**THE CASE FOR PREVENTING THE SALE OF
ORILLIA HYDRO DISTRIBUTION**

*By Frank Kehoe, Intervenor to the Ontario Energy Board Hearing*

Our provincial hydro system is a complete train wreck leading to a financial tragedy for electricity consumers. The provincial electricity rates are now the highest in North America. This hydro disaster is the result of the former Ontario Hydro multiple corporations operating out of control and the provincial introduction of deregulation that was, at the time, promised to lead to a reduction on the rates for consumers.

With provincial deregulation all electrical commissions in the province were forced to incorporate and operate under the Provincial Corporations Act. With this new corporation regulation, the former commissions were completely eliminated and the municipal councils across the province, with the new Electricity Act, became the shareholder of record of the newly formed Orillia corporations. The Orillia City Council then enacted a process to redirect massive monies from Orillia citizens’ proudest electrical asset into the city’s general revenue account. The process used, although probably legal, meant that the city council, could then extract millions of dollars and ignore the founding fathers’ rule that the electricity arm would be separate and apart from council involvement. Throughout the operation of the O.W.L.P., the electrical asset, from its inception, respectfully operated independently with the electrical rates alone with no money ever flowing out of the city’s tax revenue.

**DEBT CREATED**

The city council, within the new corporations, now created on the corporations’ books, massive new debt that is to be paid to the city at extremely high interest rates. The Distribution Corporation now showed a debt of nine million, seven hundred and six-two thousand dollars ($9,762,000) and the Generation Corporation five million and thirty-four thousand dollars ($5,034,000) for a total of fourteen million, seven hundred and ninety-six thousand dollars ($14,796,000). The initial interest rate, set by council, was 7.5% with interest only to be paid up to December 31st, 2030. This means that at the expiry, no principal will have been paid and the combined amount of $14,796,000 would still be owing.

**THE DIVIDENDS**

Throughout the latter years of the Orillia Water, Light and Power, in times of good water flows, and when the commission was free of debt, paid a dividend to all electrical consumers based on their metered use of electricity.

The dividend total generally ranged in the neighbourhood of one million to one million, fifty thousand dollars ($1,000,000 to $1,050,000). As of the transfer date, from commission to corporations, the Orillia Water, Light and Power Commission was completely debt free and had more than seven million dollars ($7,000,000) in the bank and receivables prior to setting the next year’s budget that was now the responsibility of the newly appointed corporation directors. The city council then enacted a process, built into the corporation structure, to pay to the city a much larger dividend which was not related, in any way, to water flows nor debt. The city council then enacted a process, built into the corporations’ structure, by alleged promissory notes, to pay to the city, not Orillia’s electrical consumers, a dividend which was not related, in any way, to water flows nor debt. The city then took one million, one hundred thousand dollars ($1,100,000) (minimum) up to one million, six hundred thousand dollars ($1,600,000) annually from the peoples’ electrical asset (not shown on the consumers’ electrical bill).

The affect of the newly shown corporation debt as well as the dividends and, other yet unidentified, city expenditures from the date of transfer (November 2000 to December 31st, 2016) is alleged to be in the neighbourhood **of forty-four million dollars ($44,000,000).** So, using this figure, which may be more or slightly less, it is best to make a calculation based upon the new electrical corporations having a published 13,400 metered consumers:

**$44,000,000 divided by 13,500 consumers equals $3,259.26 for the average of all the consumer, based on their metered consumption (Many, however, will be higher and many will be lower).**

The average consumer, from Year 2000 to December 31st, 2016, would have paid close to this amount plus the appropriate HST of 13% (GST of 8%).

When the consumer looks at the $3,259.26 figure and divides that by 16 years, the average Orillia electricity consumer would be paying $203.70 annually plus $26.48 (HST) for a total of $230.18 to the City of Orillia **over and above their municipal tax levy**. Renters, who pay for their electricity separately, may be considered to be “municipal tax payers”. None of the aforementioned appears on the consumer’s electricity bill. No member of the last elected electrical commission, and I would expect the electrical consumers up until the year 2014 were aware of this unrelated electricity process brought on, in part, by provincial deregulation and decisions made by city council.

**A PROCESS TO ENSURE SECRECY**

The Orillia Electrical consumers, as well as the formal press, are all barred from access to information related to the finances or operation of the Orillia Electricity Corporations. The corporations are now excluded from “Freedom of Information” legislation, as well as having to conform to a city council bylaw which now introduces a secrecy (confidential) clause that bars the utility staff from providing any information on the operation or finances of Orillia’s utility corporations.

In the Ontario Energy Board public hearing submissions by the appellant, Frank Kehoe has included a book of the pertinent documents comprising 351 pages and a 14-page additional document entitled “Book Two”. These include the referendum documents (solicitors’ opinions), pertinent city bylaws, letters to and from council and other documents that are all meant to be appeal exhibits and not just correspondence and can be all accessed on the Ontario Energy Board website: ***https://www.oeb.ca/participate/applications/current-major-applications/eb-2016-0276.***

**DEMOCRACY AND LAW**

To properly explain, I have included sections of our Ontario Energy Board Book Two submission to highlight a major segment of the appeal, namely:

***The appellant recognizes that the distinguishing feature of our Canadian democracy, that contains our rights and freedoms of Canadians, highlights that all Canadian governments: federal, provincial and municipal - derive their authority from their citizens.***

**DIRECT DEMOCRACY**

***Direct democracy is clearly defined as government in which its citizens, under certain circumstances, are permitted to vote on laws. The common version of this process is done, for the most part, in the legal form of duly called referendums to decide and entrench a legal issue or question. The result of a duly called peoples’ referendum voted upon by its citizens is then binding and law.***

***A binding referendum issue can, however, be changed or amended at any time as long as the process used is the same manner as it was enacted (a vote of the eligible electorate) and if the people vote against such change or amendment, the original referendum law stands.***

**ORILLIA REFERENDUM ESTABLISHING O.W.L.P.**

***The substance of the Orillia citizens’ 1913 referendum that established the Orillia Water, Light and Power Commission, forms two distinct purposes: 1) The total removal of the peoples’ owned electricity asset from any and all council involvement or control; 2) The responsible nominated or eligible people shall be elected, not appointed, using the same process used for municipal elections and the tenure of such directors will be decided by an appropriate electoral vote at election time.***

 **Canadian Democracy**

***In a democratic society, lawmakers must recognize that the electorate, in a referendum, has rights which are guaranteed. Government representatives must always clearly recognize that they have responsibilities which are not to be evaded and always recognize and protect appropriate legal referendum outcomes. The experience of now a century and a half of Canadian democracy has demonstrated that our system of free government functions best when the maximum degree of information is made available to the people. In fact, free and candid discussion of vexing problems is the bedrock of democracy and may be the surest safeguard for our electricity solutions.***

***The only thing wrong with our democratic process is the failure to use it.***

***The visionary people of the past always had rigid democratic convictions, while we now, in this day and age, appear to be just considered moderns with many options that do not fit into appropriate democratic practice. An example of this is the failure to recognize what, they call, “old referendums” and think wrongly that they have the authority to override a democratic vote of past Orillia citizens.***

**THE 1916 REFERENDUM TO SELL (OR NOT TO SELL) THE PEOPLES’ ELECTRICAL ASSET**

The, then, new provincial utility, **Ontario Hydro Electric Power Commission**, lobbied the Orillia council to purchase the Orillia electricity arm at the, then, very high price. The council, of the day, was somewhat in favour, but recognized that the only way to accomplish this sale was to place the approval to sell in a duly called citizens’ referendum. The referendum vote took place on Monday, May 22nd, 1916 at which time, **the citizens of Orillia, by a large majority, rejected the sale.**

The Orillia Peoples’ Referendum is not unlike the great published decision in support of Brexit, Britain’s June 23rd, 2016 decision by referendum to leave the European Union. The appellant Frank Kehoe can clearly recall other referendums relating to prohibition, conscription, conservation lands, the famous Charlottetown Accord of 1992, the naming of Thunder Bay, and Orillia’s referendum vote in 1967 to permit the sale of beer and wine in licensed establishments that had previously been banned by a peoples’ referendum 65 years prior.

Of the many law firms and lawyers that are involved in Energy Board 2016-0276, the appellant would expect that none have found a legal precedent nor law that can override a legal referendum voted on by the people. The council of the City of Orillia have ignored the legality of Orillia’s referendum and chose to try to use a draconian amendment to the Public Utilities Act for their authority to usurp the Peoples’ 1916 Referendum. This Act was described as one to achieve fiscal savings and promote economic prosperity through public sector restructuring, streamlining, and efficiencies, and to implement other aspects of the government’s economic agenda. The short title of this Act is The Savings and Restructuring Act (1996). This was where Section 67(1), a new section which was inserted without knowledge of many of the utility staff that were formerly set up **by and** **under** the Public Utilities Act. This single section was initiated at, or close to, the legislature Christmas break and was possibly pushed through without an explanation of its impact on the many other utilities that were set up by the Public Utilities Act.

**ORILLIA 1913 REFERENDUM PRE-DATED THE PROVINCIAL PUBLIC UTILITIES ACT**

In doing research on the origin of the Public Utilities Act pertaining to electricity, the appellant discovered that no copy of the original Public Utilities Act was available at the legislature library. However, in doing an up-to-date search at the University of Toronto Law Library, the librarian discovered a somewhat fragile copy of the original act and she delicately made a copy which was included in the documents previously forwarded to the board. The result of this extensive search clearly showed that the 1913 referendum of the people, that set in place the O.W.L.P., **pre-dated** the very first Public Utilities Act.

Two years after the passing of the Public Utilities Act the provincial legislature, in order to further protect the peoples’ referendum included, as part of the **1915 Town of Orillia Act,** included the following**: *“Section 11(1) – subject to subsection 2, all the powers, rights and privileges with regard to the government of the Orillia Power Transmission plant or the generation, distribution and sale of electrical power and light heretofore or hereafter granted by any special Acts to the council or Corporation of the Town of Orillia shall, while the bylaw appointing such commission remains in force, be exercised by the Orillia Water, Light and Power Commission, and not by the council of the corporation.***

On October 9th, 1996, after the city engaged their law firm Russell, Christie, Miller, Koughan to see if there was a process to revoke Bylaw #557 – set in place by the 1913 Referendum. The legal opinion reads, in part: ***HOW TO REVOKE BY-LAW 557 (1913): The procedure for revoking all or part of By-law 557 is interesting. From what we know now, it would appear that the By-law could only be revoked (in whole or in part) in the same manner in which it was instituted, namely, by a By-law approved with the consent of the electors.*** This is supported by our attorney, Stanley M. Makuch, who is a renowned published municipal lawyer.

**SOLUTION**

**The appellant clearly recognizes that the Ontario Energy Board and city council must operate under the rule of law and does not have the legislative authority to make nor overrule existing laws. In dealing with the sale of Orillia Power’s distribution to Hydro One the board must recognize and take into consideration that Orillia City Council does not have the authority to override its own citizens’ by-law that created the Peoples’ 1913 referendum or the 1916 referendum that rejected the sale of Orillia’s electricity asset without following due process which requires that they first go back to its electorate for their approval. To do otherwise thwarts the law in place. Hence, the appellant feels that the decision of the Ontario Energy Board should be stayed until the city council can show, to the board, that they have obtained the legal authority, from its citizens to sell - or not sell - the distribution arm of the Orillia Power Corporation.**

**HYDRO ONE’S ABILITY TO COMPETE**

It is the appellant’s well-informed view that Hydro One, even in the best of circumstances, could never financially compete with the Orillia Power Distribution Corporation. Hydro One, with its massive debt, will certainly require significant future rate increases. When the former Ontario Hydro broke up and the legislature passed the Energy Competition Act of 1998, Ontario Hydro, that had just over 35,000 employees, broke up the organization into multiple companies, later to become corporations that operate paying corporation dividends to the province. The corporations that were formed were called Ontario Power Generation (OPG), Ontario Hydro Services Company, now renamed Hydro One, and the Independent Electricity Market Operator (later named the Independent Electricity System Operator), the Electricity Safety Authority, and the Electricity Financial Corporation. Some of these corporations formed additional corporations. For example, Hydro One Inc. incorporated Hydro One Networks Inc., Hydro One Remote Communities Inc., and Hydro One B2M Holdings Inc. Hydro One B2M Holdings Inc. further incorporated Hydro One B2M LP Inc. and B2M GP Inc. which formed the B2M Limited Partnership and Hydro One Brampton Inc. So, one can see that it is next to impossible to obtain exact debt figures from all of these corporations.

The Hydro One C.E.O. Mayo Schmidt is the highest paid public employee at $4.4 million in salary and bonuses (*Toronto Star, July 13th, 2017)*. The salaries of the people making over $1 million is part of the evidence placed in front of the Ontario Energy Board.

When Hydro One, or the province, introduced solar and wind power contracts, they did so using the private sector with many people and corporations from outside of Canada. Many of the solar contracts were given for 20 years at prices close to 80 cents per kilowatt hour with the province agreeing to buy all the energy that solar and wind produced. Hydro One had an over-abundance of electrical energy and had no choice other than to dump the surplus electrical energy to the U.S.A. at figures close to 0.02 cents per kilowatt hour while, at the same time, charging Ontario consumers 18 cents for their primetime usage.

In referring to Bonnie Lysyk, the provincial Auditor General’s report in 2015, she stated that Ontarians have paid $37 billion more than the market price of electricity over 8 years and will pay another $133 billion extra by the year 2032. She also stated that Hydro One is in rough shape with ever-increasing numbers of power outages and aging equipment “at a very high rate of failing” that needs $4.472 billion worth of repairs.

This situation has had a horrendous impact on the electrical consumers and there isn’t any way that the Orillia consumers could possibly benefit from a sale of their distribution arm to Hydro One.

**VALUATION OF ORILLIA POWER DISTRIBUTION**

The appellant, with the assistance of professional and knowledgeable people, has devoted a great deal of time to attempt to arrive at a more realistic valuation of the Orillia Power Distribution Corporation. This valuation is next to impossible to assemble a complete document as the Orillia Power Distribution Corporation has refused to supply the distribution values that we, as former elected commissioners, had full and ready access to. The excuse for their refusal to provide us with this strategic information is based on the fact that there is no Freedom of Information applicable to Orillia’s new corporations. Hence, the valuation that was provided is but a fraction of its true value. This partial evaluation, I’m sure you can appreciate, has taken many days to assemble and is based upon factual information and expert submissions and well exceeds a minimum figure of over fifty-five million dollars ($55,000,000). The sale figure of Orillia council is $26.3 million.

**There is not a single item, in writing, of Hydro One’s contribution to job creation for Orillians. Some members of council put their emphasis on Hydro One’s pledge to lower their distribution (delivery charge) by 1% for a five-year period. The electrical consumers, themselves, should look at their electricity bill and access what the average 1% delivery charge (distribution) on their energy bill means. For example: if the consumer’s monthly delivery charge is shown to be $30, they may have a savings of 30 cents. If it is as high as $40, the savings would be 40 cents. So, the average savings would be minimal.**

Orillia citizens should stand up with an obligation of contacting their ward council members to voice their concerns on the sale of the distribution arm of **their utility.** The time is right to insist that this critically important decision be placed with the electorate to decide this issue. Many citizens of Orillia think they don’t have any power and that its entirely up to our elected officials. This is not true. Council has to put this question to the people and the people have to make their opinion known. The electrical utility is owned by the Orillia electrical consumers and can’t be sold without their approval. **This question SHOULD BE PUT TO THE PEOPLE IN THE FORM OF A REFERENDUM.**

The citizens of Orillia, and all of the electrical consumers have, in the past, put their electoral trust in the writer. And with this trust, the writer, a lifelong fifth-generation Orillian, feels he has a fiduciary obligation to work in the consumer’s best interest, as a previously elected chairman and commissioner, who served Orillians, in an elected capacity, for 19 years on the Orillia Water, Light and Power Commission and 3 terms on city council.