SCC File No. 38254

IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

B E T W E E N:

HYDRO-QUÉBEC

APPELLANT
(Respondent)

- and –

LOUISE MATTA, CLAUDE OUELLET, CHRISTIANE LÉVEILLÉ, DIANE OUELLET, PATRICK LÉVEILLÉ, JOSÉE LÉVEILLÉ and ENTREPRISES CASLON INC.

RESPONDENTS
(Appellants)

- and –
-

ATTORNEY GENERAL OF QUEBEC, CANADIAN ELECTRICITY ASSOCIATION

INTERVENERS

FACTUM OF THE INTERVENER
THE CANADIAN ELECTRICITY ASSOCIATION
(Pursuant to Rules 42 of the *Rules of the Supreme Court of Canada*)

TORYS LLP
79 Wellington Street West, 30th Floor
Box 270, TD Centre
Toronto, ON M5K 1N2

David Outerbridge
Stacey Reisman
Tel: 416.865.7825
Fax: 416.865.7380
Email: douterbridge@torys.com
sreisman@torys.com

Counsel for the Intervener
Canadian Electricity Association

SUPREME ADVOCACY LLP
100-340 Gilmour Street
Ottawa, ON K2P 0R3

Marie-France Major
Tel: 613.695.8855
Fax: 613.695.8580
Email : mfmajor@supremeadvocacy.ca

Agent for the Intervener
Canadian Electricity Association

BLAKE CASSELS & GRAYDON LLP
1 Place Ville Marie, Suite 3000
Montréal, QC H3B 4N8

Claude Marseille
Ariane Bisaillon
Tel: 514.982.4000
Fax: 514.982.4099
Email : claude.marseille@blakes.com
ariane.bisaillon@blakes.com

RAMSAY GANESAN FRASER LEBLANC
75 Boul. René-Lévesque, 4th Floor
Montréal, QC H2Z 1A4

Jean-Francois Mercure
Fax: 514.289.3719
Tel: 514.289.2211 x7829

Counsel for the Appellant

SUPREME ADVOCACY LLP
340 Gilmour St.
Ottawa, ON K2P 0R3

Marie-France Major
Tel: 613.695.8580
Fax: 613.695.8855
Email : mfmajor@supremeadvocacy.ca

Agent for the Appellant

VINCENT KARIM & ALS
580 Av Sainte-Croix, Suite 100
Saint-Laurent, QC H4L 3X5

Vincent Karim
Tel: 514.744.9117
Fax: 514.744.4041
Email: vincentkarim@vkals.com

Counsel for the Respondents

DEVEAU AVOCATS LEFEBVRE, TREMBLAY, LAROCQUE, S.E.N.C.R.L.
8- 867, boul. Saint-René Ouest Gatineau (Québec)
J8T 7X6

Me Frédérick Langlois
Tel : 819 243-2616, poste 224
Fax : 819 243-2641
Email: flanglois@deveau.qc.ca

Agent for Counsel for the Respondents

ATTORNEY GENERAL OF QUÉBEC
1200, Route de l'Église, 3e étage
Québec, QC G1V 4M1

Stéphane Rochette
Tel: 418.643.6552 x20734
Fax: 418.643.9749
Email : stephane.rochette@justice.gouv.qc.ca

Counsel for the Intervener

NOËL & ASSOCIÉS
111 rue Champlain
Gatineau, QC J8X 3R

Sylvie Labbé
Tel: 819.771.7393
Fax: 819.771.5397
Email : s.labbe@noelassocies.com

Agent for the Intervener

TABLE OF CONTENTS

PART I – OVERVIEW 1
PART II – POSITION ON THE APPELLANT'S QUESTIONS 2
PART III – STATEMENT OF ARGUMENT 2
The proper approach to interpreting a utility right-of-way 2
A. Apply a textual, contextual and purposive approach 2
B. Do not presumptively apply a strict interpretation 3
C. Recognize that the purpose of a right-of-way is to serve the public interest 4
D. Allow for normal evolution of the electricity grid 6
E. Promote stability of rights 8
The Court of Appeal erred in presuming a strict interpretation 9
PART IV – SUBMISSIONS ON COSTS 10
PART V – ORDER SOUGHT 10

PART I – OVERVIEW

1. What is the proper approach to interpreting a right-of-way for electricity transmission or distribution in Canada? That is the core question addressed by Canadian Electricity Association in this factum.

2. The answer involves the application of well-established legal principles that are national in scope and do not materially vary by province or territory. The issues on this appeal are not limited to the Québec civil law of servitudes, and the facts underlying the decision below are not unique to Hydro-Québec.

3. The proper approach to interpreting a utility right-of-way, whether expropriated under statutory authority or agreed to by contract, involves the follow five elements:

(a) Apply a textual, contextual and purposive approach when construing the document creating the right-of-way.

(b) Do not presumptively apply a strict interpretation. The right approach is to construe the right-of-way in a manner consistent with its purpose, text, and context, viewed objectively and reasonably.

(c) Recognize that the purpose of the right-of-way is to serve the public interest. Electricity is fundamentally important to our society – it enables most other social goods. The creation of rights-of-way is essential to this pressing public interest. The interpreting court should construe the right-of-way to promote the achievement of this social purpose.

(d) Allow for normal evolution of the electricity grid. Our society's need for electricity will continue indefinitely, and rights-of-way are typically of indefinite duration. The transmission and distribution system for electricity must evolve as technology evolves and as demands shift and increase. Courts should apply the long-established principle that rights-of-way should be construed as permitting technological and social evolution within their scope.

(e) Promote stability of rights. Utilities must be able to rely upon a consistent, predictable and stable judicial approach to the interpretation of rights-of-way, whether expropriated or contractual – in line with expectations of commercial reasonableness and the governing legal framework.

4. The Québec Court of Appeal's decision is inconsistent with each of these five elements. The Court of Appeal took a narrow, restrictive approach that is inconsistent with the purpose of electricity rights-of-way, inconsistent with the text of the servitudes, inconsistent with the requirements of operating an electricity network in a continuously developing environment, and inconsistent with the public interest.

PART II – POSITION ON THE APPELLANT'S QUESTIONS

5. CEA focuses on the second question identified by the Appellant, namely whether the Québec Court of Appeal misinterpreted Order-in-Council 3360-72 and the deeds of servitude. CEA agrees with Hydro-Québec that the Court of Appeal's interpretation is incorrect.

PART III – STATEMENT OF ARGUMENT

The proper approach to interpreting a utility right-of-way

A. Apply a textual, contextual and purposive approach

6. The Québec Court of Appeal, after concluding that the servitudes in this case were acquired by means of expropriation,[1] did not conduct a textual, contextual and purposive analysis when construing Order-in-Council 3360-72 (the "**OIC**"). This was a legal error.

7. This Court has made clear that there is one preferred approach to the interpretation of statutes and regulatory instruments (like the OIC): to read their words in their entire context and in their grammatical and ordinary sense, harmoniously with the scheme of the legislation, the object of the legislation, and the intention of the legislature.[2]

---

[1] Court of Appeal Reasons, para. 18.

[2] *Bell ExpressVu Limited Partnership v. Rex*, 2002 SCC 42 at paras. 26-27 [*Bell ExpressVu*]; *Épiciers Unis Métro-Richelieu Inc., division Éconogros v. Collin*, 2004 SCC 59 at paras. 20-21; Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014) at

8. When the document being construed is a regulatory instrument, the larger statutory scheme is to be considered.[3]

9. The proper approach to contractual interpretation is analogous. Contract interpretation is not to be dominated by technical rules of construction. The text of the contract is to be read in light of the contract as a whole, and consistent with the surrounding circumstances known to the parties at the time of contract formation. The surrounding circumstances are essential to determine the mutual intent, since words alone do not have an immutable or absolute meaning.[4]

B. Do not presumptively apply a strict interpretation

10. The Court of Appeal appears to have presumptively applied a narrow interpretation to the text of the OIC, without having found ambiguity in the text, or otherwise explaining the basis for its strict construction.[5] This too was a legal error.

11. In a previous era, this Court endorsed strict construction as the presumptive approach for interpreting certain types of legislation that interfere with personal freedoms or property rights – including tax, penal and expropriation statutes.[6] That is not the current law.[7] The governing approach is the modern, purposive approach, a key objective of which is to ensure that the legislature's intent (i.e., serving the public good) is fulfilled.

2.1, p. 7 [Book of Authorities ("BOA"), Tab 5]; Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed (Toronto: Thomson Reuters, 2011) at 407 [BOA, Tab 3].

[3] Sullivan, at 13.18, p. 412 [BOA, Tab 5]; *Bristol-Myers Squibb Co. v. Canada (Attorney General)*, 2005 SCC 26 at para. 38.

[4] *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47 [*Sattva*]; Geoff R. Hall, *Canadian Contractual Interpretation Law*, 3rd ed (Toronto: LexisNexis, 2016) at 24 [BOA, Tab 4].

[5] Court of Appeal Reasons, para. 22.

[6] *Pacific National Investments Ltd. v. Victoria (City)*, 2000 SCC 64 at para. 26.

[7] *Leiriao c. Val-Bélair (Ville)*, [1991] 3 S.C.R. 349 at 372-73 [*Leiriao*]; *Placer Dome Canada Ltd. v. Ontario Minister of Finance*, 2006 SCC 20 at paras. 21-23; *R. v. Hasselwander*, [1993] 2 S.C.R. 398 at 411-413; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City),* 2004 SCC 19 at paras. 6, 8; Côté, at 513-514, 522 [BOA, Tab 3]; Stéphane Beaulac, *Handbook on Statutory Interpretation* (Markham: LexisNexis, 2008) at 26 [BOA, Tab 2]; *Ville de Maschouche v. Thiffault* (1996), JE 96-1097 (Que. C.A.) at paras. 21-25 [*Thiffault*].

12. The principle of strict construction receives application only if there is an ambiguity.[8] A similar rule applies to the interpretation of contracts. Under the principle of *contra proferentem*, a clause may be interpreted against the author only in the case of ambiguity.[9]

13. Legislative interpretation has evolved to focus on the intended benefit to society, without treating the protection of private rights as paramount.[10] This approach applies in the expropriation context.[11] It also applies in expropriation-like cases of public entities restricting private property rights for the public good, such as for urban planning and environmental protection.[12]

14. The Respondents refer to this Court's decision in *Leiriao c. Val-Bélair (Ville)* for the proposition that courts should apply a restrictive approach to the interpretation of enactments that restrict private property rights. However, in *Leiriao* it was the dissenting judges who endorsed a restrictive approach. The majority of this Court expressly applied a contextual and purposive analysis, consistent with the scheme of the Act and intent of the legislature.[13]

C. Recognize that the purpose of a right-of-way is to serve the public interest

15. CEA has comprehensively reviewed the statutory regimes and case law governing electricity rights-of-way across the country. A key theme that emerges from both the legislation and the decided cases is their focus on the public interest.

16. In Alberta, for example, the purpose of the *Hydro and Electric Energy Act* is to provide for "the economic, orderly and efficient development and operation, in the public interest, of hydro

---

[8] *Bell ExpressVu*, at para. 28.

[9] *Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways)*, 2010 SCC 4 at para. 79.

[10] *Tuteckyj v. Winnipeg (City)*, 2012 MBCA 100 at para. 54 [*Tuteckyj*]; *Leiriao* at 373; *Municipalité Régionale de comté d'Abitibi c. Ibitiba ltée*, [1993] R.J.Q. 1061 (Que. C.A.) at paras. 20-23, 27 [*Ibitiba ltée*]; *Thiffault*, at paras. 21-25.

[11] *Leiriao*, at 372-373.

[12] *Tuteckjy*, at para. 49, citing *Bayshore Shopping Centre Ltd. v. Nepean (Township)*, [1972] S.C.R. 755, *Soo Mill & Lumber Co. v. Sault Ste. Marie (City)* (1974), [1975] 2 S.C.R. 78, *St. Peter's Evangelical Lutheran Church v. Ottawa (City)*, [1982] 2 S.C.R. 616, and *Leiriao*; *Thiffault*, at paras. 21-25; *Ibitiba ltée*, at paras. 20-23, 27; Beaulac, at 333-334 [BOA, Tab 2].

[13] Respondents' Factum at para. 58; *Leiriao* at 372-373.

energy and the generation and transmission of electric energy in Alberta." Other provinces have similar statements in their electricity statutes.[14]

17. The purpose of expropriation, where needed, is likewise to serve the public interest.[15] As this Court recently confirmed in *Lorraine (Ville) v. 2646-8926 Québec Inc.,* "the exercise of the power to expropriate is strictly regulated to ensure that property is expropriated for a legitimate public purpose and in return for a just indemnity."[16]

18. The public interest being served is the safe, secure, and sustainable delivery of reliable electricity to consumers.[17] Each statutory regime provides a process for utility providers to obtain approval to construct, maintain, repair, modify and rebuild the infrastructure required to generate, transmit, and distribute electricity to consumers.[18] Where these activities require the use of private property, utility providers can acquire rights-of-way through a process that involves governmental authorization, including expropriation if needed.

19. The legislative framework in Ontario is illustrative of the public interest focus. Under section 92 of the *Ontario Energy Board Act*, no one may construct, expand, or reinforce an electricity transmission line or an electricity distribution line without first obtaining leave from the

---

[14] R.S.A. 2000, c. H-16, s. 2. See also *Ontario Energy Board Act 1998*, S.O. 1998, c. 15, Sch B, ss. 96, 99(5); *Alberta Utilities Commission Act*, S.A. 2007 c. A-37.2, s. 17(1); *Electricity Act*, S.N.B. 2013, c. 7, s. 131; *Utilities Commission Act*, R.S.B.C 1996, c. 473, ss. 70, 71.

[15] *Lorraine (Ville) v. 2646-8926 Québec Inc.*, 2018 SCC 35 at para. 1 [*Lorraine (Ville)*].

[16] *Lorraine (Ville)*, at para. 1. See also *Ontario Energy Board Act 1998*, S.O. 1998 c. 15, Sch. B, 96, 99(5); *Expropriation Act*, R.S.N.B. 1973, c. E-14, ss. 4(a), 17(2)(c); *Expropriation Act*, R.S.N.S. 1989, c. 156, s. 11(7); *Expropriation Act*, R.S.A. 2000, c. E-13, ss. 13(1), 14; *The Expropriation Act*, CCSM c. E190, s. 9(8); *Civil Code of Québec*, C.Q.L.R. c. C.C.Q.-1991, art. 917.

[17] See *Electricity Act, 1998*, S.O. 1998, c. 15, s. 1; *Ontario Energy Board Act 1998*, S.O. 1998 c. 15, Sch B, s. 1; *Hydro and Electric Energy Act*, R.S.A. 2000, c. H-16, s. 2(b); *Hydro Corporation Act*, 2007, S.N.L. 2007, c. H-17, s. 5; *Electricity Act,* S.N.B. 2013, c. 7, s. 68(b); *The Manitoba Hydro Act*, C.C.S.M. c. H190, s. 2; *Electrical Power Control Act, 1994*, S.N.L. 1994, c. E-5.1, s. 3; *Utilities Commission Act*, R.S.B.C. 1996, c. 473, s. 38.

[18] See *Utilities Commission Act*, R.S.B.C 1996, c. 473, s. 45; *Ontario Energy Board Act 1998*, S.O. 1998, c. 15, Sch B, ss. 92, 96; *Hydro and Electric Energy Act*, R.S.A. 2000, c. H-16, 9, 14; *The Manitoba Hydro Act*, C.C.S.M. c. H190, s. 28; *Electrical Power Control Act, 1994*, S.N.L. 1994, c. E-5.1, s. 26; *Public Utilities Act*, R.S.N.S. 1989, c. 380, s. 26(1).

Board.[19] In considering whether to grant leave, the Board must consider whether the proposed project is in the public interest.[20]

20. If the project is approved, the applicant can apply for authorization to acquire the property rights necessary to complete the project. The Board then separately considers whether expropriation is in the public interest.[21] If the Board so determines, it will authorize the applicant to expropriate the lands using the procedure provided for under Ontario's *Expropriations Act*.[22]

21. In most cases, right-of-way agreements are negotiated with landowners, as occurred in this case after the expropriation process began. These contractual rights-of-way are not typical commercial contracts. They are negotiated against the backdrop of expropriations legislation and exist to facilitate a public good: providing adequate, safe, sustainable, and reliable electricity.[23]

22. Whether statutory or contractual, an electricity right-of-way should be construed in light of its public interest purpose, and in a manner that seeks to achieve that purpose within the scope of its wording.[24] In each case, the broader public interest must be considered to be primary, while the effect on private landowners is addressed separately through compensation.[25]

D. Allow for normal evolution of the electricity grid

23. It is a well-established principle in the interpretation of rights-of-way that, absent clear limiting terms, the scope of a right-of-way is not restricted to the uses subjectively contemplated

---

[19] *Ontario Energy Board Act 1998*, S.O. 1998 c. 15, Sch B, s. 92(1).

[20] *Ontario Energy Board Act 1998*, S.O. 1998 c. 15, Sch B, ss. 1, 96(2); *Re Dufferin Wind Power Inc.*, EB-2013-0268 (February 7, 2014) at 5, 8 [BOA, Tab 1].

[21] *Ontario Energy Board Act 1998*, S.O. 1998 c. 15, Sch B, ss. 1, 99(1).

[22] R.S.O. 1990, c. E.26, ss. 4-9.

[23] See *Electricity Act, 1998*, S.O. 1998, c. 15, s. 1; *Ontario Energy Board Act 1998*, S.O. 1998 c. 15, Sch B, s. 1; *Hydro and Electric Energy Act*, R.S.A. 2000, c. H-16, s. 2(b); *Hydro Corporation Act*, 2007, S.N.L. 2007, c. H-17, s. 5; *Electricity Act,* S.N.B. 2013, c. 7, s. 68(b); *The Manitoba Hydro Act*, C.C.S.M. c. H190, s. 2.

[24] *Sattva*, at para. 47; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21 [*Rizzo Shoes*]; *Avanti Mining Inc. v. Kitsault Resort Ltd.*, 2010 BCSC 1181 at paras. 36, 39, 42 [*Avanti*].

[25] *Dawn (Township) Restricted Area By-Laws 40 of 1973 & 52 of 1974, Re* (1977), 15 O.R. (2d) 722 (Ont. Div. Ct.) at paras. 16, 29; *Re Hydro One Service to Toyota Canada Inc.*, 2007 CarswellOnt 6328 at paras. 41-42 (ONEB).

at the date of the grant.[26] A right-of-way granted over a roadway in the 19th century is not restricted to horse-drawn carriages today, even though no one then envisaged today's vehicles.

24. So long as the use being made of a right-of-way is of the same general nature or kind, the use of the right-of-way can evolve beyond the uses subjectively contemplated at grant. Indeed, evidence of a specific use to which a right-of-way was intended to be put at the time of the grant is not evidence that the parties intended that the easement was not to be put to any other use.[27]

25. Electricity rights-of-way are typically of indefinite duration. It is reasonably expected by all that the transmission and distribution system for electricity will evolve over time. It is unrealistic and unworkable to apply a method of interpretation to rights-of-way that effectively renders them time-limited, contrary to the intent when the right was created. The ability of the electrical utility to perform its role in the public interest is not meant to be frozen in time.

26. Electricity transmitters and distributors must respond to increasing demand, changing transmission infrastructure, and new energy sources (such as hydro, wind, tidal, and biofuels).[28] Their rights-of-way must be interpreted with this context in mind.

27. The continuous evolution of the electricity sector weighs heavily in favour of finding that, in the absence of clear wording to the contrary, an electricity right-of-way is meant to be construed broadly and to allow for evolution of use, so long as the evolution remains within the reasonable ambit of the text of the right-of-way document.[29]

28. The decision of the British Columbia Court of Appeal in *Hillside Farms Ltd. v. B.C. Hydro & Power Authority* is a direct example of the application of these principles. The Court of Appeal

---

[26] *Avanti*, at paras. 39, 46-50, 61; *Granfield v. Cowichan Valley (Regional District)* (1996), 16 B.C.L.R. (3d) 382 at para. 20 (BCCA) [*Granfield*]; *Hillside Farms Ltd. v. British Columbia Hydro & Power Authority*, [1977] 3 W.W.R. 749 (BCCA) at para. 13 [*Hillside*], citing *White v. Grand Hotel, Eastbourne, Ltd.*, [1913] 1 Ch. 113 (Eng. C.A.); *Laurie v. Winch* (1952), [1953] 1 S.C.R. 49 at 56-58 [*Winch*].

[27] *Avanti*, at para. 61, citing *Granfield*, at para. 20; *Winch*, at 56-58.

[28] "Energy and the Environment" (2015), Online: *Council of Atlantic Premiers*.

[29] *Romkey v. Osborne*, 2019 NSSC 56 at para. 125, citing *Winch*; Bruce Ziff, *Principles of Property Law*, 7th ed (Toronto: Thomson Reuters) at 437 [BOA, Tab 6].

recognized the reality of the ever-evolving electricity grid and adopted a "liberal" approach to interpreting the right-of-way in that case, holding that "logic tells us that a power line right-of-way granted in perpetuity ought not to be framed in language incorporating the inhibitions and limitations of the technology of the day."[30] The Court concluded that the parties to the right-of-way agreement, by not including such limiting language, intended to provide a power line right-of-way which would be appropriate and valid in perpetuity, and which would accommodate upward modifications of the user. This was the "genesis" and "aim" of the transaction projected into the future from a base of knowledge and facts.[31]

29. As in *Hillside Farms*, a court construing an electricity right-of-way must look beyond the four corners of the document and take a liberal approach, placing the agreement in its context and inquiring beyond the internal language to understand the circumstances within which the words were used, and the object appearing from those circumstances.[32]

E. Promote stability of rights

30. The proper interpretive approach is one that promotes the stability of rights and certainty of outcome. The interpretation of a statute or regulatory instrument should not produce commercially unreasonable or absurd consequences.[33] Likewise, a contract should not be interpreted so as to result in commercial absurdity or bring about an unrealistic result.[34]

31. An unreasonable, absurd or unrealistic result is one that would unexpectedly require a utility to re-expropriate a right-of-way it already owns in order to permit the normal evolution of the transmission line on that same right-of-way, despite the absence of clear limiting language, and despite the presence of language contemplating the addition of more lines.

---

[30] *Hillside,* at para. 8.
[31] *Hillside,* at para. 12.
[32] *Hillside,* at para. 12; *Stasiuk Estate v. West Kootenay Power Ltd.*, 2000 BCCA 377 at para. 8.
[33] *Rizzo Shoes*, at para. 27, citing Ruth Sullivan, *Driedger on the Construction of Statutes* (3rd ed. 1994) at 88; *Jardin d'enfants Curzon c. Attorney General of Quebec (Ministère de la Famille)*, 2019 QCCA 1376 at para. 34.
[34] *Consolidated Bathurst Export Ltd. c. Mutual Boiler & Machinery Insurance Co.* (1979), [1980] 1 S.C.R. 888 at 901; Hall, at 61 [BOA, Tab 4].

32. The stability of the electricity grid is essential to our society. That stability is jeopardized when transmitters and distributers are left uncertain as to how courts will construe their rights-of-way, and whether new regulatory approvals will be required to keep the system functioning within the very rights-of-way that already exist.

33. There is a parallel legislative regime to address the compensation rights of landowners affected by the increased use of a right-of-way. The public interest in expropriation and the private interest in compensation are distinct issues, addressed through related but distinct legal frameworks.[35] It is important not to confuse those frameworks when arriving at the proper broad interpretation of a right-of-way in the public interest.

The Court of Appeal erred in presuming a strict interpretation

34. In this case, the Court of Appeal focused primarily on the fact that the OIC refers to "servitudes to build transmission lines between Jacques-Cartier and Duvernay" [translation]. Leaving aside the fact that the expropriation process contemplated in the OIC was never completed and the servitudes were instead confirmed by contract, this reference to two endpoints is not an adequate basis upon which to construe the servitudes in question as being restricted in scope to the immediate hydro-electric project contemplated in 1972.[36]

---

[35] *Expropriations Act*, R.S.O. 1990, c. E 26, ss. 4, 14; *Expropriation Act*, R.S.A. 2000, c. E-13, ss. 6, 42; *Expropriation Act*, R.S.B.C 1996, c. 125, ss. 6, 20, 30; *Expropriation Act*, R.S.N.S. 1989, c. 156, ss. 6, 24; *The Expropriation Act*, C.C.S.M. c. E190, ss. 3, 16(1); *Expropriation Act*, R.S.N.B. 1973, c. E-14, ss. 4(a), 25; *The Expropriation Act*, R.S.S. 1978, c. E-15, ss. 4, 10; *Expropriation Act*, C.Q.L.R. c. E-24, ss. 39, 53.11; *Expropriation Act*, R.S.P.E.I. 1988, c. E-13, s. 3, 11.

[36] The Respondents state that the dominant lands for the servitudes in this case are the Jacques-Cartier and Duvernay switchyards (Respondents' Factum, para. 37). This is incorrect. Under s. 19 of the *Watercourses Act*, C.Q.L.R. c. R-13, the transmission line itself (not its endpoints) is deemed to be the dominant land. This approach – i.e., the abrogation of the rule requiring a right-of-way to have a dominant and servient tenement – is consistent with most provinces across the country.

See, for example, *Land Title Act*, R.S.B.C 1996, c. 250, s. 218; *Land Titles Act*, R.S.A. 2000, c. L-4, s. 69; *Real Property Act*, C.C.S.M. c. R30, ss. 111(1)-111(3), 111.1(1); *Property Act*, R.S.N.B. 1973, c. P-19, s. 26; *Land Registration Act*, S.N.S. 2001, c. 6, s 61A; *Land Titles Act*, R.S.N.W.T. 1988, c. 8 (Supp.), s. 76(4); *Land Titles Act*, 2015, S.Y. 2015, c. 10, s. 114.

35. The starting point for interpretive analysis is to look at the words of the OIC and the deeds of servitude in a purposive manner, in context. The context is that the Province of Québec must reasonably have anticipated, in 1972, that its electricity grid would be needed indefinitely, with rights-of-way fundamental to the ongoing operation of that grid. Both the Province when enacting the OIC, and the parties to the deeds of servitude at the time of contract formation, must reasonably have intended to allow for the evolution of these rights-of-way over time.

36. The text of the servitudes reflects these objective realities – although the immediate project in 1972 contemplated a single transmission line, the servitudes contemplate multiple lines. The deeds provide for additional compensation for landowners in the event additional pylons or other infrastructure were to be added in future. The landowners knew, when they signed their deeds of servitude, that up to three lines could be constructed on their properties.

37. The OIC's reference to the Jacques-Cartier and Duvernay endpoints of the 1972 project does not lead inexorably to a narrow interpretation of the rights-of-way. It is normal for an expropriation document to specify the circumstances giving rise to the expropriation. But it is not those circumstances that determine the scope of the right-of-way – it is the text of the right-of-way itself, which in this case is framed broadly, specifically contemplating future expanded use, and without any express limitation of the type the Court of Appeal found to be implied.

38. The Court of Appeal's approach to the interpretation of public utility easements could, if upheld, substantially impair the complex mosaic of transmission and distribution rights-of-way on which the electricity system in Canada depends. It is the public that will suffer.

PART IV – SUBMISSIONS ON COSTS

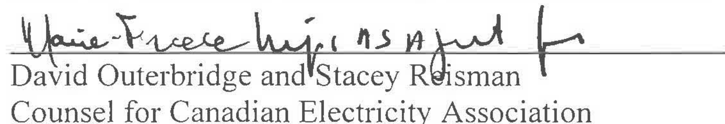
39. CEA makes no request for costs and asks that costs not be awarded against it.

PART V – ORDER SOUGHT

40. CEA takes no position on the outcome of this appeal.

November 26, 2019

ALL OF WHICH IS RESPECTFULLY SUBMITTED



David Outerbridge and Stacey Reisman
Counsel for Canadian Electricity Association

PART VI – TABLE OF AUTHORITIES

JURISPRUDENCE	
Name	**Para. No.**
Avanti Mining Inc. v. Kitsault Resort Ltd., 2010 BCSC 1181	22, 23, 24
Bell ExpressVu Limited Partnership v. Rex, 2002 SCC 42	7, 12
Bristol-Myers Squibb Co. v. Canada (Attorney General), 2005 SCC 26	8
Bayshore Shopping Centre Ltd. v. Nepean (Township), [1972] S.C.R. 755	13
Consolidated Bathurst Export Ltd. c. Mutual Boiler & Machinery Insurance Co. (1979), [1980] 1 S.C.R. 888	30
Dawn (Township) Restricted Area By-Laws 40 of 1973 & 52 of 1974, Re (1977), 15 O.R. (2d) 722 (Ont. Div. Ct.)	22
Épiciers Unis Métro-Richelieu Inc., division Éconogros v. Collin, 2004 SCC 59	7
Granfield v. Cowichan Valley (Regional District) (1996), 16 B.C.L.R. (3d) 382 (BCCA)	23, 24
Hillside Farms Ltd. v. British Columbia Hydro & Power Authority, [1977] 3 W.W.R. 749 (BCCA)	23, 28
Jardin d'enfants Curzon c. Attorney General of Quebec (Ministère de la Famille), 2019 QCCA 1376	30
Laurie v Winch (1952), [1953] 1 S.C.R. 49	23, 24, 27
Leiriao c. Val-Bélair (Ville), [1991] 3 S.C.R. 349	11, 13, 14
Lorraine (Ville) c. 2646-8926 Québec Inc., 2018 SCC 35	17
Municipalité Régionale de comté d'Abitibi c. Ibitiba ltée, [1993] R.J.Q. 1061 (Que. CA).	13
Pacific National Investments Ltd. v. Victoria (City), 2000 SCC 64	11
Placer Dome Canada Ltd. v Ontario Minister of Finance, 2006 SCC 20	11
R. v. Hasselwander, [1993] 2 S.C.R. 398	11

Re Dufferin Wind Power Inc., EB-2013-0268 (February 7, 2014)	19
Re Hydro One Service to Toyota Canada Inc., 2007 CarswellOnt 6328 (ONEB)	25
Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27	22, 30
Romkey v. Osborne, 2019 NSSC 56	27
Sattva Capital Corp. v. Creston Moly Corp., 2014 SCC 53	9, 22
Soo Mill & Lumber Co. v. Sault Ste. Marie (City) (1974), [1975] 2 S.C.R. 78	13
St. Peter's Evangelical Lutheran Church v. Ottawa (City), [1982] 2 S.C.R. 616	13
Stasiuk Estate v. West Kootenay Power Ltd., 2000 BCCA 377	29
Tercon Contractors Ltd. v. British Columbia (Minister of Transportation & Highways), 2010 SCC 4	12
Tuteckyj v. Winnipeg (City), 2012 MBCA 100	13, 14
United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City), 2004 SCC 19	11
Ville de Maschouche v. Thiffault (1996), JE 96-1097 (Que. C.A.)	11, 13

SECONDARY SOURCES

Name	**Para. No.**
Stéphane Beaulac, *Handbook on Statutory Interpretation* (Markham: LexisNexis, 2008)	11, 13
Pierre-André Côté, *The Interpretation of Legislation in Canada*, 4th ed (Toronto: Thomson Reuters, 2011)	7, 11
"Energy and the Environment" (2015), Online: Council of Atlantic Premiers <https://www.cap-cpma.ca/key-initiatives/energy-and-the-environment/>	26
Geoff R. Hall, *Canadian Contractual Interpretation Law*, 3rd ed (Toronto: LexisNexis, 2016)	9, 30

Ruth Sullivan, *Sullivan on the Construction of Statutes*, 6th ed (Markham: LexisNexis, 2014)	7, 8
Bruce Ziff, *Principles of Property Law*, 7th ed (Toronto: Thomson Reuters)	27

STATUTORY PROVISIONS

LEGISLATION	
Name	**Para. No.**
Alberta Utilities Commission Act, S.A. 2007 c .A-37.2, s. 17(1)	16
Civil Code of Québec, C.Q.L.R. c C.C.Q.-1991, English: art. 917, French: art. 917	17
Electrical Power Control Act, 1994, S.N.L. 1994, c. E-5.1, s. 3, 26	18
Electricity Act, 1998, S.O. 1998, c. 15, English: s. 1, French: s. 1	18, 21
Electricity Act, S.N.B. 2013, c. 7, English: ss. 68(b), 131, French: ss. 68(b), 131	16, 18, 21
Expropriation Act, C.Q.L.R. c. E-24, English: ss. 39, 53.11, French: ss. 39, 53.11	33
Expropriation Act, R.S.A. 2000, c. E-13, ss. 6, 13, 14, 42	17, 33
Expropriation Act, R.S.B.C. 1996, c. 125, ss. 6, 20, 30	33
Expropriation Act, R.S.N.B. 1973, c E-14, English: ss. 4(a), 17(2)(c), 25, French: ss. 4(a), 17(2)(c), 25	17, 33
Expropriation Act, R.S.N.S. 1989, c. 156, ss. 6, 11(7), 24	17, 33
Expropriation Act, R.S.P.E.I. 1988, c. E-13, s. 3, 11	33
Expropriations Act, R.S.O. 1990, c. E 26, English: ss. 4-9, 14, French: ss. 4-9, 14	16, 20, 33
Hydro and Electric Energy Act, R.S.A. 2000, c. H-16, ss. 2, 2(b), 9, 14	16, 18, 21
Hydro Corporation Act, 2007, S.N.L. 2007, c. H-17, s. 5	18, 21
Land Registration Act, S.N.S. 2001, c. 6, s 61A	34
Land Title Act, R.S.B.C. 1996, c. 250, s. 218	34
Land Titles Act, 2015, S.Y. 2015, c. 10, s. 114	34
Land Titles Act, R.S.A. 2000, c. L-4, s. 69	34

Land Titles Act, R.S.N.W.T. 1988, c. 8 (Supp.), s. 76(4)	34
Ontario Energy Board Act 1998, S.O. 1998 c. 15, Sch B, English: ss. 1, 92, 92(1), 96, 96(2), 99, 99(1), 99(5), French: ss. 1, 92, 92(1), 96, 96(2), 99, 99(1), 99(5)	16, 17, 18, 19, 20, 21
Property Act, R.S.N.B. 1973, c. P-19, English: s. 26, French: s. 26	34
Public Utilities Act, R.S.N.S. 1989, c. 380, s. 26(1)	18
Real Property Act, C.C.S.M. c. R30, English: ss. 111(1)-111(3), 111.1(1), French: ss. 111(1)-111(3), 111.1(1)	34
The Expropriation Act, C.C.S.M. c. E190, English: ss. 3, 9(8), 16(1), French: ss. 3, 9(8), 16(1)	17, 33
The Expropriation Act, R.S.S. 1978, c. E-15, ss. 4, 10	33
The Manitoba Hydro Act, C.C.S.M. c. H190, English: ss. 2, 28, French: ss. 2, 28	18, 21
Utilities Commission Act, R.S.B.C. 1996, c. 473, ss. 38. 45, 70, 71	16, 17, 18
Watercourses Act, C.Q.L.R. c. R-13, English: s. 19, French: s. 19	34