THE SUPERIOR COURT OF JUSTICE
OF ONTARIO

File No. 02-CV-227522 CM 3

B E T W E E N :

BRIAN PAYNE ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF COMMUNICATIONS, ENERGY AND PAPERWORKERS UNION OF CANADA

AND JUDY DARCY ON HER OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF CANADIAN UNION OF PUBLIC EMPLOYEES

Plaintiff

-and-

JAMES WILSON AND HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

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--- Before **THE HONOURABLE MR. JUSTICE ARTHUR GANS in the Court House at** 361 University Avenue, in the City of Toronto, in the Judicial District of York, commencing Friday, April 19, 2002.

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A P P E A R A N C E S :

Sean Dewart, Esq.	-	for Applicants
L.A. Richmond, Esq.	-	for Applicants
Steven Shrybman, Esq.	-	for Applicants
Sara Blake	-	for Respondents
Harry Underwood, Esq.	-	for Respondents
Richard Stephenson, Esq.	-	for Intervenor, P.W.U.

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ORAL JUDGMENT OF

THE HONOURABLE MR. JUSTICE ARTHUR GANS

FRIDAY, APRIL 19, 2002

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Oral Judgment
A. Gans, J.
Fri. Apr. 19/02

FRIDAY APRIL 19, 2002

--- on commencing at ten o'clock

THE COURT: Good morning.

INTRODUCTION.

Hydro One Inc. ("Hydro One"), the corporate name for the new millenium, is one of the amoebic offspring of Ontario Hydro created by the Government in 1998. Ontario Hydro was itself the last corporate incarnation of what started out as the Hydro Electric Power Commission of Ontario ("HEPCO") in 1906 when the generation, transmission and provision of hydro-electric power to the citizens of the Province was in its infancy.

Ontario Hydro was one of the defining characteristics of the Province, one with which its residents could identify, and one by which the Province was known internationally. Its creation and basic foundation was the primary reason a knighthood was bestowed upon Sir Adam Beck in 1914. His sculpted image stands watch over University Avenue.

After almost a decade of soul searching, including the appointment of a blue-ribbon Advisory Committee and the preparation and publication of a White Paper entitled, *Direction for Change - Charting a Course for Competitive Electricity and Jobs in Ontario* in November 1998, the government passed the *Energy*

Competition Act, 1998, S.O. 1998, c.15 (the "Energy Competition Act") *in December 1998. It enacted two comprehensive statutes, namely the Electricity Act, 1998*, S.O. 1998, c.15, Sched.A (the *"Electricity Act"*) and the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, Sched. B (the *"Energy Board Act"*) as schedules to the *Energy Competition Act*. This statutory regime purports to implement the major recommendations of the White Paper and establish a broad legislative framework for commission in certain areas. Of importance in respect to the matter now before me, the regime purports to divide Ontario Hydro into various publicly owned or controlled parts.

ISSUES

By way of a Preliminary Prospectus filed March 28th, the Province proposes to offer for sale all of the common shares of Hydro One. This concept was first previewed in the Legislature on the last day of the session this past December. Hydro One is a multi billion dollar corporation created under the *Electricity Act*. It is the Ontario Hydro entity responsible for electricity transmission and certain electricity distribution and energy service businesses.

In issue in this application is whether or not the Province has the legislative authority to offer these shares for sale under section 48

of the *Electricity Act*, the effect of which will call for the privatization of Hydro One. Put otherwise and more appropriately, the question is whether or not the *Electricity Act* in some fashion restricts the Government's right to dispose of the shares which are held by a member of the Executive Council for and on behalf of Her Majesty in right of the Province of Ontario. The applicable section provides as follows:

> 48(1) The Lieutenant Governor in Council may cause two corporations to be incorporated under the Business Corporations Act and shares in those corporations 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.
>
> (2) The Lieutenant Governor in Council may make regulations,
>
> (a) Designating one of the corporations incorporated pursuant to subsection (1) as the Ontario Electricity Generation Corporation for the purposes of this Act;
>
> (b) Designating the other corporation incorporated pursuant to subsection (1) as the Ontario Electric Services Corporation for the purposes of this Act.
>
> (3) No corporation shall be designated under subsection (2) unless, at the time of the designation, all voting securities of the

corporation are held by or on behalf of Her Majesty in right of Ontario or an agent of Her Majesty in right of the Ontario.

It is the applicants' position that the proposed IPO contravenes the aforesaid legislation because there is no authority in the Province to dispose of or otherwise alienate the shares in issue. As a fall-back to this position, the applicants assert that the Province must, as a condition precedent, seek leave of the Ontario Energy Board before it can sell the shares on the market. I decline to render judgment on this last-mentioned issue, and it was accordingly traversed to the Divisional Court for argument, ultimately on consent of the parties.

APPLICANTS AND STANDING

The applicants are each members of two large unions. These unions, in their own right, are the recognized bargaining agents for over 200,000 employees, and I dare say, residents in the Province. The Communications, Energy, and Paperworkers Union of Canada (CEP), does not represent any individuals working for any hydro companies as such. However, many of its 50,000 Ontario members work in large-scale manufacturing industries in resource-based small communities. Those industries and communities rely upon the continued availability of affordable sources of

electricity. The Canadian Union of Public Employees (CUPE), on the other hand, does represent thousands of employees who do work for electric utilities and some of the hydro corporations.

Interestingly enough, 3,000 employees of Hydro One are members of the Power Workers Union, (PWU), which opposes the application. I was told that the PWU is a CUPE local.

Counsel for the Minister of Energy, Science and Technology (the "Minister") advances two arguments at the outset, which I would note are not endorsed, for obvious reasons, by the PWU:

1. The *Rights of Labour Act* is a complete bar to the instant application. Unions have capacity to sue solely for purposes of matters relating to labour relations; and

2. Because the private rights of the applicants are not directly affected, and because no public interest issue is engaged or could be advanced by the present applicants who do not have any experience in the subject matter of the IPO, the matter is not otherwise justiciable, as is required for a court to grant public interest standing.

In my respectful opinion, the two arguments aforesaid must fail. While I do not intend to repeat Mr. Richmond's (one of the applicants' counsel) argument in detail,

including the historical background to which it was tied, I have come to the following conclusions based on a review of the *Rules of Civil Procedure* and the case law with which I was provided. (see *Stamos v. Belanger* (1994), 94 C.L.L.C. 12263 (Ont. Gen. Div.) and *McMillin et al. v. Yandell et al. (1971)*, 22 D.L.R. (3d) 398 (Ont. H.C.J:))

1. Rule 12.08, which was recently introduced in 1999, appears to be a complete answer to the problems suggested by counsel for the Minister. This rule vests in one or more members of a trade union the right to commence suit or, as in this case, an application without the necessity of passing over the procedural and substantive hurdles engendered by the *Class Proceedings Act, 1992*, S.O. 1992, c.6 and Rules.

(see the unreported decision of Cameron J. in Stewart and Service Employees International et al. v. Brown et al. (1 March 2000), Toronto 00-CV-185840 (Ont. S.C.J.) and see the commentary found in G.D. Watson and C. Perkins J., *Holmstead and Watson: Ontario Civil Procedure*, (Toronto: Carswell, Vol 6) at s. 16, rule 12.08.)

Regrettably, no motion in writing was made before the court seeking the requisite designation for the named applicants under the above rule or, as a fall-back position, under

Rule 10.01. Thankfully, counsel for the Minister did not voice any objection to this procedural oversight, if not irregularity. Accordingly, an order will go *nunc pro tunc*, authorizing the applicants, in the manner as styled, as the representative plaintiffs for and on their own behalf and on behalf of the other members of their respective unions for whom they purport to act.

2. The question of standing has been considered in countless cases, four of which, including the oft-cited decision of the SCC in *Finley v. Canada (Minister of Finance)*, [1986]2 S.C.R. 607, have been provided to me by counsel for the Minister. The applicable test for deciding this issue has been distilled as follows:

A. Do the plaintiffs have a sufficient personal interest in the matters in issue; or

B. If not, does the court have a discretion to recognize public interest standing in the circumstances of the present case; and.

C. If the court does have such a discretion, should it be exercised in favour of the applicants?

It has long since been recognized that unions have an interest in matters which transcends the "realm of contract negotiation and administration" (*Lavigne v. Ontario Public*

Service Employees Union (1991), 81 D.L.R. (4th) 545 (S.C.C.)("*Lavigne*") at 603). To borrow Chief Justice Dickson in *Slaight Communications Inc. v. Davidson* (1989), 59 D.L.R. (4th) 416 (S.C.C.) at 426, "...the interests of labour do not end at some artificial boundary between the economic and political". Inherent in this proposition is the notion that interests of labour are expansive and are meant to include more than, "mere economic gain for workers" (per Wilson, J. at 603 of *Lavigne*).

While I agree with Counsel for the Minister that the applicants, except as individual consumers of hydro, may not have a direct personal interest in the IPO and all that it entails, there is a public interest standing that should be recognized in the circumstances of this case. While not directly on point since, admittedly, the case dealt with the principles of *ultra vires* acts of a corporation, the comments of Macleod J. in *Bury v. Saskatchewan Government Insurance*, [1990] S.J. No. 693 (Q.B.) Online: QL(SJ) ("*Bury*") (aff'd (1991), 75 D.L.R. (4th) 449 (C.A.) are instructive:

"In my view each applicant individual is sufficiently connected to Saskatchewan as a resident of the province, (a citizen) to qualify that individual to bring the action under the public interest rule of standing in

the circumstances of this case. Saskatchewan Government Insurance is a Crown corporation. It is owned wholly by Her Majesty the Queen in Right of Saskatchewan. In any private corporation, a shareholder would have the right to require that the company conduct its affairs in accordance with its governing constitution. Similarly, in a Crown corporation, while the citizens of the province do not have shares as such, they have a public interest in requiring that the corporation conduct its affairs in accordance with the constitution of the corporation."

I am also of the view that discretion should be exercised in favour of the applicants in the circumstances of this case, notwithstanding the argument that the applicants are neither experts in the electricity sector nor in the interpretation of the underlying statutes. I do not accept the suggestion that the applicants are mere busy bodies or officious intermeddlers. They are neither.

Having regard to the subject matter and importance of the issue that is called into question by this application, namely the legislative authority for the proposed IPO, it is and was essential that the matter be canvassed as fully and accurately as possible, which it was, on all sides.

The Minister's counsel also urged me to dismiss the application on the ground that it could not be brought under rule 14.05(d) since the rights of the applicants were not affected, *per se*, by the statutory interpretation that was in issue. She could not direct me to any case that concluded that the "rights" as found in the rule should be modified by the word "their". I do not agree that the rule should be limited in such fashion because such would, by definition, eliminate any legislative challenge on a public interest standing basis by way of application as opposed to action. No such circumscription on the use of the application rule exists, to my knowledge, nor do I think such a restriction would be appropriate when, as in the instant case, there are no material facts in dispute. Again, so long as the applicants have standing, the matter is justiciable, and there are no facts in dispute, resort to the application rule is the most efficacious way to bring this most important issue to court.

THE LEGISLATIVE REGIME

As previously indicated, the issue before the Court is whether or not there is any express or implied limitation in respect of the Minister's ability to privatize Hydro One.

Mr. Dewart, one of the applicants' counsel, candidly acknowledges that the Crown

has the power of a natural person to enter into contracts, among other things. This would include a contract for the disposition of the shares that the Minister currently holds of Hydro One (see *J.E. Verreault & Fils Ltée v. Quebec (Attorney General)* [1977] 1 S.C.R. 41). It is his position that this power can be circumscribed by statute, either expressly or by implication. Respondents' counsel do not really take issue with this last proposition. It is common ground among the parties to this application that neither the *Electricity Act* nor any other Ontario statute expressly limits the Minister's ability to dispose of the subject shares of Hydro One. Therefore, what is truly in issue in these proceedings is whether or not the power described above is limited by implication.

The starting point for my analysis is found in R. Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto:Butterworths, 1994) ("*Driedger*") at 132. Previous versions of *Driedger* were cited with approval by the SCC in *Rizzo & Rizzo Shoes Ltd. (Re)* (1998) 154 D.L.R. (4th) 193. In *Driedger*, the learned author made the following observation about the "modern rule" of interpretation:

"There is only one rule in modern interpretation, namely courts are obliged to

determine the meaning of legislation in its total context, having regard to the purpose of the legislation, the consequences of proposed interpretations, the presumptions and special rules of interpretation, as well as admissible external aids. In other words, the courts must consider and take into account all relevant and admissible indicators of legislative meaning. After taking these into account, the court must then adopt an interpretation that is appropriate. An appropriate interpretation is one that can be justified in terms of (a) its plausibility, that is, its compliance with the legislative text.

"(b) Its efficacy, that is, its promotion of the legislative purpose; and

"(c) Its acceptability, that is, the outcome is reasonable and just."

With that as the backdrop, I now start down the ever-twisting road of interpretation is an effort to discern the intention of the Legislature, at its end.

Both sides of this debate, for all intents and purposes, start and finish with the words, "...and shares in those corporations may be acquired and held in the name of Her Majesty..." as found in s.48.1 of the *Electricity Act*.

The applicants argue that the right to dispose of the shares is circumscribed by the

Minister's obligation to acquire and hold the shares because the statute does not in any way contemplate the sale or disposition of same. The applicants further argue, having regard to the very nature and importance of Hydro One both historically and economically, that the Minister would require a clear mandate permitting the sale to otherwise step outside the boundaries of the enabling legislation (see *Bury* and the *Queen v. CAE Industries Ltd.* et al. (1985), 20D.L.R.(4th 347 (F.C.A.)). Put otherwise, the applicants suggest that because the "ownership" of the shares is not merely incidental to the day-to-day functions of the Minister, and arises from, and only as a result of his mandate under the *Electricity Act*, any disposition of the shares would require clear and precise language. Basically, the applicants argue that there is a world of difference between one's ability to "acquire and hold" and one's ability to, "alienate the same at the pleasure" (see the *Interpretation Act*, R.S.O. 1990, c. I.11, s.27) In support of these last-mentioned propositions, the applicants direct me to a multitude of statutes from which they urge that convention mandates a clear delineation of powers.

The respondents' position, in essence, is that the language of the statute is at most permissive, in that it imposes no obligation on

the Minister to hold the shares after acquisition for any period of time, if at all, once the companies created thereby have been "designated" in accordance with s.48(2) of the *Electricity Act*. In other words, it is their position that there is nothing in the enabling legislation nor indeed in the *Ontario Business Corporations Act*, R.S.O. 1990, c. B.16 (the "*OBCA*") under which Hydro One was incorporated, that would or could impose any restriction on a shareholder to dispose of his or her shares at pleasure. Furthermore, for there to be a valid restriction on the unalterable right to contract, the statutory reference which purports to delimit one's right of alienation must be more than a mere "touching" or glancing blow. While conceding that the limitation need not be a knock-out punch, as it were, Mr. Stephenson, counsel for the PWU, in his usual clear and precise fashion, argued that the limitation had to be something more than what the applicants suggested arose in respect of the words "acquire and hold." It was his position that in order to find a limitation I would have to hold that without one, the objects and intentions of the legislation would not be served.

The respondents further argued, again in a most compelling fashion, that a cautionary note should be sounded in respect of the reliance

one might put on other "similar" but not identical statutes. In the first place it was argued that one must be mindful of the overall legislative framework within which any such analogue was to be measured. Secondly, to contrast the powers of those to whom the *ultra vires* principle applied was, if anything, short-sighted and often misleading. In this vein, counsel for the respondents were of the view that the rationale of the Court of Appeal of Saskatchewan in *Bury* was of limited application to the case at bar.

LEGISLATIVE INTENT

Unlike many statutes where a court is obliged to discern legislative intent from the wording of the legislation alone without regard to any stated legislated objectives, s.1 of the *Electricity Act* sets out, in detail, the Act's overarching purposes:

1. The purposes of this Act are,

(a) To facilitate competition in the generation and sale of electricity and to facilitate a smooth transition to competition.

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

(c) To protect the interests of consumers with respect to prices and the reliability and quality of electricity service;

(d) To promote economic efficiency in the generation, transmission and distribution of electricity;

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

(f) To facilitate the maintenance of a financially viable electricity industry; and

(g) To facilitate energy efficiency and the use of cleaner, more environmentally benign energy sources in a manner consistent with the policies of the Government of Ontario.

It is interesting to observe that the aforesaid objectives, except for s.1(e), are incorporated by reference in the *Energy Board Act* and that the Board is obliged to have regard to these objectives when discharging its duties under that Act. It is also worthy of note that the objectives, to a great degree, track the enumerated objectives set out in the White Paper which the applicants urged me to consider.

At the risk of doing a disservice to the arguments of counsel, I will attempt to briefly set out the essential elements of the *Electricity Act*. Putting the matter in its simplest terms, the *Electricity Act* is designed to meet the objectives set out in s.1, as above. It is intended to cover all elements of the complex electricity delivery system, which

comprises a vast network of interconnected generation, transmission and distribution lines, plants and related facilities. It calls for the "corporatization" of Ontario Hydro, in part, by the creation of two OBCA companies, one of which is Hydro One, and certain other non-share capital corporations and similar vehicles. One of the last-mentioned non-OBCA entities was created or set up to house the many billions of dollars of debt amassed over the last several decades by Ontario Hydro. Others are designed to facilitate the regulation of the retail, distribution, and system operations of the old Hydro.

The two OBCA companies are to function independently of the Government, save for the financial and other reporting duties prescribed by statute. It was and is hoped that each will discharge its separate functions of generation and transmission efficiently, profitably and responsibly.

As suggested, the debt incurred by Ontario Hydro on an historic basis was hived out of the former operation in an effort to establish the two OBCA companies and other regulatory vehicles as debt-free enterprises, albeit enterprises into which some very valuable operating assets will be and have been transferred. The debt, which is being housed in a non-share capital corporation (the

"Financial Corporation"), is to be discharged from all manner of revenue generation, except for one critical source to which reference will be made. By that I mean that under Part V and VI of the *Electricity Act*, a detailed intricate scheme was put in place which calls for the reduction of the debt, curiously labeled the "residual stranded debt", something of a contradiction in terms having regard to the amount of the debt remaining. This system of payments and deemed payments, whether it comes from the sale of assets, dividends generated from the operation of the OBCA companies or payments in lieu of taxes, is designed to reduce, if not eliminate, the residual stranded debt.

Absent from the legislative scheme is the fact that there is no provision for paying down the "legacy" debt from the sale of the shares of either OBCA company. This conclusion was discoverable after undertaking a microscopic examination of the *Electricity Act*, and a consideration of the interrelationship of its various sections, if not the fine print of the Prospectus at p.18. In other words, any dollar generated from the proposed Hydro One IPO is not directed by a statute, in this case the *Electricity Act, towards discharging the large debt with which the beleaguered Ontario Hydro was saddled. Any money generated from the IPO*

will be, if not must be, paid into the Consolidated Revenue Fund. In theory then, it can be used for any and all government programs (see the Financial Administration Act, *R.S.O. 1990, c.12, ss. 1 and 2). It cannot, as the legislation presently stands, be used automatically to discharge the legacy or stranded debt.*

The mere fact that the prospectus references the Government's pronouncement that proceeds from the IPO, "...will be used to pay down the legacy debt and the liabilities of Ontario Hydro," arguably, does not bind the new Minister of Finance to do so. Such a pronouncement, even if somehow elevated to a "representation", does not have the force of a legislative mandate and, as was argued by the Minister's counsel in another context, does not give rise to an estoppel.

This apparent lacuna to the legislation is in marked contrast to the obligations thrust upon municipalities slated to take over the former electrical utilities. If any municipality sells any of the assets of or shares in respect of any local utility which it owns or controls, the funds generated therefrom must be paid over to the Financial Corporation and in turn utilised to retire the legacy debt (see the *Electricity Act* s.94). Again, no such similar requirement is imposed on the Minister

as "trustee", for the benefit of the Province, of the shares in the OBCA companies, including Hydro One. If there is parallelism between the mechanics in respect of the ownership of Hydro One by the Minister and the ownership of the local utilities by the municipalities, as was argued by Mr. Stephenson, then the parallel structure not only breaks down, but is torn asunder by this omission.

I pose the question yet again: If the Minister has an unfettered power to sell the shares of Hydro One, why wouldn't there be some simple language in the *Electricity Act* directing, if not mandating, the payment of the proceeds of disposition to the Financial Corporation? Alternatively, does not the absence of such a provision undermine a stated purpose of the Act, namely the prudent and equitable repayment of the legacy debt (s.1(e))?

One might argue that this omission was purposeful so that the Government could have the option to pay but a portion of funds to the Financial Corporation, albeit through somewhat of a circuitous route through the Consolidated Revenue Fund. Indeed, this may be the very modality by which Government might be able to subscribe for the $290 million of "its" common shares, just before completion the offering, presumably, through a company as yet to be

incorporated. Again, if this methodology is followed and money is commingled in the Consolidated Revenue Account, arguably, the debt is discharged from taxpayer dollars and not as was anticipated by s.1(e), aforesaid.

In my opinion, as was urged upon me by the applicants, the reason for this very significant omission, if not self-evident, admits of logical. The legislature, in its wisdom, did not intend to embark upon a privatization program at this stage in the reorganisation and corporatization of Ontario Hydro. I need therefore not go so far as to say that if a corporation is owned solely by the Crown and created solely for the public benefit, with roots deep in the fabric of the community, public ownership cannot be relinquished absent express language, as the Saskatchewan Court of Appeal did at *Bury* at page 472. Such a notion although appealing is not necessary, having regard to the conclusion reached aforesaid.

However, I would have thought that the notion of privatization should have been set out in clear and unequivocal terms in the "purposes" portion of the *Electricity Act*, as were a whole range of other important social and economic matters. Privatization of a long-standing important public institution, such as Ontario Hydro, is not something I would

have thought would or should occur without addressing the issue head on. The fact that it wasn't set out as a stated purpose is consistent with the conclusion that the *Electricity Act*, as comprehensive a piece of legislation as it is, is not intended to deal with privatization, as such, let alone through any implied ability to alienate personal property as a natural person.

Furthermore, in my respectful opinion, other sections of the *Electricity Act*, read alone and in conjunction with sections of the OBCA, lead to the conclusion that the Minister intends to remain the holder of all outstanding voting securities of Hydro One, until the requisite amendments to the former act are put in place (see in particular ss.50, 52 and 53 of the *Electricity Act and ss. 108(3) and (4), and s. 154 of the* OBCA) By way of example, s. 53 of the Electricity Act reads as follows:

53. The Generation Corporation and the Services Corporation shall submit such other reports and information to the Minister of Energy, Science and Technology or the Minister of Finance as each of those ministers may require from time to time.

The *OBCA* specifies precisely what, and when, shareholders are entitled to receive by way of corporate information. In general, this information is restricted to financial

statements, or in the case of an offering corporation, such as the proposed class for Hydro One, the auditors and annual reports (s. 154). Unless required by articles, by-laws or an unanimous shareholders' agreement, a corporation is not normally obliged to provide a shareholder, and in no instance a non-shareholder, with "...such reports and information..." that the shareholder (Minister) or the non-shareholder (Minister of Finance), may require.

In my opinion, s.53 in its present form permits the Minister and his or her cabinet colleague, the Minister of Finance, to receive any and all information about the operation of Hydro One that each considers important. That provision is perfectly consistent with Cabinet's overarching responsibility for a company like Hydro One so long as the Minister holds title to the shares of the company, as trustee, and indeed, so long as the legacy debt remains outstanding, if not significant, as it is today.

In my opinion, s.53, again in its present form, is otherwise inconsistent with the Minister having anything less than complete control of Hydro One through the ownership of the voting securities. Indeed, I would be so bold as to suggest that if the situation were otherwise, this would mean that Hydro One would

have a greater reporting obligation than is required under the *Securities Act*, R.S.O. 1990, c. S.5 or the *OBCA* in absolute and in relative terms to other offering corporations. Arguably, therefore, the interrelationship of that section with the stated purposes of the *Electricity Act* and the operation of other corporate/securities statutes would lead to an absurd, if not an unlawful, result.

The conclusions expressed above, respectfully, are consistent with the statements of the then Minister of Energy, Science and Technology, when he introduced the legislation in the House in November 1998 and bears repeating:

"As a shareholder in Ontario Hydro, we don't talk about privatization because, first of all, that company needs a number of years, and the successor companies will need a number of years to get their value back up, to enhance their value. Ontario Hydro is a badly devalued and demoralized entity right now. We do not want a fire sale, so we are not talking about privatization. We are talking about introducing competition and commercializing, making sure that the new successor companies have to, by law, act in a prudent manner and in a business-like manner.

"But of the reasons we are not talking about privatization is my dream for Ontario

Hydro is that, once again, it will begin to return a healthy profit back to the shareholder -- and the shareholder is the people of Ontario -- that money in the future could be used to either lower electricity rates again or, once the debt is paid off, clearly that's money that could go into general revenues that can support health care and education and other priorities that the government of the day might have. That's one vision of where the money should go once Ontario Hydro is a major player in the North American market."

In my respectful opinion, not only does three years not amount to "a number of years", as was suggested by the Minister's counsel, but the Minister's comments about not then "talking about privatization" are telling. While admittedly, such statements do not bind subsequent legislatures, they do provide insight into the context and purpose of the legislation at the time of its introduction to the House.

Furthermore, the interpretation just advanced is equally consistent with the Government's White Paper, previously referenced, which was presented to the House as a precursor to the legislation. Nowhere in the White Paper is there anything more than an oblique reference to privatization. Indeed,

the six step plan "...to put the proposed new companies on a sound financial basis, and to advance the public discussion about potentially stranded debt and the options dealing with it" does not conclude with any form of statement that privatization is a viable option or at least an option that could introduced without public discussion. I have annexed for ease of reference the Executive Summary and pages 22 to 24 of the White Paper, the latter of which includes reference to the aforesaid six point plan.

I hasten to observe that any reliance on the reports of Hansard and even the White Paper is to play a truly limited role in the interpretation of a statute (see *Rizzo* at 208). That having been said, such evidence can nevertheless be admitted to assist the Court in understanding both the background and purpose of the legislation.

CONCLUSION

A declaration will therefore issue in terms of paragraph 1(b)(i) of the notice of application. I will hear submissions on whether such declaratory relief can or need be issued in respect of the relief sought in paragraph 1(c).

--- whereupon unreported submissions commenced