment on pourrait empêcher les provinces d'exercer leur pouvoir de taxation directe en vertu du paragraphe 2 de l'article 92, et leur pouvoir de licence dans le but de prélever un revenu pour des objets provinciaux, locaux ou municipaux, en vertu du paragraphe 9 de l'article 92.

79 Comme conséquence de ce qui précède, je réponds comme suit aux questions qui nous ont été soumises:

80 J'interprète la première question comme impliquant de la part du gouvernement du Canada une juridiction absolue et sous tous les rapports; et ma réponse est dans la négative.

81 Quant à la seconde question, les différents aspects sous lesquels, à mon avis, le parlement du Canada a juridiction en matière de radiocommunication sont exposés en détail dans le présent jugement.

***Lamont J.*:**

82 In this case I agree with my brother Rinfret that the jurisdiction of the Dominion Parliament over the subject of radio communication is not exclusive, although, in some particulars, a very large measure of control admittedly belongs to it.

83 When we consider the nature of radio communication and the fact that once the electro-magnetic waves are discharged from the transmitting stations they cannot be confined within the boundaries of a province, or even the limits of a country, it is evident that a provincial legislature, whose jurisdiction is only province wide, is not in a position to control the transmission of these waves, yet, without some control, radio communication would be impossible. So far, therefore, as the transmission of the waves is concerned, a very wide jurisdiction must, in the present state of the art, be conceded to the Dominion Parliament. It belongs to Parliament because the more important matters which must be regulated and controlled lie in the international field where control can only be assured by

treaty, convention or agreement between nations.

84 As indicating the matters over which those who have been dealing with radio communication in a practical way have felt the necessity for control, reference may be made to the International Radiotelegraph Convention at Washington, in November, 1927, and also to the agreement between Canada, the United States, Newfoundland, Cuba, et al. (effective since March 1, 1929), relating to the assignment of frequencies on the North American Continent. All parties to these agreements recognize that until the development of the art progresses to the stage where radio interference can be eliminated, special administrative arrangements are necessary to minimize this interference and promote standardization. To this end the contracting governments have agreed that all transmitting stations will, so far as possible, be established and operated in such manner as not to interfere with radio electric communication of other contracting governments, or persons authorized by them to conduct a public radio service; that no transmission station will be established or worked by an individual without a special licence issued by the government of the country to which the station is subject; that they will propose legislative measures to prevent the unauthorized transmission and reception of correspondence of a private nature, or the divulgence of messages received; and, further, that they will take necessary measures to connect the International Radio Service with the general communication system of each country.

85 The matters covered by these agreements shew the extent of the field in which control can only be secured by agreements between the nations. As to these matters jurisdiction lies with the Dominion Parliament under section 132 of the B.N.A. Act, 1867, which reads as follows: —

> The Parliament and Government of Canada shall have all powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries.

86 Besides the transmission of electro-magnetic waves there are other matters in respect of which jurisdiction to regulate and control must exist in some authority. These are, for example, the capturing of these waves and the delivery of the messages they contain. These, to my mind, present a very different question from the transmission of the waves into space. According to Mr. Bain's report, which is printed with the case, the receiving apparatus performs two functions: it receives the transmitted wave, and converts it into an understandable signal. When electromagnetic waves are thrown into space from one or more transmitting stations, they pass, by virtue of their potentially expanding force, not only over every parcel of land in the province in which the transmitter is situate, but over land far beyond the province. In the case of broadcasting they are not directed to any particular individual, but are left to be captured by anyone who can capture them. Where an owner of land in a province erects on his property a receiving antenna and to it attaches an apparatus which selects a given wave and delivers the message impressed upon it as an understandable signal to those who are within the limits of its varrying power, I am unable to see why the receiving apparatus cannot properly be designated a "local work" under no. 10 of s. 92. The services it performs, first in capturing the wave and then in extracting and delivering its message, are all performed within the province and, therefore, localized. In my opinion such localized service and such an instrumentality constitute a "local work." If it is not a local work within no. 10 of s. 92, I should consider that it would then fall within no. 16 "Generally all Matters of a merely local or private Nature in the Province." *Prima facie*, therefore, legislation upon these subjects would come within the jurisdiction assigned to the provincial legislatures by s. 92.

87 The jurisdiction of the province, however, is subject to being overborne by competent legislation on the part of the Dominion Parliament, ancillary or incidental, to any of the enumerated heads of s. 91.

88 I would, therefore, answer the questions as follows: —

> 1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and in-

cluding the right to determine the character, use and location of apparatus employed?

89 Answer: Not exclusive jurisdiction.

2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

90 Answer: The jurisdiction of Parliament is limited as set out above.

***Smith J.*:**

91 There are submitted, for the hearing and consideration of the court, pursuant to the authority of s. 55 of *The Supreme Court Act*, the following questions: —

1. Has the Parliament of Canada jurisdiction to regulate and control radio communication, including the transmission and reception of signs, signals, pictures and sounds of all kinds by means of Hertzian waves, and including the right to determine the character, use and location of apparatus employed?

2. If not, in what particular or particulars or to what extent is the jurisdiction of Parliament limited?

92 It becomes necessary in the first place to consider the nature of radio communication, how it is brought about, the extent of its effects, its usefulness to the inhabitants of the country at large, and the manner in which that usefulness may be made available.

93 The principles underlying radio communication are set out in an article compiled by J.W. Bain, radio engineer of the Marine Department, and printed in the case. This document is inserted for the convenience of the court, and it is stated that its accuracy may be verified by reference to the various standard textbooks on the subject. Its general accuracy was, I think, not controverted, and I therefore resort to this document for a brief general description of how radio communication is effected.

94 An alternating current is one which periodically changes direction in its circuit. For a certain time it flows in one direction, with varying strength, and then reverses and flows for an equal time in the opposite direction. The time in fractions of a second which elapses between two successive maximum values of current in the same direction is called a period or cycle, and the number of such periods or cycles per second is called the "frequency" of the alternating current. The maximum value to which the current rises in each half cycle is called the "amplitude" of the current. A high frequency alternating current is one of which the frequency is reckoned in tens of thousands.

95 By the use of alternate electric current in a transmitting apparatus, magnetic and electric fields are created, which expand and contract with the varying strength of the current, the energy being continually sent out into the surrounding medium and returned to the wire to be sent out again with a reversal of direction as the current increases from zero to maximum in one direction, and then decreases to zero, to increase again to a maximum in the opposite direction. If the frequency is very high, all the energy cannot return to the wire after each half-cycle, and it remains in space, to be pushed further out by the next expansion of the field; and the energy so pushed out at each successive cycle forms an electro-magnetic wave, which is radiated out from the radio antenna.

96 It is formed of two fields, a magnetic and an electric field at right angles to each other and to the direction of propagation, varying in intensity in step with one another and at the frequency of the current which gave rise to them, and travelling through space at the speed of light, that is: three hundred million metres per second. This figure of three hundred million, when divided by the frequency in cycles per second, gives the wave length in metres, and, conversely, when divided by the wave length, gives the frequency.

97 Part of the energy is radiated in a direction parallel to the surface of the earth, and forms what is known as the direct or ground wave. Another part is radiated upwards into space, and there exists in the upper part of the atmosphere a conducting layer of electrified particles which possesses the property of reflecting radio waves back to earth, making them available, to a certain extent, for radio communication.

98 The electro-magnetic waves here referred to are energy waves sent out into surrounding space in the manner indicated, and are the means by which radio communication is carried on. This communication involves not only the production and radiation of electro-magnetic waves, but also their reception by suitable apparatus, which intercepts these waves by means of a receiving antenna. The passage of the waves across this antenna produces in it a voltage. The receiving apparatus, which is coupled to this antenna, must be capable of so amplifying the small voltage generated in the receiving antenna as to deliver at the output end a signal of suitable strength. Owing to the great number of electro-magnetic fields, due to the waves issuing from a corresponding number of transmitting stations engaged in the various services of radio communication, the receiving apparatus must also be able to discriminate between all these waves and select the desired one.

99 The fundamental method of arranging the receiving apparatus so as to select the desired wave is by tuning it to the frequency of the wave so desired. It follows that if more than one wave of the same or nearly the same frequency are coming to the receiving apparatus, one would interfere with the reception of the others and destroy the efficiency of all. In order to prevent this result, it is necessary that stations sending out these waves within certain distances of each other be limited to the use of frequencies sufficiently separated to avoid such interference.

100 By International Convention, frequencies from 550 kilocycles to 1,500 kilocycles have been appropriated to the service of broadcasting, and this band of 950 kilocycles is divided into 96 channels, giving approximately a width of 10 kilocycles to each channel, deemed necessary to prevent a transmitting station operating on one of these channels from interfering with the station operating on an adjoining channel. The electro-magnetic waves sent out from a transmitting station ordinarily travel through space in all directions, and the distances at which they can be picked up by a receiver, and at which they may cause interference with other transmitting stations, vary with the electric power and the frequency used.

101 In "Elements of Radio Communication," by John H. Morecroft, page 98, there is a table shewing the variation according to power. It is there stated that a fifty-watt station will give good service at ten miles, poor service at 100 miles, and interference at 600 miles; a five hundredwatt station will give good service at 30 miles, poor service at 300 miles, and interference at 1,800 miles; and a five thousand-watt station will give good service at 100 miles, poor service at 1,000 miles, and interference at 6,000 miles. At page 76 of the same book it is stated that if frequency is increased, keeping the current constant, more and more energy is radiated until, when the frequency is a million or more, the radiated power may be detected at great distances; and that, for a given current, the power radiated from a given circuit varies as the square of its frequency.

102 It is scarcely necessary to give in detail the extent and importance of the service now rendered to the whole people of this and other countries by radio communication. The broadcasting service is the one most familiar to the masses of the people, and is useful to them as a means of enjoyment, of information and of education. The vast importance to the Dominion as a whole of the coast stations established throughout Canada, and the services that they render to shipping over great distances, as set out in the case, need not be enlarged upon. Of scarcely less importance to the people of all sections of the Dominion is the service by radio communication, which scatters everywhere daily the news of the world and the happenings of the various localities, in which people everywhere are interested; and the service which enables people everywhere to carry on expeditiously business affairs.

103 From what has been said above, and what further appears in the case, it is evident that all these services by radio communication would be rendered of little practical use to anybody if there were not regulation somewhere by

which transmitting stations would be prevented from interfering with each other.

104 By the questions submitted, we are asked to determine whether or not the Dominion Parliament, under the *British North America Act*, is vested with the general power of dealing with the subject.

105 Section 91 of the *British North America Act* is as follows:

> 91. It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater certainty, but not so as to restrict the generality of the foregoing terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next hereinafter enumerated; that is to say, —

Then follows a list of 29 classes of subjects.

106 Section 92 reads as follows: —

> 92. In each Province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next hereinafter enumerated; that is to say, —

Then follow 10 enumerated classes of subjects, among which are:

> 13. Property and Civil Rights in the Province.
>
> 16. Generally all matters of a merely local or private nature in the province.

107 Many disputes have arisen as to the respective jurisdiction of the Dominion and the provinces by virtue of these sections, resulting in many appeals to the Privy Council, in which the construction to be put upon them has been authoritatively laid down. Lord Watson, in *Attorney-General for Ontario v. Attorney-General for the Dominion*[FN26], makes the following statement: —

> These enactments appear to their Lordships to indicate that the exercise of legislative power by the Parliament of Canada, in regard to all matters not enumerated in s. 91, ought to be strictly confined to such matters as are unquestionably of Canadian interest and importance, and ought not to trench upon provincial legislation with respect to any of the classes of subjects enumerated in s. 92.

108 Viscount Haldane, in *Toronto Electric Commissioners v. Snider*[FN27], states the result of what has been laid down in previous decisions, as follows:

> The Dominion Parliament has, under the initial words of s. 91, a general power to make laws for Canada. But these laws are not to relate to the classes of subjects assigned to the provinces by s. 92, unless their enactment falls under heads specifically assigned to the Dominion Parliament by the enumeration in s. 91. When there is a question as to which legislative authority has the power to pass an Act, the first question must therefore be whether the subject falls within s. 92. Even if it does, the further question must be answered, whether it falls also under an enumerated head in s. 91. If so, the Dominion has the paramount power of legislating in relation to it. If the subject falls within neither of the sets of enumerated heads, then the Dominion may have power to legislate under the general words at the beginning of s. 91.

1931 CarswellNat 56, [1931] S.C.R. 541, [1931] 4 D.L.R. 865, 39 C.R.C. 49

109 Radio communication is, of course, not specifically mentioned in either of these sections, unless the word "Telegraphs" in s. 92-10 (*a*) includes it. It is, however, contended, on behalf of the provinces, that it falls within the class of subjects in s. 92 (13), "Property and Civil Rights in the Provinces," or no. 16, "Generally all matters of a merely local or private nature in the Provinces."

110 It is, of course, conceded on behalf of the provinces that if general jurisdiction is vested in the provinces by virtue of these clauses, that jurisdiction is still subject to any Dominion legislation properly enacted in reference to the classes of subjects specifically assigned to the Dominion Parliament under s. 91 and for the performing of the obligations of Canada or of any province thereof arising under treaties, pursuant to s. 132 of the *British North America Act*.

111 Dealing firstly with class no. 16, is it possible, having in view the nature and effect of radio communication, as described, to say that, when carried on in a province, it is a matter of a merely local or private nature in the province? When a transmitter sends out into space these electromagnetic waves, they are projected in all directions for the great distances referred to, and it is not possible for the transmitter to confine them within the bounds of a province. As already pointed out, a transmitter of only fifty-watt power — the power of an ordinary house lamp — will radiate these waves in all directions around it for a distance of 600 miles with sufficient energy at that distance to disturb and interfere with any radio communication passing through that field on the same or nearly the same channel or frequency.

112 Mr. Lanctôt, in his argument, pointed out that by the Beam system electro-magnetic waves can in a large measure be prevented from radiating in any but a given direction. This is accomplished by fencing the transmitter behind and at each side by certain apparatus, which results in limiting largely radiation of waves in these directions, with a consequent diminution of power and distance in those directions, and, apparently, increased power and distance in the remaining direction. He stated that it was possible that these waves so projected in one direction might travel around the world, and in that way come back to the starting point. If his general argument is sound, then every resident of the province of Quebec, and of every other province, has a right at will to send out waves of this or any other character, on any or all channels or frequencies, without limitation or control, unless the province in which the sender resides sees fit by legislation to establish control. The result, if the practice were resorted to to any considerable extent by the residents of the various provinces, would be, as has been pointed out, to destroy the usefulness of radio communication, not only throughout all the provinces, but far beyond the bounds of the Dominion. This, Mr. Lanctôt argues, is a matter of a merely local or private nature in the province. I am of opinion that it is not a matter of that nature, and that radio communication does not fall within the class of subjects mentioned in this clause 16.

113 Is it, then, within the class of subjects described in clause 13, "Property and Civil Rights in the Province?" It is difficult to conceive of any legislation having a general effect that would not limit or affect in some way an individual's dominion over his property or over his actions; and if we are to hold that all legislation having this effect deals with property and civil rights in the province, within the meaning of clause 13, then that clause is all-embracing; and notwithstanding the general jurisdiction given to the Dominion Parliament in express terms by s. 91, the practical result would be that, by virtue of this clause 13 of s. 92, the province has general jurisdiction, limited only by the jurisdiction given to the Dominion in reference to the particular classes of subjects enumerated in s. 91.

114 Counsel for the provinces disclaimed any intention of arguing for any such extended interpretation of clause 13, and conceded that legislation merely affecting property and civil rights in the province would not necessarily be legislation in connection with that class of subjects. The argument is that a transmitting set and a receiving set are both pieces of property, and that the resident of a province has a right to use such property within the province, and that any legislation by the Dominion that presumes to control or limit his right to such user is legislation in respect of property and civil rights in the province. We are not, however, here dealing with a transmitter or a receiver simply as pieces of property, but are dealing with radio communication by means of these instruments; and it is shewn that the effects of that means of communication cannot be confined within the limits of the province.

115 It is clear that the provinces cannot, by legislation under clause 13, effectively deal with radio communication and so control it as to make that class of service available within the province to any degree of efficiency. No one province can prevent the entrance of these electro-magnetic waves from another province, or in any way eliminate the interference coming from outside the province. The subject can only be dealt with effectively by the Dominion Parliament. The various International conferences and treaties that have been entered into, to which Great Britain and Canada are parties, for the regulation and control of radio communication, in order to make it available and useful to people of all these countries, and the negotiations on the subject still in progress, shew that even the Parliament of Canada is unable of itself to exercise the control and regulation necessary to secure to the Canadian people the full benefits of this recently discovered and marvellous means of communication.

116 A good deal has been said as to the importance, to provincial governments, of radio communication for maintaining easy connection with the large areas within their bounds, sparsely inhabited or uninhabited, but containing natural resources of great value, such as timber, requiring supervision, that is greatly facilitated by radio service. This, however, contributes little to the argument, because the object and effect of Dominion legislation on the subject is not to deprive provincial governments and residents of the provinces of radio service, but to secure it to them in a degree of efficiency otherwise unobtainable, by preventing disturbance from bringing about a condition of chaos that the provincial legislatures themselves have not jurisdiction to prevent.

117 Legislation by the Dominion Parliament on the subject no doubt affects the use that the resident of a province may make of a piece of property that he owns, namely, a transmitter or a receiver, and may affect what is claimed to be a civil right to use such property within the province, but it is not legislation directly dealing with property and civil rights in the province. It is legislation, in my opinion, dealing with a subject not included in the classes of subjects expressly mentioned in s. 91 or s. 92, which therefore falls within the general jurisdiction assigned to the Dominion Parliament by s. 91.

118 In view of what has just been stated, it becomes unnecessary to discuss the jurisdiction that may be conferred on the Dominion Parliament in reference to radio communication by s. 92-10 (*a*). It has been held that the word "Telegraphs" in that subsection includes telephones, though telephones were not invented until several years after the passage of the *British North America Act. Attorney-General v. Edison Telephone Company*[FN28]. If this case is authority for holding that radio communications are telegrams, then the jurisdiction over that subject vested in the Dominion Parliament by virtue of this clause (*a*) may amount, practically, to general, or almost general, jurisdiction, because radio communication connecting a province with any other or others of the provinces, or extending beyond the limits of the province, could not be carried on with any degree of efficiency without controlling the disturbance that would otherwise arise from radio communication within the various provinces.

119 I am of opinion that question no. 1 should be answered in the affirmative.

120 It therefore becomes unnecessary to answer question no. 2.

The official judgment of the court is as follows: *Anglin C.J.C.*:

121 Q. 1. In view of the present state of radio science as submitted, Yes.

122 Q. 2. No answer.

***Newcombe J.*:**

123 Q. 1 should be answered in the affirmative.

124 Q. 2. No answer.

***Rinfret J.*:**

125 Q. 1. Construing it as meaning jurisdiction in every respect, the answer is in the negative.

126 Q. 2. The answer should be ascertained from the reasons certified by the learned judge.

***Lamont J.*:**

127 Q. 1. Not exclusive jurisdiction.

128 Q. 2. The jurisdiction of Parliament is limited, as set out in the learned judge's reasons.

***Smith J.*:**

129 Q. 1. Should be answered in the affirmative.

130 Q. 2. No answer.

Solicitors of record:

Solicitor for the Attorney-General of Canada: *W. Stuart Edwards*.

Solicitor for the Attorney-General of Ontario: *E. Bayly*.

Solicitor for the Attorney-General of Quebec: *Charles Lanctôt*.

Solicitor for the Attorney-General of Manitoba: *W.J. Major*.

Solicitor for the Attorney-General of New Brunswick: *John B.M. Baxter*.

Solicitor for the Attorney-General of Saskatchewan: *M.A. MacPherson*.

Solicitor for the Canadian Radio League: *Brooke Claxton*.

FN1 [1930] A.C. 124.

FN2 [1905] A.C. 52, at 57.

FN3 (1880) 50 L.J. C.L. 145.

FN4 [1898] A.C. 700, at 715.

FN5 [1925] A.C. 396, at 406.

FN6 [1896] A.C. 348, at 360.

FN7 [1898] A.C. 700, at 715.

FN8 [1912] A.C. 333.

FN9 [1930] S.C.R. 663 at 702.

FN10 [1896] A.C. 348, at 359.

FN11 [1902] A.C. 73.

FN12 [1930] S.C.R. 663, at 684.

FN13 [1930] A.C. 124.

FN14 [1912] A.C. 333.

FN15 [1931] S.C.R. 357.

FN16 [1927] A.C. 925.

FN17 [1925] S.C.R. 434, at 448.

FN18 [1922] 1 A.C. 191.

FN19 [1912] A.C. 333.

FN20 [1925] A.C. 396, 412.

FN21 [1912] A.C. 333.

FN22 [1930] S.C.R. 663.

FN23 (1881) 7 App. Cas. 96.

FN24 [1916] 1 A.C. 588.

FN25 [1922] 1 A.C. 191.

FN26 [1896] A.C. 348, at 360.

FN27 [1925] A.C. 396, at 406.

FN28 (1880) L.R. 6 Q.B.D. 244.

END OF DOCUMENT

TAB 14

1880

CORRY v. GREAT WESTERN RAILWAY CO.

C. P. D.

inasmuch as it is brought to try a question of much importance we think the defendants should have leave to appeal.

Judgment accordingly.

Solicitors for plaintiff: *Warry, Robins, & Burges, for Messrs. Ffooks, Sherborne, Dorset.*

Solicitor for defendants: *R. R. Nelson.*

Dec. 20.

Ex. D.

THE ATTORNEY-GENERAL *v.* THE EDISON TELEPHONE COMPANY OF LONDON (LIMITED).

Telegraph—Telephone—Postmaster-General—Telegraph Acts, 1863 (26 & 27 *Vict. c.* 112), *s.* 3; 1868 (31 & 32 *Vict. c.* 110); *and* 1869 (32 & 33 *Vict. c.* 73), *ss.* 3, 4, 5, 6.

Edison's telephone, for which patents were granted in 1877 and 1878, consists of a transmitter, a wire, and a receiver. When sounds are spoken into the transmitter, electric currents of varying intensity pass along the wire, so that corresponding or equivalent sounds are heard at the receiver, and two persons at a distance can thus converse with one another. A company leased these telephones to subscribers at yearly rents which produced a profit to the company, and arranged the wires so that subscribers could converse with one another when put into communication by a servant of the company:—

Held, that Edison's telephone was a "telegraph" within the meaning of the Telegraph Acts, 1863 and 1869, although the telephone was not invented or contemplated in 1869.

Held, also that a conversation through the telephone was a "message," or at all events a "communication transmitted by a telegraph," and therefore a "telegram" within the meaning of those Acts; and that since the company made a profit out of the rents, conversations held by subscribers through their telephones were infringements of the exclusive privilege of transmitting telegrams granted to the Postmaster-General by the Act of 1869, and were not within the exceptions mentioned in s. 5.

INFORMATION. The facts and arguments appear in the judgment.

Sir H. James, A.G., Sir F. Herschell, S.G., E. E. Kay, Q.C., C. T. Simpson, W. W. Karslake, and *Moulton,* for the Crown.

Benjamin, Q.C., R. E. Webster, Q.C., and *Cozens-Hardy,* for the defendants.

Cur. adv. vult.

1880

ATTORNEY GENERAL *v.* EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

1880. Dec. 20. The judgment of the Court (Pollock, B., and Stephen, J.) was read by

STEPHEN, J. This was an information filed by the Attorney-General against the Edison Telephone Company of London (Limited), and heard before my Brother Pollock and myself on the 29th of November and four following days. The facts were not in dispute, and they were as follows:—

The defendant company was formed in August, 1879, for the purpose of working two patents granted to Mr. Edison, namely, one on the 30th of July, 1877, "for the invention of improvements in instruments for controlling by sound the transmission of electric currents, and the reproduction of corresponding sounds at a distance;" and the other, on the 15th of June, 1878, "for the invention of improvements in telephones and apparatus employed in electric circuits." The nature of the instruments patented, and the manner in which they are used by the company are as follows: The telephonic apparatus consists of three parts, namely —first, an instrument called a transmitting instrument, into which a person speaks: secondly, an ordinary telegraphic wire through which an electric current passes; thirdly, an instrument called a receiving instrument, at which another person hears sounds. The transmitting instrument consists of a mouthpiece, into which the person using the instrument speaks; a tympanum or disc, which vibrates under the impulse of the words spoken; and a substance brought into the lightest possible contact with the tympanum, and also brought into relation with the electric wire, the nature of which substance is such, that the vibrations of the tympanum are by its means represented by variations in the electric current in the wire. The wire is exactly like any other telegraphic wire. The receiving instrument consists of a cylinder of chalk, which is damped by some chemical liquid, and is capable of being made to revolve by clock-work; a metal disc which touches the cylinder of chalk; and a tympanum. When the apparatus is to be used, the chalk cylinder is made to revolve, whereby friction is produced between the surface of the cylinder and the disc which touches it. The electric current passes from the wire into the chalk, and as it passes decomposes a part of the liquid, by which the chalk is moistened. The amount of decom-

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

position is greater or less according to the variations produced in the current by the vibrations of the tympanum at the transmitting end. The decomposition of the fluid varies the degree of friction between the chalk cylinder as it revolves and the metal disc applied to it. These variations are represented by vibrations in the metal disc, and these vibrations cause the tympanum at the receiving end to vibrate in correspondence with the vibrations of the tympanum at the transmitting end, and so to emit sounds equivalent to those which are uttered at the transmitting end. The sounds so reproduced differ from the sounds uttered by the speaker, but they reproduce these sounds with such precision and completeness, that the voices of different speakers at the transmitting end can be recognised and distinguished from each other at the receiving end. This account of the apparatus used by the Telephone Company would, of course, be altogether incomplete for scientific purposes, but it is, we think, sufficient for the purpose of explaining our judgment.

We must now state the manner in which the apparatus described is used by the company. They have a central office in Queen Victoria Street, called the Central Exchange. They have also district offices in various parts of London called District Exchanges, and from the District Exchanges wires run to the houses or offices of subscribers in the neighbourhood. At each exchange, district or central, is an instrument called a switch board, by which any two wires running from that exchange can be connected with each other. The switch board is an instrument well known in telegraphic operations, and is constructed as follows: The wires running to the place where it is kept are brought down in front of the switch board in a vertical direction and parallel to each other. Behind, but not in contact with them, are horizontal wires. If it is desired to connect any two of the vertical wires, a metal peg is pushed through a hole in each of the vertical wires to be connected till the peg touches the horizontal wire running between and behind the vertical wire. The electric current in the first vertical wire then passes down the peg put through that wire, along the horizontal wire, up the peg passed through the second vertical wire, and along the second wire. If a subscriber, A. wishes to communicate with another subscriber,

B., the process is as follows: A. first attracts the attention of a servant of the company, stationed at the District or Central Exchange, as the case may be. He does this by pushing a button, by means of which an electric current lifts a spring, which keeps in position a small metal shutter, covering a number corresponding to A.'s name. The shutter falls. The servant upon this sees A.'s number, and connects his own receiving instrument with A.'s wire. A. thereupon names the person to whom he wishes to speak, namely, B. The servant puts A.'s wire in communication with B.'s wire, and shuts the shutter which had been opened, and A. and B. converse. When their conversation is over, one or both pushes his button and causes his shutter to fall, upon which the servant disconnects the wires.

If the subscribers' wires are each connected with the same District Exchange, the words spoken pass over three separate wires, or portions of wire, which may belong to three different people, namely, A.'s wire, which may belong to or be rented by A., the small length of wire on the switch board, which belongs to the company, and B.'s wire, which may belong to or be rented by B. If A. and B. have to communicate through the Central Exchange, the words spoken would pass over five separate portions of wire, namely—first, A.'s wire, to the District Exchange, with which A. communicates; second, the company's trunk wire from the District Exchange to the Central Exchange; third, the small portion of wire on the switch board at the Central Exchange; fourth, the company's trunk wire between the Central Exchange and the District Exchange, with which B. communicates; and, fifth, B.'s wire to the District Exchange, with which B. communicates. Of these numbers, 2, 3, and 4 belong exclusively to the company, No. 1 may belong to or be rented by A., and No. 5 by B. Agreements are made between the company and its subscribers, by which the wire and the telephonic apparatus necessary for working it are leased to the subscriber at a rent in consideration of which the company contract, among other things, that they will, "Upon request made through the said telephone at any time during the continuance of this agreement, between the hours of 9 A.M. and 6 P.M., Sundays excepted, put the lessee in telephonic communication with the telephone of any other subscriber to the

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

said exchange whose wire is free." The rents are so calculated as to leave a profit for the company after paying the expenses of maintenance, &c.

The information charges that the use in this manner of the apparatus described is an infringement of the exclusive privilege of the Postmaster-General as to the transmission of telegrams. We must now consider what that privilege is. It is created by the 4th section of the Telegraph Act, 1869 (32 & 33 Vict. c. 73), in these words: "The Postmaster-General . . . shall . . . have the exclusive privilege of transmitting telegrams within the United Kingdom of Great Britain and Ireland, . . . and shall also within that kingdom have the exclusive privilege of performing all the incidental services of receiving, collecting, or delivering telegrams except as hereinafter provided." The 3rd section defines the words employed as follows: "The term 'telegram' shall mean any message or other communication transmitted or intended for transmission by a telegraph. The term 'telegraph' shall, in addition to the meaning assigned to it in the Telegraph Act, 1863, mean and include any apparatus for transmitting messages or other communications by means of electric signals." The Telegraph Act of 1863 defines "telegraph" thus: "The term 'telegraph' means a wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube or pipe enclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication."

Putting these enactments together, and substituting the definitions given for the words defined, the material part of s. 4 of the Act of 1869 will stand thus: "The Postmaster-General shall have the exclusive privilege of transmitting messages or other communications transmitted, or intended for transmission, by any wire or wires used for the purpose of telegraphic communication, with any casing, coating, tube, or pipe inclosing the same, and any apparatus connected therewith for the purpose of telegraphic communication, or by any apparatus (other than such wire) for transmitting messages or other communications by means of electric signals." In simpler language, the Postmaster-General is to have the exclusive privilege of transmitting messages or other communications by any wire and apparatus connected

therewith used for telegraphic communication, or by any other apparatus for transmitting messages or other communications by means of electric signals. The result of the definition seems to be that any apparatus for transmitting messages by electric signals is a telegraph, whether a wire is used or not, and that any apparatus, of which a wire used for telegraphic communication is an essential part, is a telegraph, whether the communication is made by electricity or not. It would include, on the one hand, electric signals made, if such a thing were possible, from place to place, through the earth or the air: and on the other, a set of common bells, worked by wires pulled by the hand, if they were so arranged as to constitute a code of signals. By s. 6 of the Act of 1869, "any company, corporation, or person who transmits, or aids, or is concerned in transmitting any telegram in contravention of the exclusive privilege" above referred to is rendered liable to a penalty of 5*l.* for every such offence. Penalties are not asked for by this information, but the allegation made by it is that an offence has been committed, and the question for our determination is, whether this is or is not the case.

The case for the Crown is that every such conversation as the one which we have supposed to take place between A. and B. is a "message or other communication transmitted by wire used for the purpose of telegraphic communication with certain apparatus (namely, a transmitting and a receiving instrument) connected therewith for the purpose of telegraphic communication;" and that whenever such a conversation takes place the speakers and the company, by their servant, transmit, and that the company, at all events, aid and are concerned in transmitting such a message or communication. More particularly, it was argued that every member of this definition is satisfied by such a conversation so carried on. The conversation must be a communication, even if the word "message" is less appropriate. It is "transmitted" or sent through a wire used for the purpose of communication, and that communication is telegraphic according to the common use of language, though it involves no writing. The various affidavits filed give a complete history of the word "telegraph," and shew that from the first invention of semaphores till within the last few years no contrivance of the sort did literally write at a distance,

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

but that the word was applied to a variety of contrivances which, by signals perceptible sometimes by the sense of sight and sometimes by the sense of hearing, conveyed intelligence to great distances in a much shorter time than a letter could be carried. On these grounds it was said that to hold such a conversation as described was to transmit a telegram within the meaning of the Act. As to the exceptions, it was contended for the Crown that the burden of bringing the case within one or more of them was upon the defendants, which is no doubt correct.

The arguments for the defendants may be reduced to three points: first, no communication by telephone is a telegram, because a telephone and a telegraph differ essentially; secondly, when two persons converse by means of a telephone they do not transmit a message or communication within the meaning of the Telegraph Act of 1869; thirdly, if such a conversation is the transmission of a message or communication within the Telegraph Act of 1869, it is within either the first or the second of the exceptions in s. 5 of the Act of 1869. The first contention was supported by the following arguments: It was argued that telephonic communication consisted in the transmission of the human voice to distances greatly exceeding those to which it can naturally reach by means altogether unknown in 1863, or even in 1869, when the Telegraph Acts were passed which we have to construe, and this, it was said, is an entirely new result, produced by entirely new means. The transmitting instrument is, it was argued, quite new, the method of varying the force of the current in the wire by collecting and impressing upon it the vibrations of the human voice having been altogether unknown before the inventions of Mr. Graham Bell and Mr. Edison. In the same way the receiving instrument is absolutely new. In 1869 means were no doubt known by which the interruption and re-establishment of an electric current at the transmitting end of a wire would cause sound mechanically at the receiving end, but in such cases the sound was created at the receiving end—as, for instance, by magnetising and demagnetising a piece of iron, which when magnetised drew down on itself a small steel bar with a click, which resumed its position by means of a spring when the magnet ceased to act as such; but the transmission of the actual vibrations of the voice through the length

of the wire and their re-translation into sound at the receiving end were unknown till the recent invention. Thus the means used were entirely new, and so was the result produced.

This is forcibly stated in various affidavits made by men of the highest scientific eminence. Sir W. Thompson says, "When the Telegraph Acts were passed the telephone had not been invented, and no one concerned in that legislation had the slightest idea, nor had any one living the slightest idea, that it would be possible so to extend the power of speech as to enable persons at a distance to converse with one another." Professor Stokes says, "Neither the transmitter nor the receiver of the telephone in any way resemble in their mode of operation the corresponding parts of a telegraphic instrument, and if a single word is to be used to include both a telephone and a telegraph it must, in my opinion, be wide enough to cover every instrument which may ever be invented which employs electricity transmitted by a wire as a means for conveying information." Professor Tyndall says, "Prior to the labours of Bell and Edison it had never to my knowledge entered into the thoughts of scientific men to transmit by means of electricity the tremors of the human voice, so as to reproduce audible and articulate speech at a distance. The proof that this was not only possible but practical appeared to those most familiar with experimental physics to be an application of electrical and acoustical science not only new but marvellous. I have, therefore, no hesitation in expressing the opinion that to confound the telephone with the telegraph would be to place in the same category utterly dissimilar things." Dr. Fleming, who has been engaged for many years in the study of the subject, says, "The Edison telephone is only a complicated form of speaking trumpet;" and he also says, "When I, standing in one closed room, shout to another person in an adjoining room, the waves of sound from my voice beat against the wall, transmit their motion to the particles of the wall, and these again hand on the motion to the air in the other room. In this case the molecules of the wall constitute an apparatus by which motion of the air in one place is repeated in another. The Edison telephone does just the same thing." So Lord Rayleigh says, "The speaking telephone is an instrument for artifically extending by the use of electricity the

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

limits through which the human voice is audible. . . . The only essential difference between a speaking telephone and a speaking tube is, that in the former vibrations are transmitted in the electrical, in the latter in the aerial, form." Mr. Hopkinson says much the same at greater length.

We see no reason to doubt the statements of these distinguished men as to the novelty and other scientific merits of the transmitting and receiving instruments. Our attention was certainly called to a remarkable passage in a work by the Viscomte du Moncel, published in 1857, which no doubt suggests the possibility of such a contrivance as the telephone. Much evidence was also given as to an instrument invented in 1861 by a German named Reiss, which, it was contended, had more or less analogy to the telephone; but to these matters we attach no importance, because we cannot see in the speculations of Du Moncel, or in what was done by Reiss, anything that can be said, either in science or practice, to have anticipated the telephone of Edison or of Bell. Whether it is correct to speak of the telephone as actually transmitting sound, and as being in the nature of a speaking trumpet or speaking tube, seems much more questionable. Sir George Airy, Professor Adams, and Mr. Siemens expressly deny it, for reasons which we need not quote at length. Sir George Airy gives his reason in a very few words: "I do not believe that any such identity can be proved or reasonably stated to exist, and this I say for the reason that while we know the laws governing and the nature of the process which takes place during the transmission of sound through air, we really know nothing as to the nature and mode of operation of electric currents, or waves, or impulses, or tremors."

It was argued that no sound at all is perceptible between the transmitting and the receiving instrument; that the sound produced at the receiving end is produced not by the voice uttered at the transmitting end, nor by the vibrations set up by the voice in the electric current in the wire, but by the vibrations of the metal disc caused by the variations in the friction between the disc and the chalk cylinder. It was further said that the sound heard at the receiving end differs in a marked way from the sound uttered at the transmitting end, and that though the difference

between two voices can be recognised at the receiving end, this no more proves identity between the sounds uttered and the sounds heard than the fact that you can distinguish the photograph of A. from the photograph of B. proves identity between the faces of A. and B. and the photographs of A. and B. respectively. A consideration not mentioned during the argument may perhaps be added. The telephone in the transmission of sound substitutes the velocity of electricity for the velocity of sound. If the sound made by the voice reached the receiving instrument of the telephone, it would reach it long after the telephone had spoken, and it seems difficult to say that two sounds separately heard one after the other are each identical with the sound uttered, especially when the one which arrives first makes a different impression on the ear both from the words as spoken and from the words as first heard. Mr. Cromwell Fleetwood Varley mentions that he and his brother arranged two parabolic sounding boards in such a manner that they were accurately directed towards each other, and that words spoken by one brother into the focus of the one parabola were heard by the other brother at the focus of the other parabola, at a distance of over two miles. It would take about eight seconds for the sound to traverse this distance. If, therefore, the words had been spoken into a transmitting instrument at one focus in telephonic connection with a receiving instrument in the other focus, the one sound would have been heard eight seconds before the other. Can it be said that the two sounds were one and the same sound, or that the one sound travelled simultaneously over the two intervals of space at two different rates of speed?

We do not think it necessary to express any opinion on a controversy which is more scientific than legal, and perhaps more properly metaphysical or relative to the meaning of words than scientific, as it seems to turn upon the nature of identity in relation to sound. It is enough to say that, whatever may be the merits of the controversy, it does not appear to us that the fact, if it is a fact, that sound itself is transmitted by the telephone establishes any material distinction between telephonic and telegraphic communication, as the transmission if it takes place is performed by a wire acted on by electricity. We are of opinion,

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

then, that, fully admitting all that has been, or indeed can be said as to the novelty and value of the telephonic transmitter and receiver, the whole apparatus, transmitter, wire and receiver, taken together form "a wire used for the purpose of telegraphic communcation, with apparatus connected therewith, for the purpose of telegraphic communication"—that is, they are a telegraph within the definition of the Act of 1863, which is embodied by reference in the Act of 1869. The wire is a wire. The transmitting and receiving instruments are apparatus connected therewith for the purpose of conveying information by electricity; and this, as it seems to us, is telegraphic communication. Indeed, though for scientific purposes it may, no doubt, be necessary to distinguish between telegraphs and telephones, it seems to us that the word "telegraph," as defined in the Telegraph Acts, is (to use Professor Stokes's words) "wide enough to cover every instrument which may ever be invented which employs electricity transmitted by a wire as a means for conveying information." Indeed, looking to the extension of the definition inserted in the Act of 1869, the words "transmitted by a wire" might probably be left out of this definition.

That this view does no violence to the common use of language is proved, first, by the fact that in Mr. Edison's own specification the words "telegraph" and "telegraphic" are frequently used in reference to his invention, and that in Webster's Dictionary, published in 1856, an electro-magnetic telegraph is defined (under the head "Telegraph") as an "instrument or apparatus for communicating words or language to a distance by the use of electricity;" and (under the head "Electro-magnetic telegraph,") as "an instrument or apparatus which, by means of iron wires conducting the electric fluid, conveys intelligence to any given distance with the velocity of lightning."

Of course no one supposes that the legislature intended to refer specifically to telephones many years before they were invented, but it is highly probable that they would, and it seems to us clear that they actually did, use language embracing future discoveries as to the use of electricity for the purpose of conveying intelligence. The great object of the Act of 1863 was to give special powers to telegraph companies to enable them to open

streets, lay down wires, take land, suspend wires over highways, connect wires, erect posts on the roofs of houses, and do many other things of the same sort. The Act, in short, was intended to confer powers and to impose duties upon companies established for the purpose of communicating information by the action of electricity upon wires, and absurd consequences would follow if the nature and extent of those powers and duties were made dependent upon the means employed for the purpose of giving the information. Suppose a company found it essential to erect posts along a highway, and suppose the body having control of the highway gave their consent, would the validity of the consent, and therefore the liability of the parties concerned to an indictment for obstructing the highway, notwithstanding such consent, be dependent on the question whether the messages were sent by an Edison's transmitter or by a Morse key? Or, again, suppose that the company favoured particular customers, and so enabled their friends to get great advantages in trade or speculation over other persons, could they say, "We have a right to do so, notwithstanding s. 41, because we use telephones and not telegraphs?" Or, still more, if one of their clerks negligently refused to send a message or improperly divulged its contents, would they, for the same reason, be deprived of the summary remedy given by s. 45? Nearly every section of the Act would supply an additional illustration of the general conclusion that, but for the monopoly established in 1869, the Edison Telephone Company would be as anxious to be included in the Act of 1863 as they are at present to be excluded from it; but this is only an accident, which cannot affect the interpretation of the Act.

Looking at the Acts from the point of view of the Crown, we are led by a different road to the same conclusion. If a telephone is not a telegraph, then a telephonic communication is not a telegram, and if so, any company may not only transmit such messages, but may perform all the incidental services of collection and delivery; and if this is so there is nothing to prevent all the railroad and other companies in possession of telegraphs from applying to them telephonic transmitters and receivers, and carrying on the business of telegraphy just as they did before 1869. The customer would write his message at the counter and the

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

clerk would speak it through the telephone instead of using a less perfect instrument. It is difficult to suppose that the legislature intended to grant a monopoly so liable to be defeated, or that its language was meant to be so construed as to be limited to the then state of, perhaps, the most progressive of all sciences.

In this connection we may dispose of one or two minor arguments by which it was attempted to draw a distinction between telephonic messages and telegrams. It was said to be essential to a telegraphic message that it should be sent not direct from party to party, but through the intervention of a messenger or clerk, and also that it should consist of signals having a conventional meaning, and not of actual words spoken. It seems to us impossible to regard these matters as essential to the process. A clerk may be regarded merely as an extra link in a chain of communication, and signals are only imperfect substitutes for words. It would be a strange thing to say that improvements by which a step in a given process can be dispensed with, and by which the process itself may be perfected, destroy the character of the process. To take such a view would be to affirm that imperfections in an instrument are essential parts of it, and that their removal destroys it. Apart from this a practical difficulty arises. There has been a constant progress in the subject of electric communication from its first invention to the present day. Some of the means employed require no code of signals, and some can be worked by any one who can read and write, without any assistance from clerks. The A B C instrument worked by moving a hand successively to all the letters forming the message, and this moved a corresponding hand at the other end of the wire. Any two persons who could spell could use these instruments. Hughes's type-printing instrument prints the message in capital letters on a long narrow strip of paper. A telegraph called Cowper's writing telegraph has lately been invented, the nature of which is that a person holding a pencil at one end of the wire can write or even draw with it, and that a facsimile is produced by a corresponding pen set in motion by the electric current at the other end of the wire. Two papers were produced before us written in what was said to be Chinese character, and exactly resembling each other. The one was written by a Chinese lady,

and the other by the pen at the other end of the wire. Now, either these instruments are telegraphs and the messages sent by them telegrams within the Act, or they are not. If Cowper's writing telegraph is within the Act, it is difficult to say why a telephone is not. They equally dispense with clerks or messengers. If the sound is in any sense transmitted in the one case, the motions of the hand are in the same sense transmitted in the other. The one reproduces actual written words quite as accurately as the other reproduces words spoken, and if the one can properly be described as a complicated speaking trumpet, the other can with equal propriety be described as an elongated pen. If, on the other hand, Cowper's writing telegraph is not within the Act, it is equally difficult to say why Hughes's type-printer is within it. It requires no messenger or servant, at least at the receiving end, and it employs no special code of signals. It is, however, impossible to doubt that it is included, for it was in common use long before the Act of 1869, having been invented in 1854, and having procured the Grand Prix for its inventor at the Paris Exhibition of 1867. The result seems to be that it is impossible to draw the line between these instruments, and that all or none must be regarded as coming within the definition of the term "telegraph" so often referred to. For all these reasons, we hold that a telephone is a telegraph within the meaning of the Acts of 1869 and 1863.

The second point made by the defendant company was that, whether the telephone was a telegraph or not, the conversations held through it were not "messages or communications" sent by a telegraph within the meaning of the Act. This contention was founded partly on the argument that the directness of communication between the parties to the conversation rendered the word "message" inappropriate, and partly on the Telegraph Acts of 1863 and 1868, which it was said, use the word "message" in the sense of a substance with a message written upon it, and on the Telegraph Act of 1869, which, it is said, uses the word "communication" in a peculiar sense. As to the word "message," it is, no doubt, true that in several sections it is so used; but in others it seems to us to be used in the sense of the purport or tenor of the message. It is, for instance, an

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

offence to delay to "transmit or deliver" a message. "Transmit" obviously applies to the words and not to the paper; "deliver" to the paper and not to the words; and so in other cases. The same remark applies to the Act of 1868, in which the word "message" is frequently used, and which was commented upon by Mr. Webster minutely. All the difficulties raised or attempted to be raised appear to us to be capable of solution by the single principle already stated. The word "communication" in the definition of "telegram" given in the Act of 1869 was said to have found its way there from s. 16 of the Act of 1868, which authorizes the Postmaster-General to make contracts with the proprietors of newspapers and others for the transmission or delivery of "telegraphic communications" to them at certain times and on certain terms; and it was rather suggested than expressly argued that such communications only would be telegrams within the meaning of the definition of the Act of 1869. We do not agree with this view. The use of the word "communication" instead of message in s. 16 of the Act of 1868 certainly favours the opinion that there might be communications which would not be properly described as messages; but there is nothing in the definition of a telegram in the Act of 1869 which suggests that the word "communication" which it contains is to be restricted to the communications mentioned in s. 16 of the Act of 1868. It is very possible that the use of the word in the one section may have suggested its use in the other; but there is nothing to narrow its sense in the last-mentioned section. For these reasons we hold that a conversation held through a telephone is either a message, or, at all events, a communication transmitted by a telegraph, which is the definition of a telegram.

A small question was raised on the word "transmitted." When one person speaks to another it was said he "makes," but does not "transmit," a communication. The answer is, that when he speaks through a wire some miles long he sends what he says through the wire, or transmits it. As the defendants contended that the very voice itself was so sent, this seems specially clear as against them.

It was further argued that, admitting the conversations in question to be telegrams, they were still not within the Act of

1869, because the preamble of that Act recites that "similar powers to those conferred upon the Postmaster-General with respect to the exclusive privilege of conveying letters should be enacted with reference to the transmission of public telegraphic messages." This, it is said, confines the exclusive privilege as to telegrams within the limits within which the exclusive privilege as to letters is confined, and subjects it to the same tacit exceptions. But the exclusive privilege of the Postmaster-General as to letters is "the exclusive privilege of conveying from one place to another all letters" (7 Wm. 4 and 1 Vict. c. 33, s. 2) subject to certain exceptions. No express exception applies to the case of a man who carries his own letter with his own hand to the person to whom it is addressed. Yet this exception has always been regarded as tacitly implied in the Act, and no one ever supposed that a man who came within it violated the Postmaster-General's exclusive privilege. It was argued that, in like manner, if two friends communicated with each other directly by a telegraph of which they were joint owners, they would be outside of the sphere of the Act of 1869. To this argument there are, in our opinion, several conclusive answers. In the first place, we do not think that the recital in the preamble of the Act of 1869 ought to have the effect ascribed to it. Each Act must be construed independently. The practical inconvenience of construing the Post Office Act literally would be so very great that it can never have been seriously proposed so to construe it. It is enough to say that such a construction would have involved the consequence that when a letter was written it must be left on the table at which it was written till the postman called and took it away, visiting every room in every house for that purpose. Such a consequence is an absurdity; but there is no absurdity in supposing that the legislature meant to prohibit private electric telegraphs. The extent to which they were intended to be prohibited will appear from the exceptions to be considered immediately. In the next place, there is no real analogy between a man carrying his own letter to his correspondent's house and two men telegraphing to each other. In the one case the act done can, by no conceivable means, injure the revenue. In the other case an apparatus must be employed which may readily be made to injure the revenue. The object of

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

the Post Office Act is to give to the Postmaster-General an exclusive right to earn all that can be earned by carrying letters; but a man cannot pay himself for carrying his own letter. If he gets a friend to carry it for him he might pay, and this case is accordingly provided for by an express exception. In the third place, the customers of the Telephone Company do not in fact communicate directly with each other. They are put in communication by a servant of the company, and their messages travel in all cases over at least one wire, and in many cases over three separate wires, which are the property of the company. On all these grounds we hold that the conversations held through the telephone are infringements of the Postmaster-General's exclusive privilege, unless they can be shewn to be within the exceptions to that privilege.

We now pass to the exceptions. Those which are said to apply are the first and second in s. 5 of the Act of 1869. The first is in these words: "Telegrams in respect of the transmission of which no charge is made, transmitted by a telegraph maintained or used solely for private use, and relating to the business or private affairs of the owner thereof." The second is: "Telegrams transmitted by a telegraph maintained for the private use of a corporation, company or person, and in respect of which, or of the collection, receipt and transmission or delivery of which no money or valuable consideration shall be, or promised to be, made or given." These exceptions resemble each other so closely that it is not easy to put a case of a telegram which would fall within the first exception, and which would not fall within the second. Every "telegraph maintained or used solely for private use" must be a "telegraph maintained for the private use of a corporation, company, or person." A "telegram for which no charge is made" does not differ materially from a "telegram in respect of which, or of the collection, receipt and transmission or delivery of which, no money or valuable consideration shall be or promised" (the words "shall be" seem to be wanted before "promised") "to be made or given." And a message "relating to the business or private affairs of the owner" of the telegraph by which it is sent is a telegram. Thus the second exception seems to contain everything which can fall within the first and nothing more, except possibly telegrams not

charged for transmitted by a telegraph used solely for private use and relating to the business of the owner of the telegraph, such telegraph not being maintained by the owner. But no case occurs to us in which a man is likely to own a telegraph and use it exclusively for his own business and yet not to maintain it. Some light may perhaps be thrown upon the subject by an obscure provision in the first exception. This exception authorises individuals to keep telegraphs for their own use, and to send messages by them relating to their own affairs so long as no charge is made for the messages. This condition is, as it stands, unintelligible. How could a man make a charge to himself for sending a message on his own telegraph about his own affairs? It suggests that the exception may have been originally intended to provide for two classes of telegrams sent by telegraph maintained or used solely for private use, namely, first, telegrams relating to the private affairs of the owner; and, secondly, telegrams relating to other people's affairs, sent as an exceptional favour and not charged for; but this is certainly not said. The second exception provides not only for nearly every case provided for by the first exception, but also for the case which seems to have been, for some reason, omitted from the first exception, namely, telegrams relating to the affairs of the owners' friends sent gratuitously; for the telegrams to which the second exception refers may relate to any subject so long as they are not charged for, and so long as the telegraph by which they are sent is maintained for the private use of any corporation, company, or person.

Probably some amendment made while the Act was passing through parliament was the cause of this confusion, but, however this may have been, the effect of the two exceptions seems to us to be that if a person, company, or corporation has a telegraph maintained bonâ fide for his or its own use—if, for instance, a banker has a telegraph to communicate between his office in the city and another office in a distant part of London, or if under the Act of 1868 (s. 9, sub-s. 8) a railway has made arrangements with a coal master upon the company's system for a private telegraph between his coal pit and a station, they may not only send telegrams on their own affairs, but may also, under special circumstances, and if no charge is made, send messages on the affairs of others. This

1880

ATTORNEY GENERAL v. EDISON TELEPHONE COMPANY OF LONDON.

EX. D.

view of the exceptions shews how wide the exclusive privilege granted to the Postmaster-General was intended to be. But for them it would be unlawful for the owner of works spread over a great space of ground to have a telegraph to communicate between the different parts of the establishment, or for a man of business with two offices in different parts of London to have a telegraph between them. This supports what we have already said as to the difference between the exclusive privilege of the Postmaster-General in relation to telegrams and in relation to letters. The privilege relating to telegrams seems to us to be the wider of the two.

It was argued by the defendants that they were within the first exception, because in it the word "owner" ought to be read as including "owners," the effect of which was said to be that two persons might contribute to keep up a telegraph and use it for communicating with each other on affairs interesting to either, that each of them might again communicate with others, and that thus the country might in theory be covered with a network of telegraphic wires, each connecting two persons only. It was further suggested that if this were lawful, it would be lawful in order to avoid circuity and complication to consolidate the individual wires into a small number owned by a large number of subscribers, and this it was said was practically what was done by the defendant company. This ingenious argument appears to us to be unfounded, both in law and in fact. The exceptions seem to us to apply exclusively to telegraphs kept either by a single owner or under some express provision of the Telegraph Acts, like the one already referred to; but, quite apart from this, it is obvious that the telegraphs of the defendant company are neither owned nor maintained by the subscribers, nor are they used solely by the owners. The switch board and the trunk wires are the property of the defendant company, and they are essential to the system of communication adopted. Moreover, a charge in the shape of rent is made for the transmission of messages, and from this the company derives a profit. Each of these circumstances takes the case out of the exceptions, or rather prevents them from applying to it.

Lastly, it was asked by the defendants when and by whom the offence (if any) of the defendant company was committed. To

this we think the answer is, that if several persons combine to do an illegal act, each is guilty of the whole of it, so that when A. sends a telegram to B. by means provided by the company for that purpose, and under the provisions of a contract by which it is carried out, A., B. and the company are all guilty of an offence under s. 6 of the Act of 1869, namely, the offence of transmitting a telegram. Apart from this we think that when the company's servant puts A. in telephonic communication with B. the company aids and is concerned in transmitting a telegram, which, again, is an offence under the same section.

The result is, that we give judgment for the Crown, with costs. There will, accordingly, be declarations in the terms of paragraphs 1 and 2 of the prayer, an injunction in the terms of paragraph 3, and an order that an account be taken as in paragraph 4. (1)

Judgment for the Crown.

Solicitor for the Crown: *Horace Watson, Solicitor to the Post Office.*

Solicitors for defendants: *Waterhouse & Winterbotham.*

(1) The information prayed:—

1. A declaration that the wires and apparatus of the company are telegraphs within the meaning of the Telegraph Acts, and that messages or other communications transmitted by means of any such wires and apparatus as aforesaid are telegrams within the meaning of the same Acts.

2. A declaration that the transmission by or with the aid or permission of the company by means of any such wires and apparatus as aforesaid, of messages or other communications under or by virtue of contracts entered into upon the terms mentioned in the notices published and circulated by the company as aforesaid, or upon any terms under which any money or other consideration is or shall be paid or given, or promised to be paid or given, to the company, or of any other messages or other communications in respect of which or of the collection, receipt, transmission, or delivery of which any money or other consideration has been or shall be paid or given, or promised to be paid or given to the company, is an infringement of the exclusive privilege conferred on the Postmaster-General by the Telegraph Act, 1869.

3. That the company, their servants and agents may be restrained by the order and injunction of this Court from transmitting, and from aiding in or permitting the transmission within the United Kingdom, by means of any such wires or apparatus as aforesaid, of any message or other communication under or by virtue of any contracts or contract entered into upon the terms mentioned in the said notices, or upon any terms under which any money or other consideration is or shall be paid or given, or promised to be paid or given, to the company, or of any other message or other communication in respect of which or of the collection,

TAB 15

with the weight of *stare decisis*.[19] A court may nonetheless reject an established interpretation that it believes to be wrong.[20]

The concurring judgment of Major J. in *Schwartz v. Canada*[21] offers a striking illustration of the weight courts may be willing to attach to established interpretation. The majority in *Schwartz* held that s. 3 of the *Income Tax Act* applied to all sources of income and not just those enumerated in the section. This interpretation was supported by the wording of the section which defined the income of a taxpayer as

> the aggregate of amounts each of which is the taxpayer's income ... including, without restricting the generality of the foregoing, his income ... from each office, employment, business and property.

Major J., dissenting, argued that the apparently clear meaning of the section should be rejected on the following ground:

> Section 3(a) ostensibly permits taxation from any source ...
>
> However, a literal adoption of this position would arguably constitute a dramatic departure from established tax jurisprudence....
>
> If s. 3(a) were applied literally to provide for taxation of income from any source, then again it is arguable the existing jurisprudence would be placed in jeopardy.[22]

In certain respects, Major's judgment is surprising, especially given the Court's insistence on sticking to plain meaning when interpreting fiscal legislation. How can bad interpretation be allowed to change the law? On the other hand, when it comes to interpreting vague or difficult concepts, precedent is essential and the failure to follow it can breach of rule of law.

Dynamic vs. static interpretation. An adequate formulation of the original meaning rule must be complex enough to take into account the competing considerations canvassed above. The *Perka* case[23] indicates that courts in practice rely on two distinct formulations of the rule: (a) the words of an Act must retain their original sense or definition and (b) the words of an Act must receive the interpretation they would have been given when the Act was first passed. These formulations do not amount to the same thing. The sense or definition of a word is abstract – the sort of thing one finds in a dictionary. The way a word is interpreted is its reference, the way it is used in particular contexts. These contrasting conceptions of meaning often lead to different outcomes.

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19 See, for example, *Lax v. Lax*, [2004] O.J. No. 1700, 70 O.R. (3d) 520, at paras. 35-36 (Ont. C.A.).

20 See *Schwartz* (judgment of LaForest); *Canada (Attorney General) v. Abrahams*, [1983] S.C.J. No. 2, 142 D.L.R. (3d) 1 (S.C.C.).

21 [1996] S.C.J. No. 15, [1996] 1 S.C.R. 254 (S.C.C.).

22 *Ibid.*, at paras. 67-69.

23 See *supra* note 12.

When meaning is understood as the sense or definition of a word, then courts are obliged to work with the sense or definition accepted at the time of enactment and to ignore any subsequent change. However, this approach is not very constraining, particularly in the case of general terms or abstract concepts. The definition of a word attempts to describe a range of accepted usage and therefore tends to be broad. As Côté explains, even though the meaning of a word remains constant, the things or events that fall within its ambit may change dramatically over time.[24] Understanding the original meaning as the original sense or definition of words allows for a dynamic approach to interpretation. New inventions, changes in institutions or the environment and the evolution of new ideas may all be taken into account, provided they do not depend on an expansion of the original definition of the word.[25]

The other way of understanding the original meaning rule identifies original meaning with original interpretation. On this approach, the court asks itself how the language of the text would have been applied by contemporaneous interpreters if faced with the same set of facts.[26] Unlike its dictionary definition, the interpretation of a word takes into account the contextual considerations that readers bring to a text and that influence their appreciation of its meaning in relation to particular facts. These considerations are rooted in the reader's own circumstances and tie the interpretation to a particular time and place. The point is made clearly in *Romania (State) v. Cheng*, where MacDonald J., having identified original meaning with original interpretation, concluded: "Thus I must interpret the statute in the context of the late nineteenth century" when it was first enacted.[27]

Although the sense of words is slow to change, the contextual considerations that influence interpretation can change significantly over short periods of time. If courts are bound by the original interpretation of legislation (or by what they imagine that interpretation would have been), they cannot respond to such change. This understanding of the original meaning rule thus supports a static approach to legislation.

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24 P.-A. Côté, *The Interpretation of Legislation in Canada*, 3rd ed. (Cowansville: Les Éditions Yvon Blais Inc., 2000), p. 269.

25 As the Supreme Court of Canada points out, in *Society of Composers, Authors and Music Publishers of Canada v. Canadian Association of Internet Providers*, [2004] S.C.J. No. 44, [2004] 2 S.C.R. 427, at para. 43 (S.C.C.), dynamic interpretation is sometimes a burden: in the absence of new legislation, "the courts must struggle to transpose a *Copyright Act* designed to implement the *Berne Convention for the Protection of Literary and Artistic Works* of 1886, as revised in Berlin in 1908, and subsequent piecemeal amendments, to the information age, and to technologies undreamt of by those early legislators."

26 Canadian courts often use the expression *contemporanea expositio* to refer to this second way of understanding the original meaning rule. See, for example, *Budinsky v. Breakers East Inc.*, [1992] O.J. No. 65, 6 O.R. (3d) 255, at 287 (Ont. Gen. Div.); affd [1992] O.J. No. 120, 10 O.R. (3d) 120 (Ont. C.A.). Certainly contemporaneous understanding is helpful evidence of original meaning in this second sense, but it is to be distinguished from the meaning actually intended by the enacting legislature.

27 *Romania (State) v. Cheng*, [1997] N.S.J. No. 106, at para. 102 (N.S.S.C.).

The difference between these two understandings of the original meaning rule can be illustrated by looking at the so-called "person" cases.[28] The issue in these cases was whether the word "person" appearing in various legislative texts referred to men only, even though there was nothing in the language of the texts expressly excluding women. When these texts were first enacted, the definition of the word "person" obviously included women as well as men. However, it is safe to assume that contemporaneous interpreters would have interpreted the word as used in these contexts to exclude women.[29]

A court bound by the original meaning rule can reach different conclusions about whether women are "persons" by relying on one or the other understanding of the rule. If the court goes with original sense, there is no basis for excluding women since "person" has always included both males and females. On this approach, the court is bound by the original sense of the word "person", which included males and females, and it relies on current contextual considerations to decide whether the scope of the word should be narrowed. The fact that contemporaneous interpreters would have found the inclusion of women to be implausible is irrelevant. If the more static formulation is adopted, on the other hand, the court looks at the original meaning of "person" in light of the contemporaneous context. On this approach, a court would rely on contextual factors such as the barriers to women's participation in public life existing at the time to justify narrowing the scope of the word so as to exclude women.

APPLICATION OF THE RULE

How the rule is applied by the courts. The two understandings of original meaning described above co-exist within the original meaning rule and allow the courts maximum flexibility in responding to change. In exercising their discretion, courts are influenced by a number of factors that favour either a dynamic or a static approach. These include (1) the legislature's own intention respecting the dynamic or static character of the legislation; (2) the character of the legislative language; (3) the degree of discretion conferred on the interpreter; and (4) the kind of choice the interpreter is called on to make.

Legislative intention. An enacting legislature may have views on whether its legislation should receive a dynamic or a static interpretation and these views

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[28] These cases are canvassed in M. Ritchie, "Alice Through the Statutes" (1975), 21 McGill L.J. 685. See, in particular, *Edwards v. Canada (Attorney General)*, [1930] A.C. 124 (P.C.), revg [1928] S.C.J. No. 19, [1928] S.C.R. 276 (S.C.C.). See also *Ackland v. Yonge-Esplanade Enterprises Ltd.*, [1992] O.J. No. 2093, 10 O.R. (3d) 97 (Ont. C.A.), and cases discussed at 101-02. For another good illustration of the difference between these approaches, see *Hills v. Canada (Attorney General)*, [1988] S.C.J. No. 22, [1988] 1 S.C.R. 513 (discussed *infra*, at pp. 159-60), where the majority of the court insisted on adopting the original interpretation while the dissent preferred the original definition.

[29] For a very striking example, see *Viscontess Rhondda's Claim*, [1922] 2 A.C. 339 (H.L.).

may be expressed or indicated in the legislation. A preamble or a purpose statement, for example, may be used to signal the legislature's preference for a static or a dynamic approach. More often, however, the legislature's preference in this matter must be inferred.

In *Bogoch Seed Co. v. Canadian Pacific Railway Co.*[30] the Supreme Court of Canada was asked to determine whether rapeseed was a "grain" within the meaning of the *Crow's Nest Pass Act* and the Agreement authorized by the *Act*. When this legislation was first enacted the definition of the word "grain" was broad enough to include rapeseed, but because rapeseed was not grown commercially on the prairies, in practice it was not classified as a grain by prairie farmers and shippers. Later, with improvements in farming technology, rapeseed came to be grown in large quantities and regarded as a grain. On these facts it was open to the Court to adopt either a dynamic or a static approach. However, because the purpose of the Act was a narrow one, namely to implement a specific agreement between the Government of Canada and the Canadian Pacific Railway, the Court thought that the perspective of the original parties to the agreement should govern:

> The agreement was dealing with a reduction in the existing rates on grain and flour and it seems to me that the parties contemplated ... the effecting of a reduction in rates then applicable on what both parties, at that time, regarded as being grain.
>
> ... [I]t did not cover commodities which were not considered as grain at the time of the making of the agreement, even though they subsequently came to be considered as grain in the trade.[31]

In *Romania (State) v. Cheng*,[32] a static approach was adopted to ensure consistency between the meaning of "jurisdiction of a foreign state" in Canada's *Extradition Act* and its meaning in Canada's Extradition Treaty with Romania. Section 3 of the *Act* provided:

> 3. In the case of any foreign state with which there is an extradition arrangement this Part applies during the continuance of the arrangement, but no provision of this Part that is inconsistent with any of the terms of the arrangement has effect to contravene the arrangement, and this Part shall be so read and construed as to provide for the execution of the arrangement.

30 [1963] S.C.J. No. 20, [1963] S.C.R. 247 (S.C.C.).

31 *Ibid.*, at 255-56. See also *Re Vancouver Island Railway*, [1994] S.C.J. No. 35, [1994] 2 S.C.R. 41 (S.C.C.), where the Court relied on a static interpretation, even though the instrument being interpreted was constitutional, because it arose out of a negotiated agreement pertaining to commercial interests in particular land.

32 See *Romania*, *supra* note 27.

Since the contemporaneous evidence strongly suggested that when the Treaty was made the "jurisdiction" of a state referred to its territory alone, this was the meaning preferred by the court.[33]

As *Bogoch* and *Cheng* suggest, legislation that is aimed at a particular set of circumstances or is tied to a specific time or place invites a static interpretation. By contrast, legislation that is enacted to regulate an ongoing activity over an indefinite period of time invites a dynamic approach. This distinction is emphasized by the Supreme Court of Canada in *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*,[34] where the court had to interpret a portion of the *Immigration Act* that was enacted to implement international law. Bastarache J. wrote:

> International law is developing continuously.... The travaux préparatoires should be taken into account, yet this does not mean that courts are restricted to a precise interpretation of that material. Rather, consideration should be given to the underlying principles and concerns that they express with the aim of giving them a contemporary meaning. Similarly, with regard to state practice, some consistency should be maintained with the line of interpretation revealed by the practice of state parties, but that interpretation must be adjusted to take into account evolving ideas and principles in international law. The interpretation of international legal instruments is a dynamic process which must take into account the contemporary conditions. To put it another way, the interpretation must respond to the contemporary context.[35]

This analysis captures the essence of dynamic interpretation of law, whether international or domestic. When the purpose of legislation is to establish norms for long term regulation of an activity, and particularly when it establishes institutions for the administration of those norms, it is fair to infer that the legislature intends a dynamic approach.

Functional equivalence. Most modern legislation is drafted in general terms, which lend themselves to a dynamic approach. The sense of a general term often remains constant while the facts to which it applies may vary over time. If the new facts are functionally equivalent or analogous to facts that were within the ambit of the legislation when it first came into force, the courts have no difficulty in applying the legislation to the new facts. This is so whether the new facts have arisen because of changes in social attitudes or institutions or because of new technology.

The leading case on functional equivalence is *Attorney General v. Edison Telephone Co. of London*.[36] The court held that the provisions governing telegraphs in the Telegraph Acts were also applicable to telephones even though the telephone had not been invented when the provisions were enacted. In *Lumber-*

33 *Ibid.*, para. 94ff.
34 [1998] S.C.J. No. 46, [1998] 1 S.C.R. 982 (S.C.C.).
35 *Ibid.*, at 1059.
36 (1880), 6 Q.B.D. 244.

land Inc. v. Nineteen Hundred Tower Ltd.[37] the Supreme Court of Canada applied the principle to an article in the Civil Code which conferred a privilege on suppliers for materials used "in the construction" of a building. In concluding that the privilege extended not only to lumber incorporated into the building but also to lumber used to make forms for the pouring of concrete, Beetz J. wrote:

> ... no one could have foreseen the use of concrete, or of certain materials, such as wood, that are normally quite durable but undergo substantial deterioration when used in form work. However, the "law is ever commanding", as provided in s. 49 of the *Interpretation Act*[38]. The law commands the more easily, when, as is the case here, the letter of the law allows it to adapt to changes resulting from later inventions and improved techniques, and when this adaptation corresponds with the spirit of the measures whose application is involved. In this case, the principle intended by the legislator ... is that those persons whose labour or materials have conferred additional value on an immoveable [should] benefit....[39]

When the legislative language is general and the new facts are within the "spirit" or the "principle" of the legislation, the courts generally adopt a dynamic approach.

Discretion. All legislation confers a degree of discretion on courts or other official interpreters. This is unavoidable because legislative texts are not self-applying. Apart from that, however, a legislature may deliberately confer discretion on interpreters, whether explicitly through the creation of formal powers or implicitly through the use of abstract or of evaluative language such as "public interest" or "reasonable". Subject to any constraints expressed or implied in the legislation, this discretion is properly exercised in the interpreter's own context, taking into account current assumptions and values. This follows from the reasons for which discretion is conferred, namely, to ensure a decision that is sensitive to the circumstances of each case as it arises, and to permit the adaptation of the legislation to a variety of circumstances in an appropriate way.

The connection between discretion and a dynamic approach to interpretation has been noted by the courts. In applying the community standards test to determine what is obscene within the meaning of the *Criminal Code*, a number of courts have emphasized the importance of responding to changing social values. In *R. v. Butler*,[40] the Supreme Court of Canada adopted the following passage from the dissenting judgment of Freedman J.A. in *R. v. Dominion News & Gifts (1962) Ltd.*:

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37 [1975] S.C.J. No. 129, [1977] 1 S.C.R. 581 (S.C.C.).

38 R.S.Q. 1964, c. 1. See *supra* notes 9 and 10.

39 *Lumberland Inc. v. Nineteen Hundred Tower Ltd.*, *supra* note 37, at 593. See also *Harvard College v. Canada (Commissioner of Patents)*, [2000] F.C.J. No. 1213, [2000] 4 F.C. 528 (F.C.A.); *Apple Computer Inc. v. Mackintosh Computers Ltd.*, [1986] F.C.J. No. 278, [1987] 1 F.C. 173, at paras. 18 and 33 (T.D.). On appeal, Reed J.'s judgment was adopted by the Supreme Court of Canada at [1990] S.C.J. No. 61, [1990] 2 S.C.R. 209, paras. 14-15 (S.C.C.).

40 [1992] S.C.J. No. 15, [1992] 1 S.C.R. 452 (S.C.C.).

> Community standards must be contemporary. Times change, and ideas change with them.... We cannot and should not ignore these present-day attitudes when we face the question whether [materials] are obscene according to our criminal law.[41]

In *R. v. Zundel*,[42] the Supreme Court of Canada was concerned with s. 181 of the *Criminal Code* making it an offence to publish a falsehood that "is likely to cause injury or mischief to a public interest". In a dissenting judgment Cory J. wrote:

> Just as the community standards test as applied to the obscenity law "must necessarily respond to changing mores", ... so too should the test to define "injury to a public interest" take into account the changing values of Canadian society.[43]

In *Tataryn v. Tataryn Estate*,[44] the Supreme Court of Canada had to interpret s. 2(1) of British Columbia's *Wills Variation Act*, which was first enacted in 1920. It provided that a court may override a will that does not adequately provide for the testator's dependents and make whatever provision it considers "adequate, just and equitable." McLachlin J. wrote:

> The language of the Act confers a broad discretion on the court. The generosity of the language suggests that the legislature was attempting to craft a formula which would permit the courts to make orders which are just in the specific circumstances and in light of contemporary standards. This, combined with the rule that a statute is always speaking ...,[45] means that the Act must be read in light of modern values and expectations. What was thought to be adequate, just and equitable in the 1920's may be quite different from what is considered adequate, just and equitable in the 1990's.... Courts are not necessarily bound by the views and awards made in earlier times. The search is for contemporary justice.[46]

The Court here appropriately interprets its authority under the Act as a mandate to apply evolving norms of adequacy, justice and fairness.

Specific and technical terms. Many of the cases in which the courts have adopted a static interpretation involve legal terms of art or other technical terms. The *Perka* case is an example.[47] The issue in *Perka* was the meaning of the phrase "*Cannabis sativa* L." in the list of prohibited substances under the *Narcotic Control Act*. At the time this expression was added to the Act, botanists believed that the various types of cannabis all belonged to the single species *Cannabis sativa* L. By the time the defendants were charged with possession,

41 ; quoted with approval in *R. v. Butler*, *supra* note 40, at 477 and in *R. v. Labaye*, [2005] S.C.J. No. 83, [2005] 3 S.C.R. 728, at para. 55 (S.C.C.).

42 [1992] S.C.J. No. 70, [1992] 2 S.C.R. 731 (S.C.C.).

43 *Ibid.*, at 823.

44 [1994] S.C.J. No. 65, [1994] 2 S.C.R. 807 (S.C.C.).

45 See *supra* note 9.

46 See *supra* note 44, at 814-15.

47 *Perka v. R.*, [1984] S.C.J. No. 40, [1984] 2 S.C.R. 232 (S.C.C.).

botanists had come to believe that there were several species of cannabis of which sativa L was only one. In these circumstances, the Court concluded that "*Cannabis sativa* L." should be interpreted to include all known species of cannabis since that is how the term was originally understood. Dickson J. wrote:

> Broad statutory categories are often held to include things unknown when the statute was enacted. In *Gambart v. Ball*,[48] for example, it was held that the *Engraving Copyright Act* of 1735, which prohibited unauthorized engraving or "in any other manner" copying prints and engravings, applied to photographic reproduction — a process invented more than one hundred years after the Act was passed.... This kind of interpretive approach is most likely to be taken, however, with legislative language that is broad or "open-textured".... But where, as here, the legislature has deliberately chosen a specific scientific or technical term to represent an equally specific and particular class of things, it would do violence to Parliament's intent to give a new meaning to that term....[49]

Technical terms tend to be precise; they do not readily lend themselves to the kind of organic evolution associated with ordinary language, an evolution that often depends on metaphor. Technical terms are used when a speaker wants to be exact and to avoid the uncertainty and rich possibility of general reference. For these reasons, technical terms tend to attract a static rather than a dynamic interpretation.

Courts avoid second-guessing the legislature. As a rule, general language will not be extended to new facts if these have already been the subject of legislative consideration. This point was made by Décary J.A. in *Symes v. R.*[50] The issue was whether the concept of a business expense embodied in s. 18(1)(a) of the *Income Tax Act* was broad enough to cover the salary paid by the taxpayer to her child care worker. The taxpayer argued that with large numbers of women entering the work force, the means by which income was earned from business and professional careers had changed. In these new circumstances the salary paid by a working professional woman for child care is functionally equivalent to tradi-

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48 (1863), 32 L.J.C.P. 166.

49 *Perka v. R.*, *supra* note 47, at 265-66. See also *Blank v. Canada (Minister of Justice)*, [2006] S.C.J. No. 39 (S.C.C.), where the Supreme Court of Canada had to interpret the term "solicitor-client privilege" in s. 23 of the federal *Access to Information Act*. Fish J. wrote, at para. 4: "As a matter of statutory interpretation, I would proceed on the same basis. The *Act* was adopted nearly a quarter-century ago. It was not uncommon at the time to treat 'solicitor-client privilege' as a compendious phrase that included both the legal advice privilege and litigation privilege. This best explains why the litigation privilege is not separately mentioned anywhere in the *Act*. And it explains as well why, despite the *Act's* silence in this regard, I agree with the parties and the courts below that the *Access Act* has not deprived the government of the protection previously afforded to it by the legal advice privilege *and* the litigation privilege: In interpreting and applying the *Act*, the phrase 'solicitor-client privilege' in s. 23 should be taken as a reference to both privileges."

50 [1991] F.C.J. No. 537, [1991] 3 F.C. 507 (F.C.A.); affd [1993] S.C.J. No. 131, [1993] 4 S.C.R. 695 (S.C.C.).