Exhibit CAC-12-2

THE PUBLIC UTILITIES BOARD OF MANITOBA

IN THE MATTER OF: Manitoba Public Insurance Corporation
2022/23 General Rate Application

AND IN THE MATTER OF: Manitoba Public Insurance Corporation
2022 Special Rebate Application

BOOK OF AUTHORITIES

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Legislation

1. *The Manitoba Public Insurance Corporation Act,* CCSM c P215
2. *The Automobile Insurance Act,* SM 1970 c 102
3. *An Act to Amend the Automobile Insurance Act*, SM 1974 c 58
4. *The Statute Law Amentment Act (1984)*, SM 1984-85 c 17
5. *Classes of Insurance Regulation*, Man Reg 221/2014
6. *Automobile Insurance Coverage Regulation*, Man Reg 290/88R
7. *The Drivers and Vehicles Act*, CCSM c D104

Public Utilities Board Orders

8. PUB Order 176/19

Jurisprudence

9. *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42
10. *Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al,* 2020 MBCA 60
11. *Lang Transport Ltd. v. Plus Factor International for the Respondent Trucking Ltd.*, 32 OR (3d) 1 143 DLR (4th) 672
12. *Felty v. Ernst & Young LLP*, 2015 BCCA 445
13. *First Nations Child and Family Caring Society of Canada et al. v. Attorney General of Canada (for the Minister of Indian and Northern Affairs Canada)*, 2016 CHRT 2
14. *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 SCR 5
15. *Starz (Re)*, 2015 ONCA 318
16. *Independent Contractors and Business Association v. British Columbia (Transportation and Infrastructure)*, 2020 BCCA 243
17. *R. v Lloyd*, 2016 SCC 13, [2016] 1 SCR 130
18. *Katz Group Canada Inc v Ontario (Health and Long Term Care)*, 2013 SCC 64

Other Sources

19. Investopedia, "Profit Definition" (website), available online: <https://www.investopedia.com/terms/p/profit.asp>.
20. Eileen E. Gillese, *The Law of Trusts* (Toronto: Irwin Law, 2014)
21. Manitoba, Legislative Assembly, *Hansard*, 29th Leg, 2nd sess Vol XVII No 176 (August 12, 1970) at 4600 (Sidney Spivak).
22. Manitoba, Legislative Assembly, *Hansard*, 38th Leg 3rd Sess, Vol LVI No 57B (2 June 2005) at 3251 (Kevin Lamoureux)(Liberal).
23. *The Manitoba Hydro Act,* CCSM c H190.

TAB 1

MANITOBA

THE MANITOBA PUBLIC INSURANCE CORPORATION ACT

C.C.S.M. c. P215

LOI SUR LA SOCIÉTÉ D'ASSURANCE PUBLIQUE DU MANITOBA

c. P215 de la *C.P.L.M.*

As of 25 Oct 2021, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 25 oct. 2021. Son contenu était à jour pendant la période indiquée en bas de page.

LEGISLATIVE HISTORY

The Manitoba Public Insurance Corporation Act, C.C.S.M. c. P215

Enacted by	Proclamation status (for provisions in force by proclamation)
RSM 1987, c. P215	whole Act: in force on 1 Feb 1988 (Man. Gaz.: 6 Feb 1988)
Amended by	
RSM 1987 Corr.	
SM 1987-88, c. 55, s. 39 (RSM 1987 Supp., c. 13, s. 3)	
SM 1988-89, c. 13, s. 35	
SM 1988-89, c. 23, s. 37	s. 37(1) to (3): in force on 1 Jul 1989 (Man. Gaz.: 17 Jun 1989) s. 37(4): in force on 17 Jan 1989 (Man. Gaz.: 28 Jan 1989)
SM 1990-91, c. 4, s. 5	
SM 1991-92, c. 41, s. 23	
SM 1992, c. 58, s. 26	
SM 1993, c. 36	
SM 1994, c. 4, s. 37	
SM 1994, c. 20, s. 16	
SM 1996, c. 11	
SM 1996, c. 59, s. 103	
SM 1996, c. 64, s. 12	
SM 1997, c. 23	
SM 1997, c. 42, s. 21	not proclaimed, but repealed by SM 2005, c. 8, s. 23
SM 1997, c. 50, s. 93	in force on 4 May 1998 (Man. Gaz.: 25 Apr 1998)
SM 1997, c. 57, s. 3	not proclaimed, but repealed by SM 2002, c. 1, s. 22
SM 1998, c. 29, s. 158	in force on 1 May 1999 (Man. Gaz.: 27 Mar 1999)
SM 1998, c. 36, s. 133	in force on 29 Oct 1999 (Man. Gaz.: 16 Oct 1999)
SM 1998, c. 44, s. 51	in force on 4 Jan 1999 (Man. Gaz.: 26 Dec 1998)
SM 1998, c. 46	
SM 1999, c. 18, s. 20	
SM 2000, c. 35, s. 19 and 70	
SM 2001, c. 37, s. 8	
SM 2001, c. 39, s. 31	in force on 1 May 2002 (Man. Gaz.: 18 May 2002)
SM 2001, c. 43, s. 23 and 56	
SM 2002, c. 1, s. 21	in force on 1 Jan 2003 (Man. Gaz.: 28 Dec 2002)
SM 2002, c. 24, s. 49	
SM 2002, c. 48, s. 20	in force on 30 Jun 2004 (Man. Gaz.: 29 May 2004)
SM 2004, c. 3	in force on 16 May 2005 (Man. Gaz.: 28 May 2005)
SM 2004, c. 7	
SM 2004, c. 12	
SM 2004, c. 42, s. 78	
SM 2005, c. 8, s. 11	in force on 29 May 2006 (Man. Gaz.: 3 Jun 2006)
SM 2005, c. 21	
SM 2005, c. 37, Sch. A, s. 158	in force on 1 Mar 2006 (Man. Gaz.: 11 Mar 2006)
SM 2005, c. 42, s. 31	
SM 2008, c. 36, Part 3	in force on 1 Nov 2009 (Man. Gaz.: 24 Jan 2009)
SM 2008, c. 42, s. 80	
SM 2009, c. 9, Part 2	

SM 2009, c. 15, s. 247	not yet proclaimed
SM 2009, c. 32, s. 103	in force on 1 Jun 2012 (Man. Gaz.: 2 Jun 2012)
SM 2009, c. 36	
SM 2010, c. 33, s. 54	
SM 2011, c. 21	
SM 2013, c. 46, s. 46	in force on 1 Apr 2014 (Man. Gaz.: 5 Apr 2014)
SM 2013, c. 54, s. 58	
SM 2014, c. 15	
SM 2015, c. 10	
SM 2015, c. 43, s. 40	
SM 2017, c. 19, s. 34	
SM 2017, c. 26, s. 21	
SM 2017, c. 36, s. 17	in force on 28 Feb 2018
SM 2018, c. 10, Sch. D	in force on 1 Mar 2019 (proc: 8 Dec 2018)
SM 2018, c. 12, s. 11	in force on 1 Nov 2018 (proc: 13 Oct 2018)
SM 2018, c. 19, s. 3 and 9	
SM 2018, c. 29, s. 30	in force on 1 Mar 2019
SM 2018, c. 34, s. 56	
SM 2019, c. 5, s. 25	
SM 2019, c. 7, s. 29	not yet proclaimed
SM 2019, c. 11, s. 22	
SM 2021, c. 5, s. 18	
SM 2021, c. 11, s. 120	not yet proclaimed
SM 2021, c. 15, s. 111	not yet proclaimed
SM 2021, c. 19	whole Act: not yet proclaimed
SM 2021, c. 22, Part 3	
SM 2021, c. 30, s. 25 and 26	s. 25(3) and (4): not yet proclaimed s. 26: not yet proclaimed (comes into force on the proclamation of SM 2021, c. 19, s. 4)

HISTORIQUE

Loi sur la Société d'assurance publique du Manitoba, c. P215 de la C.P.L.M.

Édictée par	**État des dispositions qui entrent en vigueur par proclamation**
L.R.M. 1987, c. P215	l'ensemble de la Loi : en vigueur le 1er févr. 1988 (Gaz. du Man. : 6 févr. 1988)
Modifiée par	
L.R.M. 1987 corr.	
L.M. 1987-88, c. 55, art. 39 (L.R.M. 1987 Suppl., c. 13, art. 3)	
L.M. 1988-89, c. 13, art. 35	
L.M. 1988-89, c. 23, art. 37	par. 37(1) à (3) : en vigueur le 1er juill. 1989 (Gaz. du Man. : 17 juin 1989) par. 37(4) : en vigueur le 17 janv. 1989 (Gaz. du Man. : 28 janv. 1989)
L.M. 1990-91, c. 4, art. 5	
L.M. 1991-92, c. 41, art. 23	
L.M. 1992, c. 58, art. 26	
L.M. 1993, c. 36	
L.M. 1994, c. 4, art. 37	
L.M. 1994, c. 20, art. 16	
L.M. 1996, c. 11	
L.M. 1996, c. 59, art. 103	
L.M. 1996, c. 64, art. 12	
L.M. 1997, c. 23	
L.M. 1997, c. 42, art. 21	non proclamé, mais abrogé par L.M. 2005, c. 8, art. 23
L.M. 1997, c. 50, art. 93	en vigueur le 4 mai 1998 (Gaz. du Man. : 25 avr. 1998)
L.M. 1997, c. 57, art. 3	non proclamé, mais abrogé par L.M. 2002, c. 1, art. 22
L.M. 1998, c. 29, art. 158	en vigueur le 1er mai 1999 (Gaz. du Man. : 27 mars 1999)
L.M. 1998, c. 36, art. 133	en vigueur le 29 oct. 1999 (Gaz. du Man. : 16 oct. 1999)
L.M. 1998, c. 44, art. 51	en vigueur le 4 janv. 1999 (Gaz. du Man. : 26 déc. 1998)
L.M. 1998, c. 46	
L.M. 1999, c. 18, art. 20	
L.M. 2000, c. 35, art. 19 et 70	
L.M. 2001, c. 37, art. 8	
L.M. 2001, c. 39, art. 31	en vigueur le 1er mai 2002 (Gaz. du Man. : 18 mai 2002)
L.M. 2001, c. 43, art. 23 et 56	
L.M. 2002, c. 1, art. 21	en vigueur le 1er janv. 2003 (Gaz. du Man. : 28 déc. 2002)
L.M. 2002, c. 24, art. 49	
L.M. 2002, c. 48, art. 20	en vigueur le 30 juin 2004 (Gaz. du Man. : 29 mai 2004)
L.M. 2004, c. 3	en vigueur le 16 mai 2005 (Gaz. du Man. : 28 mai 2005)
L.M. 2004, c. 7	
L.M. 2004, c. 12	
L.M. 2004, c. 42, art. 78	
L.M. 2005, c. 8, art. 11	en vigueur le 29 mai 2006 (Gaz. du Man. : 3 juin 2006)
L.M. 2005, c. 21	
L.M. 2005, c. 37, ann. A, art. 158	en vigueur le 1er mars 2006 (Gaz. du Man. : 11 mars 2006)
L.M. 2005, c. 42, art. 31	
L.M. 2008, c. 36, partie 3	en vigueur le 1er nov. 2009 (Gaz. du Man. : 24 janv. 2009)
L.M. 2008, c. 42, art. 80	

L.M. 2009, c. 9, partie 2	
L.M. 2009, c. 15, art. 247	non proclamé
L.M. 2009, c. 32, art. 103	en vigueur le 1er juin 2012 (Gaz. du Man. : 2 juin 2012)
L.M. 2009, c. 36	
L.M. 2010, c. 33, art. 54	
L.M. 2011, c. 21	
L.M. 2013, c. 46, art. 46	en vigueur le 1er avr. 2014 (Gaz. du Man. : 5 avr. 2014)
L.M. 2013, c. 54, art. 58	
L.M. 2014, c. 15	
L.M. 2015, c. 10	
L.M. 2015, c. 43, art. 40	
L.M. 2017, c. 19, art. 34	
L.M. 2017, c. 26, art. 21	
L.M. 2017, c. 36, art. 17	en vigueur le 28 févr. 2018
L.M. 2018, c. 10, ann. D	en vigueur le 1er mars 2019 (proclamation : 8 déc. 2018)
L.M. 2018, c. 12, art. 11	en vigueur le 1er nov. 2018 (proclamation : 13 oct. 2018)
L.M. 2018, c. 19, art. 3 et 9	
L.M. 2018, c. 29, art. 30	en vigueur le 1er mars 2019
L.M. 2018, c. 34, art. 56	
L.M. 2019, c. 5, art. 25	
L.M. 2019, c. 7, art. 29	non proclamé
L.M. 2019, c. 11, art. 22	
L.M. 2021, c. 5, art. 18	
L.M. 2021, c. 11, art. 120	non proclamé
L.M. 2021, c. 15, art. 111	non proclamé
L.M. 2021, c. 19	l'ensemble de la Loi : non proclamé
L.M. 2021, c. 22, partie 3	
L.M. 2021, c. 30, art. 25 et 26	par. 25(3) et (4) : non proclamés art. 26 : non proclamé (entre en vigueur sur le proclamation de L.M. 2021, c. 19, art. 4)

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THE MANITOBA PUBLIC INSURANCE CORPORATION ACT

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CHAPTER P215

THE MANITOBA PUBLIC INSURANCE CORPORATION ACT

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions

1(1) In this Act, unless the context otherwise requires,

"additional driver premium" means the premium for a driver's certificate that, in addition to the base driver premium, must be paid by a driver who, under the driver safety rating system established by the regulations, has the number of demerits prescribed in the regulations; (« prime de pénalité pour conducteurs »)

"adjusted additional driver premium" means the premium for a driver's certificate

(a) that has been fixed by the Rates Appeal Board as the result of an appeal under clause 65(4)(a), and

(b) that, in addition to the base driver premium, must be paid by a driver who, under the driver safety rating system established by the regulations, has the number of demerits prescribed in the regulations; (« prime de pénalité rajustée pour conducteurs »)

CHAPITRE P215

LOI SUR LA SOCIÉTÉ D'ASSURANCE PUBLIQUE DU MANITOBA

SA MAJESTÉ, sur l'avis et du consentement de l'Assemblée législative du Manitoba, édicte :

Définitions

1(1) Les définitions qui suivent s'appliquent à la présente loi, sauf indication contraire du contexte.

« agent » Sous réserve de l'article 29, agent d'assurances au sens de la *Loi sur les assurances*. ("agent")

« assurance » L'engagement que prend une personne d'en indemniser une autre en raison d'une perte ou de la responsabilité à l'égard d'une perte relative à certains risques ou dangers auxquels l'objet du contrat d'assurance peut être exposé, ou encore l'engagement de payer en argent ou autrement si un événement donné survient. ("insurance")

« assurance-automobile » Assurance-automobile au sens de la *Loi sur les assurances*. ("automobile insurance")

« assurance complémentaire » L'assurance disponible en vertu de la présente loi ou de ses règlements qui constitue un ajout au régime universel obligatoire d'assurance-automobile. ("extension insurance")

"adjuster" means, subject to section 29, an adjuster as defined in *The Insurance Act*; (« expert » ou « expert en sinistre »)

"agent" means, subject to section 29, an insurance agent as defined in *The Insurance Act*; (« agent »)

"applicant" means a person who applies for insurance; (« proposant »)

"at-fault claim", in relation to a person, means a claim arising from a motor vehicle collision

(a) in which the person was driving a motor vehicle involved, and

(b) for which the person has been found by the corporation or a court to be 50% or more at fault; (« demande d'indemnisation — accident avec responsabilité »)

"automobile insurance" means automobile insurance as defined in *The Insurance Act*; (« assurance-automobile »)

"base driver premium" means the base premium for a driver's certificate that must be paid by a driver who has no merits, or has one or more demerits, under the driver safety rating system established by the regulations; (« prime de base pour conducteurs »)

"benefits" means benefits provided under Part 2 or prescribed in the regulations; (« prestations »)

"board" means the board of directors of the corporation; (« conseil »)

"certificate" means a certificate of insurance issued under this Act or the regulations; (« certificat »)

"chairman" means the chairman of the corporation appointed under this Act; (« président »)

"chief executive officer" means the president and chief executive officer of the corporation appointed under this Act; (« directeur général »)

« assuré » Assuré au sens des règlements. ("insured")

« autre assurance » Assurance fournie par une personne autre que la Société. ("other insurance")

« autre assureur » Personne qui fournit d'autres assurances à des personnes ou pour leur compte. ("other insurer")

« carte d'immatriculation »

a) Carte ou permis d'immatriculation délivré en vertu de la *Loi sur les conducteurs et les véhicules* ou de ses règlements à l'égard d'un véhicule automobile ou d'une remorque;

b) permis à l'égard d'un véhicule automobile ou d'une remorque visé à l'article 87 du *Code de la route*;

c) carte d'immatriculation d'un véhicule à caractère non routier au sens de la *Loi sur les conducteurs et les véhicules*. ("registration card")

« certificat » Le certificat d'assurance délivré en vertu de la présente loi ou de ses règlements. ("certificate")

« certificat d'assurabilité » Le certificat délivré en vertu de la présente loi ou de ses règlements à la personne qui peut être titulaire d'un permis de conduire en vertu de la *Loi sur les conducteurs et les véhicules*, que le certificat soit délivré à titre de partie intégrante du permis ou à titre de document séparé. ("driver's certificate")

« certificat de propriété » Certificat délivré en vertu de la présente loi ou des règlements :

a) au propriétaire d'un véhicule automobile ou d'une remorque;

b) au titulaire d'un permis de commerçant sous le régime de la *Loi sur les conducteurs et les véhicules*;

c) à un réparateur au sens de cette loi;

"contract", except for a contract mentioned in section 20, means a contract of insurance and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and also includes a binding oral agreement; (« contrat »)

"contract of insurance" means insurance provided by the corporation and evidenced by a certificate or a policy; (« contrat d'assurance »)

"corporation", except where the context otherwise requires, means The Manitoba Public Insurance Corporation continued under this Act; (« Société »)

"court" means Her Majesty's Court of Queen's Bench; (« tribunal »)

"coverage" means the right conferred upon a person by this Act or the regulations to be indemnified against liability for, or to be compensated for, death, injury, loss, or damage; (« garantie »)

"demerit" means one of the units of measurement on the negative side of the driver safety rating scale established by the regulations; (« point de démérite »)

"discounted driver premium" means the discounted premium for a driver's certificate that must be paid by a driver who has one or more merits under the driver safety rating system established by the regulations; (« prime réduite pour conducteurs »)

"driver record" means the record about a person maintained by the registrar under section 125 of *The Drivers and Vehicles Act*; (« dossier de conduite »)

"driver's certificate" means a certificate issued under this Act or the regulations to a person who is eligible to hold a driver's licence, as defined in *The Drivers and Vehicles Act*, whether that certificate is issued as part of the licence or as a separate document; (« certificat d'assurabilité »)

d) à l'égard d'un ensemble de véhicules au sens de cette loi. ("owner's certificate")

« conseil » Le conseil d'administration de la Société. ("board")

« contrat » S'entend d'un contrat d'assurance et notamment d'une police, d'un certificat, d'un reçu provisoire, d'un reçu de renouvellement d'ou un écrit faisant preuve du contrat, scellé ou non, de même qu'une entente orale ferme. La présente définition ne vise pas le contrat prévu à l'article 20. ("contract")

« contrat d'assurance » Assurance fournie par la Société et attesté par un certificat ou une police. ("contract of insurance")

« demande d'indemnisation — accident avec responsabilité » Toute demande d'indemnisation présentée à la suite d'un accident automobile :

a) dans lequel est accidenté le véhicule automobile qu'une personne conduisait;

b) à l'égard duquel la Société ou un tribunal a déclaré que la responsabilité de cette personne s'élevait à 50 % ou plus. ("at-fault claim")

« directeur général » Le président et directeur général de la Société nommé en vertu de la présente loi. ("chief executive officer")

« dossier de conduite » Dossier concernant une personne que tient le registraire conformément à l'article 125 de la *Loi sur les conducteurs et les véhicules*. ("driver record")

« expert » ou **« expert en sinistre »** Sous réserve de l'article 29, expert au sens de la *Loi sur les assurances*. ("adjuster")

« facteur de démérite » Fait :

a) qui figure dans le dossier de conduite d'une personne;

"extension insurance" means insurance made available under the Act or regulations that is in addition to or in excess of universal compulsory automobile insurance; and with respect to any other class of insurance has the same meaning as under *The Insurance Act*; (« assurance complémentaire »)

"family" of a person includes another person who, not being married to the person, is cohabiting with him or her in a conjugal relationship of some permanence; (« famille »)

"highway" includes every highway within the meaning of *The Highway Traffic Act*, and every road, street, lane, or right-of-way designed or intended for or used by the general public for the passage of vehicles, and every private place or passageway to which the public, for the purpose of the parking or servicing of motor vehicles, has access or is invited; (« route »)

"input factor" means a fact about a person, including, but not limited to, an at-fault claim or a conviction,

(a) that is recorded in his or her driver record, and

(b) that is prescribed in the regulations as an input factor that negatively affects his or her driver safety rating under the driver safety rating system established by the regulations; (« facteur de démérite »)

"insurance" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event; (« assurance »)

"insurance moneys" means the amount payable by the corporation under the regulations or a contract, and includes all benefits, surplus profits, dividends, bonuses, indemnity, and annuities payable under the regulations or a contract; (« sommes assurées »)

b) qui est prescrit par règlement à ce titre et qui nuit à sa cote de conduite dans le cadre du système de cotes de conduite établi par les règlements.

Sont notamment assimilées aux facteurs de démérite les demandes d'indemnisation — accident avec responsabilité et les condamnations. ("input factor")

« **famille** » Fait partie de la famille d'une personne la personne qui vit avec celle-ci dans une relation maritale d'une certaine permanence sans être mariée avec elle. ("family")

« **garantie** » Droit que la présente loi ou ses règlements attribuent à une personne de se faire indemniser en cas de responsabilité ou de recevoir une compensation à la suite de décès, de blessures, de pertes ou de dommages. ("coverage")

« **ministre** » Le membre du conseil exécutif que le lieutenant-gouverneur en conseil charge de l'application de la présente loi. ("minister")

« **permis** » Permis de conduire au sens de la *Loi sur les conducteurs et les véhicules*. ("licence")

« **permis d'essai de technologie** » S'entend au sens de l'article 318.13 du *Code de la route*. ("technology testing permit")

« **permis de conduire** » Selon le cas :

a) permis de conduire temporaire délivré en vertu des paragraphes 265.2(1) ou 268(1) du *Code de la route*;

b) permis délivré en vertu de l'article 87 de ce code;

c) permis d'immatriculation délivré sous le régime de la *Loi sur les conducteurs et les véhicules* ou de ses règlements. ("permit")

« **point de démérite** » Unité de mesure située dans la partie négative de l'échelle de cotes de conduite établie par règlement. ("demerit")

"insured" means an insured as defined in the regulations; (« assuré »)

"licence" means driver's licence as defined in *The Drivers and Vehicles Act*; (« permis »)

"merit" means one of the units of measurement on the positive side of the driver safety rating scale established by the regulations; (« point de mérite »)

"minister" means the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of this Act; (« ministre »)

"motor vehicle" means a self-propelled vehicle but, subject to subsection (2), does not include

(a) agricultural equipment, infrastructure equipment, a motorized mobility aid or a power-assisted bicycle, as those terms are defined in *The Highway Traffic Act*,

(b) an off-road vehicle as defined in *The Off-Road Vehicles Act*, or

(c) a vehicle while it is being operated on rails; (« véhicule automobile »)

"other insurance" means insurance provided by a person other than the corporation; (« autre assurance »)

"other insurer" means a person who provides other insurance to or for persons; (« autre assureur »)

"owner", in relation to motor vehicles or trailers and to automobile insurance on such vehicles, includes

(a) the owner in whose name the vehicle is registered under *The Drivers and Vehicles Act*,

(b) a joint owner within the meaning of subsection 40(4) of that Act, and

(c) a person who has the right to pass the property in the vehicle other than by way of security only; (« propriétaire »)

« point de mérite » Unité de mesure située dans la partie positive de l'échelle de cotes de conduite établie par règlement. ("merit")

« police » Instrument qui fait preuve d'un contrat d'assurance. ("policy")

« président » Le président de la Société nommé en vertu de la présente loi. ("chairman")

« prestations » Prestations prévues à la partie 2 ou prescrites aux règlements. ("benefits")

« prime » Sommes payées ou dues par un assuré ou par un requérant à la Société pour l'achat ou la mise à jour d'une garantie fournie en vertu de la présente loi ou de ses règlements. ("premium")

« prime de base pour conducteurs » Prime de base exigible pour un certificat d'assurabilité que paient les conducteurs qui n'ont obtenu aucun point de mérite ou qui ont obtenu un ou plusieurs points de démérite dans le cadre du système de cotes de conduite établi par règlement. ("base driver premium")

« prime de pénalité pour conducteurs » Prime exigible pour un certificat d'assurabilité qui s'ajoute à la prime de base pour conducteurs et que paient les conducteurs qui ont obtenu le nombre de points de démérite réglementaire dans le cadre du système de cotes de conduite établi par règlement. ("additional driver premium")

« prime de pénalité rajustée pour conducteurs » Prime exigible pour un certificat d'assurabilité :

a) qui est fixée par la Commission d'appel des tarifs à la suite d'un appel interjeté en vertu de l'alinéa 65(4)a);

b) qui s'ajoute à la prime de base pour conducteurs et que paient les conducteurs qui ont obtenu le nombre de points de démérite réglementaire dans le cadre du système de cotes de conduite établi par règlement. ("adjusted additional driver premium")

"owner's certificate" means a certificate issued under this Act or the regulations

(a) to the owner of a motor vehicle or trailer,

(b) to the holder of a dealer's permit under *The Drivers and Vehicles Act*,

(c) to a repairer as defined in *The Drivers and Vehicles Act*, or

(d) in respect of a drive-away unit as defined in that Act; (« certificat de propriété »)

"permit" means

(a) a temporary permit to drive under subsection 265.2(1) or 268(1) of *The Highway Traffic Act*,

(b) a permit under section 87 of *The Highway Traffic Act*, or

(c) a registration permit under *The Drivers and Vehicles Act* or the regulations under that Act; (« permis de conduire »)

"plan" means any plan of universal compulsory automobile insurance or extension insurance that may be established under this Act or the regulations; (« régime »)

"plan premium" means a premium paid or to be paid for an owner's certificate under a plan of universal compulsory automobile insurance or extension insurance, and includes any discount or additional amount established under subsection 6.1(3); (« prime du régime »)

"policy" means the instrument evidencing a contract of insurance; (« police »)

"premium" means any sum of money paid or to be paid by an insured or an applicant for insurance to the corporation for the purchase of or the maintenance of insurance coverage provided under this Act or the regulations; (« prime »)

« prime du régime » Prime exigible en vue de l'obtention d'un certificat de propriété au titre d'un régime universel obligatoire d'assurance-automobile ou d'une assurance complémentaire. La présente définition vise notamment les réductions ou les surprimes établies en vertu du paragraphe 6.1(3). ("plan premium")

« prime réduite pour conducteurs » Prime réduite exigible pour un certificat d'assurabilité que paient les conducteurs qui ont obtenu un ou plusieurs points de mérite dans le cadre du système de cotes de conduite établi par règlement. ("discounted driver premium")

« proposant » Personne qui demande une assurance. ("applicant")

« propriétaire » Relativement aux véhicules automobiles ou aux remorques et à l'assurance-automobile souscrite à leur égard, vise notamment :

a) le propriétaire au nom duquel le véhicule est immatriculé en vertu de la *Loi sur les conducteurs et les véhicules*;

b) un propriétaire conjoint au sens du paragraphe 40(4) de cette loi;

c) une personne qui a le droit de transférer la propriété d'un véhicule autrement qu'uniquement au moyen d'une garantie. ("owner")

« régime » Tout régime universel obligatoire d'assurance-automobile ou les assurances complémentaires qui peuvent être créés en vertu de la présente loi ou de ses règlements. ("plan")

« régime universel obligatoire d'assurance-automobile » Le régime universel obligatoire d'assurance-automobile tel qu'il est défini aux règlements. ("universal compulsory automobile insurance")

« registraire » Le registraire des véhicules automobiles nommé en vertu de la *Loi sur les conducteurs et les véhicules*. ("registrar")

"registrar" means the Registrar of Motor Vehicles appointed under *The Drivers and Vehicles Act*; (« registraire »)

"registration card" means

(a) a registration card or registration permit for a motor vehicle or trailer under *The Drivers and Vehicles Act* or the regulations under that Act,

(b) a permit for a motor vehicle or trailer under section 87 of *The Highway Traffic Act*, and

(c) a registration card for an off-road vehicle under *The Drivers and Vehicles Act*; (« carte d'immatriculation »)

"superintendent" means the superintendent of insurance appointed under *The Insurance Act*; (« surintendant »)

"technology testing permit" means a technology testing permit issued under section 318.13 of *The Highway Traffic Act*; (« permis d'essai de technologie »)

"test vehicle" means a vehicle for which a technology testing permit has been issued; (« véhicule d'essai »)

"trailer" means a trailer as defined in *The Highway Traffic Act*; (« remorque »)

"universal compulsory automobile insurance" means universal compulsory automobile insurance as defined in the regulations; (« régime universel obligatoire d'assurance-automobile »)

"vehicle" means a vehicle as defined in *The Highway Traffic Act*. (« véhicule »)

« remorque » Remorque au sens du *Code de la route*. ("trailer")

« route » Route, au sens du *Code de la route*, et notamment les routes, rues, ruelles ou droits de passage destinés au passage de véhicules du public en général ou utilisés comme tels ainsi que les endroits privés ou voies de passage que le public est susceptible d'utiliser pour le stationnement ou l'entretien des véhicules automobiles. ("highway")

« Société » Sauf lorsque le contexte commande une interprétation contraire, la Société d'assurance publique du Manitoba prorogée par la présente loi. ("corporation")

« sommes assurées » S'entend des sommes que la Société doit payer en vertu des règlements ou d'un contrat, et notamment des prestations, excédents, dividendes, bonus, dédommagements et rentes qu'elle doit payer en vertu des règlements ou d'un contrat. ("insurance moneys")

« surintendant » Le surintendant des assurances nommé en vertu de la *Loi sur les assurances*. ("superintendent")

« tribunal » La Cour du Banc de la Reine. ("court")

« véhicule » Véhicule au sens du *Code de la route*. ("vehicle")

« véhicule automobile » Véhicule automoteur. Sous réserve du paragraphe (2), la présente définition ne vise toutefois pas :

a) le matériel agricole, le matériel de chantier, les engins motorisés ou les bicyclettes assistées, selon le sens que le *Code de la route* attribue à ces termes;

b) les véhicules à caractère non routier au sens de la *Loi sur les véhicules à caractère non routier*;

c) les véhicules pendant qu'ils sont conduits sur des rails. ("motor vehicle")

« **véhicule d'essai** » Véhicule à l'égard duquel un permis d'essai de technologie a été délivré. ("test vehicle")

Regulations to include other vehicles

1(2) The Lieutenant Governor in Council may, by regulation, include any other kind or class of vehicle, as defined in *The Highway Traffic Act*, to be within the definition of motor vehicle and subject to this Act.

Inclusion d'autres véhicules

1(2) Le lieutenant-gouverneur en conseil peut, par règlement, inclure à la définition de véhicule automobile et soumettre à la présente loi tout autre genre ou catégorie de véhicules définis au *Code de la route*.

1(3) [Repealed] S.M. 2008, c. 36, s. 49.

1(3) [Abrogé] L.M. 2008, c. 36, art. 49.

Registered common-law relationship

1(4) For the purposes of this Act, while they are cohabiting, persons who have registered their common-law relationship under section 13.1 of *The Vital Statistics Act* are deemed to be cohabiting in a conjugal relationship of some permanence.

S.M. 1992, c. 58, s. 26; S.M. 1993, c. 36, s. 2; S.M. 1994, c. 4, s. 37; S.M. 2000, c. 35, s. 19; S.M. 2002, c. 24, s. 49; S.M. 2002, c. 48, s. 20; S.M. 2005, c. 37, Sch. A, s. 158; S.M. 2008, c. 36, s. 49; S.M. 2008, c. 42, s. 80; S.M. 2014, c. 15, s. 2; S.M. 2018, c. 10, Sch. D, s. 2; S.M. 2018, c. 12, s. 11; S.M. 2018, c. 29, s. 30; S.M. 2021, c. 22, s. 7.

Union de fait enregistrée

1(4) Pour l'application de la présente loi, les personnes qui ont fait enregistrer leur union de fait en vertu de l'article 13.1 de la *Loi sur les statistiques de l'état civil* sont, pendant la période où elles vivent ensemble, réputées vivre dans une relation maritale d'une certaine permanence.

L.R.M. 1987, corr.; L.M. 1992, c. 58, art. 26; L.M. 1993, c. 36, art. 2; L.M. 1994, c. 4, art. 37; L.M. 2000, c. 35, art. 19; L.M. 2002, c. 24, art. 49; L.M. 2002, c. 48, art. 20; L.M. 2005, c. 37, ann. A, art. 158; L.M. 2008, c. 36, art. 49; L.M. 2008, c. 42, art. 80; L.M. 2014, c. 15, art. 2; L.M. 2018, c. 10, ann. D, art. 2; L.M. 2018, c. 12, art. 11; L.M. 2018, c. 29, art. 30; L.M. 2021, c. 22, art. 7.

Disclosure of facts by directors

2(12) A director who, under subsection (10), is or may be debarred from being present at the time of the discussion of any matter or from voting thereon shall, when the matter arises, disclose any facts that so debar the director, and shall withdraw; but, if the disability arises by reason of a question as to the director's having a significant beneficial interest as mentioned in subsection (10), and if the other directors declare, as provided in subsection (11) that the director does not have such a significant interest, the director may resume the director's seat on the board and discuss and vote on the matter.

Confidentialité

2(12) Un administrateur qui, en application du paragraphe (10), est ou devient inadmissible à voter sur une question ou même à assister à la partie de la réunion pendant laquelle on discute cette question doit, dès que la question est évoquée, révéler les faits qui l'empêchent de voter et il doit se retirer. Toutefois, s'il devient inadmissible du fait qu'il a un intérêt bénéficiaire important aux termes du paragraphe (10), et si en vertu du paragraphe (11) les autres administrateurs décident qu'il n'a pas d'intérêt, il peut participer au débat et au vote sur la question concernée.

Reports to minister

2(13) The chairman of the corporation shall report to such minister as may from time to time be designated by the Lieutenant Governor in Council.

S.M. 1988-89, c. 23, s. 37; S.M. 1992, c. 58, s. 26; S.M. 2015, c. 43, s. 40; S.M. 2019, c. 11, s. 22.

Ministre responsable

2(13) La Société relève du ministre que désigne le lieutenant-gouverneur en conseil.

L.R.M. 1987, corr.; L.M. 1988-89, c. 23, art. 37; L.M. 1992, c. 58, art. 26; L.M. 2015, c. 43, art. 40; L.M. 2019, c. 11, art. 22; L.M. 2021, c. 5, art. 18.

Head office

3 The head office of the corporation shall be at a place to be designated by the Lieutenant Governor in Council, but the corporation may establish branch offices at other places.

Siège social

3 Le siège social de la Société est situé à l'endroit que détermine le lieutenant-gouverneur en conseil. Toutefois, la Société peut établir des succursales à d'autres endroits.

Appointment of president and chief executive officer

4 The Lieutenant Governor in Council may appoint a president and chief executive officer for the corporation and fix his or her salary.

S.M. 2000, c. 35, s. 19.

Nomination d'un directeur général

4 Le lieutenant-gouverneur en conseil peut nommer un directeur général de la Société et déterminer son traitement.

L.R.M. 1987, corr.

Power to engage employees and duties of chief executive officer

5 The directors or, if authorized by the directors, the chief executive officer may, appoint such officers and employees as they consider necessary to carry out the business of the corporation and may define their duties and determine their remuneration and the chief executive officer is responsible and has the authority for the management, direction and control of the operations of the corporation and the day to day administration of its affairs.

S.M. 2000, c. 35, s. 19.

Pouvoir d'engager des employés

5 Les administrateurs, ou le directeur général si les administrateurs l'y autorisent, peuvent nommer les cadres et employés qu'ils jugent nécessaires aux activités de la Société et peuvent déterminer leurs fonctions et leur rémunération. Le directeur général est responsable de l'administration, de la direction et de la maîtrise des activités de la Société ainsi que de son fonctionnement ordinaire. En outre, il est investi de l'autorité nécessaire à l'accomplissement de cette tâche.

Objects and powers

6(1) It is the function of the corporation and it has the power and capacity

(a) subject to the approval of the Lieutenant Governor in Council to engage in and carry on the activity of automobile insurance in all its classes;

(b) subject to the approval of the Lieutenant Governor in Council to operate and administer such plans of universal compulsory automobile insurance as may be set out in this Act and regulations and may provide plans of extension insurance upon such terms and conditions as may be prescribed by the regulations;

(c) subject to the approval of the Lieutenant Governor in Council to engage in and carry on, both within and without the province, the business of insurance and reinsurance in all its classes and without limiting the generality of the foregoing, to engage in and carry on the business of insurance and reinsurance in all its branches in the following classes of insurance as such classes are defined in *The Insurance Act*:

(i) Accident insurance;

(ii) Aircraft insurance;

(iii) Boiler and machinery insurance;

(iv) Fire insurance;

(v) Guarantee insurance;

(vi) Inland transportation insurance;

(vii) Live stock insurance;

(viii) Marine insurance;

(ix) Plate glass insurance;

(x) Property damage insurance;

Objets et pouvoirs

6(1) La Société est investie des fonctions et des pouvoirs suivants :

a) Sous réserve de l'approbation du lieutenant-gouverneur en conseil, elle peut faire le commerce de l'assurance-automobile de toute catégorie.

b) Sous réserve de l'approbation du lieutenant-gouverneur en conseil, elle peut faire fonctionner et administrer les régimes universels obligatoires d'assurance-automobile prévus à la présente loi et à ses règlements, et proposer des assurances complémentaires selon les modalités prescrites aux règlements.

c) Sous réserve de l'approbation du lieutenant-gouverneur en conseil, elle peut se consacrer à l'intérieur ou à l'extérieur de la province au commerce de l'assurance et de la réassurance, quelle que soit la branche. Elle peut notamment se consacrer au commerce de l'assurance et de la réassurance de toutes branches quant aux catégories suivantes d'assurances, selon les catégories que définit la *Loi sur les assurances* :

(i) l'assurance-accidents corporels,

(ii) l'assurance-aviation,

(iii) l'assurance bris des machines,

(iv) l'assurance-incendie,

(v) l'assurance de cautionnement,

(vi) l'assurance transports terrestres,

(vii) l'assurance-bétail,

(viii) l'assurance maritime,

(ix) l'assurance bris des glaces,

(x) l'assurance contre les dommages matériels,

(xi) l'assurance responsabilité civile,

(xi) Public liability insurance;

(xii) Theft insurance;

(xiii) Weather insurance;

(c.1) to administer *The Drivers and Vehicles Act*, and to perform the duties and exercise the powers described in subsection 2(2) of that Act;

(d) to engage in and carry on the business of

(i) repairing any property insured by the corporation; and

(ii) salvaging and disposing of by public or private sale any property insured and acquired under a contract by which the corporation may be liable as an insurer, or to make agreements with other persons for those purposes;

(e) to acquire by purchase, lease, licence, or otherwise, and hold, develop, construct, use, maintain, repair, operate, and improve, as owner or tenant or otherwise, for its own use and benefit, real property

(i) necessary or required for the conduct of its business and to allow it to carry out its role as administrator under *The Drivers and Vehicles Act* or perform the duties and exercise the powers described in subsection 2(2) of that Act;

(ii) conveyed, mortgaged, or hypothecated to it by way of security; or

(iii) conveyed to it in satisfaction in whole or in part in respect of debts and judgments;

and to sell, lease, or otherwise dispose of the whole or any part of such real property, in each case upon such terms and conditions as the board deems proper;

(xii) l'assurance-vol,

(xiii) l'assurance-intempéries.

c.1) Elle peut faire appliquer la *Loi sur les conducteurs et les véhicules* et exercer les attributions visées au paragraphe 2(2) de cette loi.

d) Elle peut se consacrer aux commerces suivants :

(i) la réparation des biens qu'elle assure,

(ii) la récupération et la disposition par vente publique ou privée des biens assurés et acquis en vertu d'un contrat par lequel la Société engage sa responsabilité d'assureur; elle peut également passer des ententes avec d'autres personnes aux mêmes fins.

e) Elle peut acquérir par voie d'achat, de bail, de permis ou autrement et détenir, mettre en valeur, construire, utiliser, entretenir, réparer, faire fonctionner et améliorer à titre de propriétaire, de locataire ou autrement, pour son propre usage et à son profit, les biens réels suivants :

(i) ceux qui sont nécessaires ou exigés pour ses activités et pour lui permettre d'exercer ses fonctions d'administrateur en vertu de la *Loi sur les conducteurs et les véhicules* et les attributions visées au paragraphe 2(2) de cette loi,

(ii) ceux qui sont transférés, hypothéqués et grevés en sa faveur à titre de sûreté,

(iii) ceux qui lui sont transférés en paiement ou en exécution totale ou partielle de dette ou de jugement.

Elle peut également vendre, donner en location ou aliéner autrement tout ou partie de ses biens réels, dans tous les cas et selon les modalités que le conseil juge appropriées.

(f) to acquire by purchase the business and property or any portion thereof of any other insurer, agent, or adjuster, or to enter into agreements to carry on jointly any class of insurance with another insurer whether within or without the province; and *The Insurance Act* does not apply to such agreements.

f) Elle peut acquérir par voie d'achat tout ou partie du commerce et des biens d'un autre assureur, agent ou expert, ou encore conclure des ententes pour faire le commerce de toute catégorie d'assurance avec un autre assureur, à l'intérieur ou à l'extérieur de la province. La *Loi sur les assurances* ne s'applique pas à ces ententes.

Additional powers

6(2) The corporation has the power and capacity to do all acts and things necessary or required for the purpose of carrying out its functions and powers and, without limiting the generality of the foregoing, the corporation may

Pouvoirs supplémentaires

6(2) La Société a le pouvoir et la capacité d'accomplir les actes et de faire les choses qui sont nécessaires ou exigées pour l'exercice de ses fonctions et pouvoirs. Elle peut notamment :

(a) conduct surveys and research programs and obtain statistics for its purposes and for the purpose of establishing and administering any insurance plan;

a) mener des études et des recherches, obtenir des statistiques correspondant à ses besoins et aux besoins de l'établissement et de la gestion de régimes d'assurances quels qu'ils soient;

(b) enter into agreements with, or retain agents or adjusters for the purpose of soliciting and receiving applications for insurance, for collecting premiums, adjusting claims, and doing of such other things on its behalf as the corporation considers necessary;

b) passer une entente avec des agents ou experts ou retenir leurs services pour le démarchage, pour le recouvrement des primes, pour l'expertise des demandes de règlements ainsi que pour l'accomplissement de toute autre chose à faire en son nom et que la Société estime nécessaire;

(c) prescribe forms of applications, contracts, and forms of policy and such other forms as the corporation considers necessary;

c) prescrire les formules de demandes, de contrats ainsi que les formules de polices et, en général, toute autre formule que la Société juge nécessaire;

(d) prescribe the information and detail required to be set out on any form;

d) prescrire les renseignements et détails qui doivent être indiqués sur chaque formule;

(e) evaluate damages and losses and pay claims under a contract by which the corporation may be liable as an insurer;

e) évaluer les dommages et les pertes et payer les réclamations dont elle est responsable par contrat en tant qu'assureur;

(f) reinsure the contract or any portion thereof of any other insurer, and reinsure its risk under any plan or a contract or any portion thereof with any other insurer, whether or not the other insurer is within or without the province, or is, or is not, licensed under *The Insurance Act*;

f) réassurer tout ou partie du contrat d'un autre assureur et réassurer ces risques en vertu d'un régime ou de tout ou partie d'un contrat auprès d'un autre assureur, que cet autre assureur soit ou non dans la province ou qu'il soit ou non détenteur d'un permis en vertu de la *Loi sur les assurances*;

(g) do all things necessary for the purpose of settling, adjusting, investigating, defending and otherwise dealing with, in conformity with this Act and *The Insurance Act* insofar as is applicable, and the regulations made under both Acts, claims made in respect of contracts by which the corporation may be liable as insurer or in respect of any plan established under section 6;

(h) carry out either alone or jointly with other board, commission, corporation, department or agency of government, or any private person, agency, or association, introduce, establish, supervise, finance and promote programs relating to health, rehabilitation, safety and the reduction of risk in respect of any branch or class of insurance in which the corporation is engaged;

(i) promote or carry out programs of research into the causes of accidents and research into the more equitable distribution of losses resulting from highway traffic accidents;

(j) establish and maintain one or more repair shops to investigate, study, and apply techniques used or to be used in the repair of motor vehicles and to analyze the cost of repairs;

(k) negotiate and bargain with persons engaged in the business of motor vehicle and trailer repairs with a view to establishing fair and reasonable prices for motor vehicle and trailer repairs in relation to which payments may be made under this Act;

(l) make such by-laws and pass such resolutions, not contrary to the law or this Act, as it considers necessary or advisable for the conduct of the affairs of the corporation, and, without limiting the generality of the foregoing, make by-laws and pass resolutions with respect to the time and place of calling and holding meetings of the corporation, the procedure to be followed at the meetings, and generally with respect to the conduct in all other particulars of the affairs of the corporation, and may repeal, amend, or re-enact them.

g) faire toutes les choses qui sont nécessaires au règlement, à l'expertise, aux enquêtes, à la contestation et, en général, au traitement, en conformité avec la présente loi et la *Loi sur les assurances* pour autant qu'elles soit applicables et en conformité avec leurs règlements, des demandes de règlement faites eu égard à des contrats par lesquels la Société peut être tenue responsable en tant qu'assureur ou eu égard au régime établi en vertu de l'article 6;

h) seule ou conjointement avec toute autre commission, régie, société, corporation, ministère ou organisme gouvernemental ou avec un particulier, présenter, mettre en place, superviser, financer et promouvoir des programmes relatifs à la santé, à la rééducation, à la sécurité et à la diminution des risques reliés à toute catégorie d'assurances dont elle fait le commerce;

i) promouvoir ou réaliser des programmes de recherches relatifs aux causes des accidents ainsi que des recherches relatives à une répartition plus équitables des pertes dues aux accidents de la route;

j) mettre en place et entretenir des ateliers de réparations dans lesquels elle peut étudier et mettre en application les techniques utilisées ou devant être utilisées dans la réparation de véhicules automobiles et également analyser les coûts de réparation;

k) négocier et marchander avec des personnes se consacrant à la réparation des véhicules automobiles et des remorques en vue d'établir le juste prix des réparations pour lesquelles des sommes peuvent être payées en vertu de la présente loi;

l) prendre des règlements administratifs et passer les résolutions compatibles avec le droit lorsqu'elle les considère nécessaires ou opportunes pour la conduite de ses affaires, et notamment faire des règles de régie interne et passer des résolutions relatives au moment, au lieu et à la tenue des réunions de la Société, à la procédure de ces réunions et, généralement, à la conduite détaillée des activités de la Société et abroger, modifier et réadopter ces règlements administratif et résolutions.

Incorporation of certificates, etc.
6(3) Any certificate and application for insurance forms prescribed and adopted by the corporation may be incorporated in the appropriate application forms and certificates of registration, registration cards, permits or licences prescribed for use or used under *The Drivers and Vehicles Act* or *The Highway Traffic Act*.

Information required
6(4) The corporation may require an applicant for insurance or an insured person to furnish such information, statements and reports relating to or affecting the operation or administration of a plan of automobile insurance, as may be set out in the regulations.

Accident information
6(5) The corporation may require every driver or owner of a motor vehicle required to be registered and licensed in Manitoba that is involved in an accident out of which arises injury or death to a person or damage to property to furnish such information relating thereto to the corporation as may be set out in the regulations.

Furnishing proofs
6(6) The corporation may require an insured to furnish such notices, proofs of claim, proofs of loss, reports and statements, and to comply with any other methods of making and proving claims, as may be prescribed in the regulations.

S.M. 1994, c. 4, s. 37; S.M. 2005, c. 37, Sch. A, s. 158; S.M. 2014, c. 15, s. 3; S.M. 2017, c. 36, s. 17.

Plan premiums
6.1(1) For the period after February 28, 2019, the corporation must establish plan premiums for the plans it operates and administers under clause 6(1)(b).

Inclusion des certificats et autres documents
6(3) Les formules de certificat et de proposition prescrites et adoptées par la Société peuvent être intégrées aux formules de demandes appropriées et aux certificats d'immatriculation, aux cartes d'immatriculation, aux permis de conduire, ou aux permis prescrits ou utilisés en vertu de la *Loi sur les conducteurs et les véhicules* ou du *Code de la route*.

Renseignements exigés
6(4) La Société peut exiger d'un proposant ou d'un assuré qu'il lui fournisse les renseignements, déclarations et rapports relatifs au fonctionnement ou à la gestion d'un régime d'assurance-automobile, conformément aux règlements.

Renseignements sur les accidents
6(5) La Société peut exiger de chaque conducteur ou propriétaire d'un véhicule automobile qui doit être immatriculé et autorisé au Manitoba et qui est mêlé à un accident ayant donné lieu à des blessures ou au décès d'une personne, ou encore à des dommages à des biens, de lui fournir les renseignements qui y sont relatifs, conformément aux règlements.

Justificatifs
6(6) La Société peut exiger d'un assuré qu'il lui fournisse des avis, des preuves de sinistre, des rapports et des déclarations et qu'il se conforme à toute autre méthode de dépôt et de justification de sinistres, conformément aux règlements.

L.M. 1994, c. 4, art. 37; L.M. 2005, c. 37, ann. A, art. 158; L.M. 2014, c. 15, art. 3; L.M. 2017, c. 36, art. 17.

Primes des régimes
6.1(1) La Société est tenue de fixer, à l'égard de la période postérieure au 28 février 2019, les primes des régimes qu'elle administre en vertu de l'alinéa 6(1)b).

Classes
6.1(2) Without limitation, the corporation may establish plan premiums with reference to the type, use, operation and age of motor vehicles and trailers, including their use within a region, and for that purpose may

(a) create classes and sub-classes of motor vehicles and trailers, and regions; and

(b) establish different plan premiums for different classes, sub-classes or regions.

Catégories
6.1(2) La Société peut fixer les primes de régimes en fonction du genre, de l'utilisation, du fonctionnement et de l'âge des véhicules automobiles ou des remorques, y compris en fonction de leur utilisation à l'intérieur d'une région. Elle peut, à cette fin, prendre les mesures suivantes :

a) établir des catégories et des sous-catégories de véhicules automobiles et de remorques ainsi qu'établir des régions;

b) fixer des primes de régimes différentes en fonction des catégories, des sous-catégories ou des régions.

Discounts and additional amounts
6.1(3) The corporation may establish discounts from the plan premiums otherwise payable, and may establish additional amounts that must be paid as part of plan premiums, by an insured or an applicant for insurance, based on the driver safety rating system established by the regulations.

Réductions et surprimes
6.1(3) La Société peut accorder aux assurés ou aux proposants des réductions à l'égard des primes de régimes normalement exigibles ou leur imposer des surprimes en fonction du système de cotes de conduite établi par règlement.

Publication
6.1(4) The corporation must ensure that its plan premiums are

(a) published on a website maintained by the corporation; and

(b) made publicly available through other reasonable means.

Publication
6.1(4) La Société veille à ce que les primes de régimes soient à la fois :

a) publiées sur son site Web;

b) diffusées au public d'autres manières raisonnables.

Premiums are not regulations
6.1(5) For certainty, the corporation's plan premiums are not regulations within the meaning of *The Statutes and Regulations Act*.

Non-assimilation à des textes réglementaires
6.1(5) Les primes de régimes ne sont pas des règlements au sens de la *Loi sur les textes législatifs et réglementaires*.

Transition
6.1(6) The *Automobile Insurance Certificates and Rates Regulation*, Manitoba Regulation 23/2017, is repealed on March 1, 2019.

S.M. 2018, c. 29, s. 30.

Disposition transitoire
6.1(6) Le *Règlement sur les certificats et les tarifs*, *R.M.* 23/2017, est abrogé le 1er mars 2019.

L.M. 2018, c. 29, art. 30.

Premium payable

6.2 The premium payable for an owner's certificate is the plan premium established by the corporation for the owner's certificate for the applicable motor vehicle or trailer, as determined by the corporation.

S.M. 2018, c. 29, s. 30.

Prime exigible

6.2 La prime exigible à l'égard d'un certificat de propriété correspond à la prime de régime que fixe la Société pour le certificat visant le véhicule automobile ou la remorque en question, selon ce que détermine la Société.

L.M. 2018, c. 29, art. 30.

Separation of compulsory and extended businesses

6.3 The corporation must ensure that the revenue from its plans of universal compulsory automobile insurance and its other revenues are not used to subsidize the corporation's plans of extension insurance.

S.M. 2018, c. 29, s. 30.

Séparation des recettes provenant des régimes obligatoires et complémentaires

6.3 La Société veille à ce que les recettes provenant entre autres de ses régimes universels obligatoires d'assurance-automobile ne servent pas à subventionner ses régimes d'assurance complémentaires.

L.M. 2018, c. 29, art. 30.

PUB approval of plan premiums for universal compulsory automobile insurance

6.4(1) The corporation's plan premiums for its plans of universal compulsory automobile insurance must not be changed, and no new plan premiums for such insurance may be established by the corporation, except in accordance with this section.

Approbation par la Régie des primes des régimes universels obligatoires d'assurance-automobile

6.4(1) Sous réserve des autres dispositions du présent article, il est interdit à la Société de modifier les primes des régimes universels obligatoires d'assurance-automobile ou d'en établir de nouvelles.

Application for review by the PUB

6.4(2) The corporation must apply to The Public Utilities Board for approval before changing an existing plan premium, or establishing a new plan premium, for its plans of universal compulsory automobile insurance.

Autorisation de la Régie

6.4(2) La Société est tenue de demander l'autorisation de la Régie des services publics avant de modifier les primes existantes des régimes universels obligatoires d'assurance-automobile ou d'en établir de nouvelles.

Board may approve or vary plan premiums

6.4(3) The Public Utilities Board may either approve or vary the plan premiums applied for by the corporation, and must make its decision in accordance with Part 4 of *The Crown Corporations Governance and Accountability Act*.

S.M. 2018, c. 29, s. 30.

Décision de la Régie

6.4(3) La Régie des services publics peut soit approuver les primes de régimes proposées, soit les modifier. Elle est tenue de rendre sa décision conformément à la partie 4 de la *Loi sur la gouvernance et l'obligation redditionnelle des corporations de la Couronne*.

L.M. 2018, c. 29, art. 30.

(b) a group insurance plan

for the benefit of officers and employees of the corporation and their dependents.

b) les régimes d'assurance collective.

Property deemed to belong to the Crown

14(1) All property, whether real or personal, and all moneys acquired, administered, possessed or received by the corporation, and all profits earned by the corporation shall be deemed to be the property of Her Majesty in right of Manitoba for all purposes, including exemption from taxation of whatever nature and description, and the corporation is an agent of Her Majesty in right of Manitoba.

Présomption d'appartenance à la Couronne

14(1) Les biens, qu'ils soient réels ou personnels et les sommes que la Société acquiert, gère, possède ou reçoit, de même que les profits que la Société réalise, sont réputés être la propriété de Sa Majesté du chef du Manitoba à toutes fins y compris aux fins d'exemptions fiscales de quelque nature que ce soit. En outre, la Société est mandataire de Sa Majesté du chef du Manitoba.

Restriction on use of moneys by government

14(2) No moneys, funds, reserves, investments and property, whether real or personal, acquired, administered, possessed or held by the corporation, nor any profits earned by the corporation in the activity of automobile insurance, may be taken, used or appropriated by the Government of Manitoba for any purpose whatever, except as provided under section 12 or in repayment of advances by or moneys borrowed from, the Government of Manitoba and interest thereon.

Restrictions financières

14(2) Les sommes, les fonds, les réserves, les investissements et les biens acquis, administrés, possédés ou détenus par la Société ainsi que les profits qu'elle tire de l'activité reliée à l'assurance-automobile ne peuvent être pris, utilisés ni affectés par le gouvernement du Manitoba à une fin quelconque, si ce n'est en conformité avec l'article 12 ou en remboursement d'avances consenties par le gouvernement du Manitoba ou de sommes empruntées auprès de celui-ci et des intérêts y relatifs.

Government may appropriate funds

14(3) Subject to subsection (2) and subsection 44(1), the Government of Manitoba may, for any purpose whatever, take, use or appropriate any moneys, funds, investments and property, whether real or personal acquired, administered, possessed or held by the corporation or any profits earned by the corporation.

Pouvoir d'appropriation du gouvernement

14(3) Sous réserve du paragraphe (2) et du paragraphe 44(1), le gouvernement du Manitoba peut à toutes fins prendre, utiliser ou s'approprier les sommes, fonds, investissements et biens, réels ou personnels, que la Société acquiert, gère, possède ou détient ainsi que les profits qu'elle réalise.

Premium tax

14(4) *The Insurance Corporations Tax Act* applies to the corporation, and the corporation is an insurer for the purposes of that Act.

Impôt sur les primes

14(4) La *Loi sur l'imposition des compagnies d'assurances* s'applique à la Société et la Société est un assureur aux fins de cette loi.

Grant in lieu of cost of municipal and school services
14(5) The corporation, as an operating expense, shall make annually to any municipality in which land or personal property of the corporation, are situated, or in which the corporation, carries on business, such grant towards the cost of municipal and school services as the Lieutenant Governor in Council may approve.

R.S.M. 1987 Supp., c. 13, s. 3; S.M. 1988-89, c. 23, s. 37; S.M. 2018, c. 29, s. 30.

Paiement de la taxe municipale et scolaire
14(5) La Société doit accorder chaque année, à titre de dépense de fonctionnement aux municipalités sur le territoire desquelles se situent certains de ses bien-fonds ou de ses biens personnels ou sur le territoire desquelles elle mène ses activités, des subventions reliées au coût des services municipaux et scolaires et que prescrit le lieutenant-gouverneur en conseil.

Suppl. L.R.M. 1987, c. 13, art. 3; L.M. 1988-89, c. 23, art. 37; L.M. 2018, c. 29, art. 30.

No privatization without referendum
14.1(1) The government shall not

(a) take any steps to privatize the corporation or all or any part of its insurance undertaking; or

(b) present to the Legislative Assembly a bill to authorize or effect such a privatization;

unless the government first puts the question of the advisability of privatizing the corporation or undertaking to the voters of Manitoba in a referendum, and the privatization is approved by a majority of the votes cast in the referendum.

Obligation de tenir un référendum avant toute privatisation
14.1(1) Le gouvernement ne peut prendre des mesures en vue de la privatisation de la Société ou de l'entreprise de celle-ci qui est liée à l'assurance-automobile ou présenter à l'Assemblée législative un projet de loi autorisant cette privatisation ou lui donnant effet que s'il demande au préalable, par voie de référendum, l'avis de l'électorat manitobain sur cette question et que si la privatisation est approuvée à la majorité des voix exprimées au référendum.

Procedures for referendum
14.1(2) A referendum under this section shall be conducted and managed by the Chief Electoral Officer in the same manner, to the extent possible, as a general election under *The Elections Act*, and the provisions of that Act apply with necessary modifications to such a referendum.

Processus référendaire
14.1(2) Le directeur général des élections tient et dirige le référendum que vise le présent article, dans la mesure du possible, de la même façon que sont tenues les élections générales en vertu de la *Loi électorale*; les dispositions de cette loi s'appliquent, avec les adaptations nécessaires, au référendum.

Question to be put to voters
14.1(3) The question to be put to voters in a referendum under this section shall be determined by order of the Lieutenant Governor in Council at the commencement of the referendum process.

Libellé de la question
14.1(3) Le lieutenant-gouverneur en conseil détermine, par décret, au début du processus du référendum devant être tenu en vertu du présent article, le libellé de la question devant en faire l'objet.

Regulations re procedures
14.1(4) The Lieutenant Governor in Council may make any regulations that the Lieutenant Governor in Council considers necessary respecting the referendum process to give effect to this section, including, without limitation, regulations

Règlements — procédure
14.1(4) Le lieutenant-gouverneur en conseil peut, par règlement, prendre les mesures nécessaires pour donner plein effet au présent article, et notamment :

a) régir la préparation de la liste électorale pour la tenue du référendum;

TAB 2

THE AUTOMOBILE INSURANCE ACT.

(Assented to August 13th, 1970)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Definitions.

1 In this Act

(a) "benefits" means benefits as defined in the regulations;

(b) "certificate" means a certificate of insurance issued under this Act and any plan;

(c) "certificate of registration" means a certificate of registration under The Highway Traffic Act or The Taxicab Act;

(d) "contract of insurance" means insurance provided by the corporation and evidenced by a certificate or a policy;

(e) "corporation" means The Manitoba Public Insurance Corporation established under this Act;

(f) "coverage" means coverage as defined in the regulations;

(g) "fund" means The Insurance Fund described in section 11 of this Act;

(h) "insurance moneys" means insurance moneys as defined in the regulations;

(i) "insurance" means insurance provided by any plan under this Act;

(j) "insured" means an insured as defined in the regulations;

(k) "insurer" means the corporation;

(l) "licence" means a driver's licence, an instruction permit, motorcycle operator's licence, or a chauffeur's licence under The Highway Traffic Act or The Taxicab Act;

(m) "motor vehicle" means a vehicle not run upon rails that is designed to be self-propelled or propelled by electric power obtained from overhead trolley wires, but does not include

(i) a farm tractor unless it is a farm tractor that is required to be registered as a motor vehicle under subsection (3) of section 6 of The Highway Traffic Act; or

(ii) a self-propelled implement of husbandry; or

(iii) a special mobile machine within the meaning of The Highway Traffic Act; or

(iv) a snowmobile other than one mentioned in the exception set out in clauses (a) and (b) of subsection (10) of section 6 of The Highway Traffic Act;

Chairman.

2 (3) The Lieutenant Governor in Council shall, from time to time, appoint one of the members as the chairman of the corporation, and may revoke such appointment at its pleasure.

Payment of expenses to members.

2 (4) The members of the corporation may be reimbursed for any out-of-pocket expenses incurred by them in the performance of their duties on the board and in such amounts as may be approved by the Provincial Auditor, and in addition, any or all of the members including, notwithstanding The Public Service Act, any person who is a member of the public service of the government, may be paid and accept, as remuneration for his or their services, such daily or periodical amounts as are fixed by order of the Lieutenant Governor in Council.

Reports to minister.

2 (5) The chairman of the corporation shall report to such minister as may from time to time be designated by the Lieutenant Governor in Council.

S.M. 1970, c. 102, s. 2.

Head office.

3 The head office of the corporation shall be at a place to be designated by the Lieutenant Governor in Council, but the corporation may establish branch offices at other places.

S.M. 1970, c. 102, s. 3.

Appointment of general manager.

4 The Lieutenant Governor in Council may appoint a general manager for the corporation and fix his salary.

S.M. 1970, c. 102, s. 4.

Duties of general manager.

5 The corporation may prescribe the duties of the general manager.

S.M. 1970, c. 102, s. 5.

Objects and powers.

6 (1) It is the function of the corporation and, subject to the approval of the Lieutenant Governor in Council, it has power:

(a) To operate and administer such plans of automobile insurance as may be established hereunder.

(b) To operate and administer such plans of universal compulsory automobile insurance as may be established hereunder.

(c) To acquire and hold as owner or tenant or otherwise, for its own use and benefit, real property necessary for the conduct of its operations and may sell or lease the whole or any part of any real property not so required.

(d) To make payment out of the reserves where at any time there is not money available to make payments under any plan as they fall due without resorting to the reserves.

Additional powers.

6 (2) The corporation may exercise all or any of the powers conferred upon companies under subsection (1) of section 26 of The Companies Act, except the powers contained in clauses (d), (e), (f), (g), (j), (m), (p), (r), (v), (w), and (aa) thereof, and the corporation may

(a) conduct surveys and research programs and obtain statistics for its purposes and for the purpose of the establishment of any plan;

(b) employ or appoint and pay, such officers, employees and agents as it deems necessary to the conduct of its operations;

(c) enter into agreements with or retain persons for the soliciting and receiving of applications for insurance, the collecting of premiums and the adjusting of claims and the doing of such other things on its behalf as the corporation deems necessary;

(d) prescribe the forms of contracts, application forms, and such other forms as it may deem necessary for the operation or administration of any plan;

(e) prescribe the information and details to be set out in any forms;

(f) evaluate losses and pay claims under plans of automobile insurance;

(g) re-insure with any other insurer the risk or any portion thereof under a contract of insurance under any plan;

(h) do all things it deems necessary for the purpose of settling, adjusting, investigating, defending, and otherwise dealing with, in conformity with the Act, the regulations and any plan established thereunder, claims made under any plan;

(i) make such by-laws, not contrary to law or this Act, as it deems necessary or advisable for the conduct of the affairs of the corporation, and, without limiting the generality of the foregoing, make by-laws with respect to the time and place of the calling and holding of all meetings of the corporation, procedure in all things to be followed at such meetings, and generally with respect to the conduct in all other particulars of the affairs of the corporation, and may repeal, amend, or re-enact them.

Incorporation of certificates, etc.

6 (3) Any certificate and application for insurance forms prescribed and adopted by the corporation may be incorporated in the appropriate application forms and certificates of registration, registration cards, permits, stickers or licences prescribed for use or used under The Highway Traffic Act or The Taxicab Act.

Information required.

6 (4) The corporation may require an applicant for insurance or an insured person to furnish such information, statements and reports relating to or affecting the operation or administration of a plan of automobile insurance, as shall be set forth in the regulations and published.

Accident information.

6 (5) The corporation may require any driver or owner of a vehicle required to be registered in Manitoba which is involved in an accident to furnish such information relating thereto to the corporation as shall be set forth in the regulations and published.

Superannuation, pensions, group insurance.

7 The Lieutenant Governor in Council may by order direct that The Civil Service Superannuation Act shall apply to the officers and employees of the corporation, but subject thereto the corporation may of its own accord, or in co-operation with any other corporation or corporations, departments, boards, commissions, or other agents of the Crown, with the approval of the Lieutenant Governor in Council, establish and support or participate in any one or more of

(a) a pension fund;

(b) a group insurance plan; or

(c) a pension or superannuation arrangement other than a pension fund mentioned in clause (a) for the benefit of officers and other employees of the corporation and their dependants.

S.M. 1970, c. 102, s. 7.

Property deemed to belong to the Crown.

8 (1) All property, whether real or personal, and all moneys acquired, administered, possessed or received by the corporation, and all profits earned by the corporation shall be deemed to be the property of Her Majesty in right of Manitoba for all purposes, including taxation of whatever nature and description, and the corporation is an agent of Her Majesty.

Restriction on use by Government.

8 (2) Subject to subsection (3), no moneys, funds, reserves, investments and property, whether real or personal, acquired, administered, possessed or held by the corporation, nor any profits earned by the corporation, may be taken, used or appropriated by the Government of Manitoba for any purpose whatever, except as provided in subsection (8) of section 6.

Subsection (2) not to apply.

8 (3) Subsection (2) shall not apply to the activity of automobile insurance carried on by the corporation under the provisions of sections 27 and 28.

Premium tax.

8 (4) The Insurance Corporations Tax Act shall apply to the corporation.

S.M. 1970, c. 102, s. 8.

Safekeeping of uninvested funds.

9 Uninvested funds of the corporation shall be kept in such institutions for the safekeeping of moneys and other valuable securities as the Lieutenant Governor in Council may direct.

S.M. 1970, c. 102, s. 9.

Payment of moneys and premiums.

10 (1) All moneys required by this Act and the regulations to be paid in respect of premiums or any other moneys which may become due and payable to the corporation by the regulations or otherwise shall be paid to the corporation.

Access to records, etc.

22 Notwithstanding anything to the contrary in any statute or law, the insurer shall have access to all documents, books, reports, records and other things and to all facilities of, belonging to or available to The Department of Transportation, The Highway Traffic and Motor Transport Board, The Taxicab Board of Greater Winnipeg and The Registrar of Motor Vehicles, as the insurer may in its discretion deem necessary or desirable for the better carrying out of this Act and the regulations.

S.M. 1970, c. 102, s. 22.

Salvage.

23 The insurer may acquire and hold for the benefit of the insurance fund the salvage to which it becomes entitled upon the settlement of a claim under any plan, and as provided under the regulations.

S.M. 1970, c. 102, s. 23.

Safety education.

24 The insurer may, either alone or in co-operation with one or more departments of government, corporations, boards, agencies, officials or unincorporated bodies, introduce, establish, supervise, finance and promote one or more educational or other programs relating to safety practices on the public highways.

S.M. 1970, c. 102, s. 24.

Exceptions to certain statutes.

25 (1) A person authorized under this Act or the regulations to accept applications for universal compulsory automobile insurance under any plan and premiums in payment thereof shall not be deemed to be an agent within the meaning of any statute that requires the licensing of insurance agents.

Corporation deemed licensed.

25 (2) Subject to subsection (1), for the purpose of licensing adjusters, agents and brokers, the corporation shall be deemed to be fully licensed as an insurer under the provisions of The Insurance Act.

S.M. 1970, c. 102, s. 25.

Non-application of Insurance Act.

26 Except as otherwise provided in this Act, The Insurance Act does not apply to the corporation and to insurance under any plan of universal compulsory automobile insurance established by virtue of this Act; and insurance provided by virtue of this Act shall not be deemed to be "other insurance" or "additional insurance" within the meaning of section 272 of The Insurance Act, or any policy of insurance subject to the said section or containing any term to the same or like effect in the said section.

S.M. 1970, c. 102, s. 26.

Additional powers may be given.

27 The Lieutenant Governor in Council may make regulations authorizing the insurer under this Act to engage in and carry on the activity of automobile insurance, as automobile insurance is from time to time defined in The Insurance Act upon such terms as the regulations may provide.

S.M. 1970, c. 102, s. 27.

Power to carry out automobile insurance operations.

28 (1) Upon being authorized as mentioned in section 27, the insurer shall have the power and authority to engage in and carry on the activity of automobile insurance in Manitoba, without any further authority than the authority of this Act and the regulations hereunder, as fully as if licensed for that purpose under The Insurance Act.

Excess insurance.

28 (2) Contracts of automobile insurance made by the insurer pursuant to this section shall provide insurance excess to the limits of any plan of universal compulsory automobile insurance.

Certain sections not to apply.

28 (3) Section 11 and subsection (2) of section 12 shall not apply to the activity of automobile insurance carried on by the corporation under this section and the Lieutenant Governor in Council may by regulation provide that certain provisions of and regulations under this Act do not apply to the activity of automobile insurance carried on pursuant to this section.

S.M. 1970, c. 102, s. 28.

Regulations.

29 (1) The Lieutenant Governor in Council may make regulations establishing, amending and revoking such plans of automobile insurance and plans of universal compulsory automobile insurance for the insurance within and without Manitoba of such losses, damages, injuries or deaths arising out of the perils and risks attendant upon the use, operation, or ownership of motor vehicles and trailers as the Lieutenant Governor in Council may designate, and establishing the terms and conditions of insurance under any plan and every regulation made under and in accordance with the authority granted by this section has the force of law; and without restricting the generality of the foregoing may make such regulations

(a) establishing classes of drivers, by regions of the Province of Manitoba, or otherwise, establishing such regions, establishing classes of vehicles, and prescribing the premiums payable by drivers and owners of vehicles according to such regions, or otherwise, and according to such classes;

(b) providing for the incorporation of forms of application for contracts of insurance in such application forms used or adopted by any authority in the Province of Manitoba authorized to register motor vehicles and trailers and drivers of motor vehicles or to issue licences, registration cards, permits and certificates of registration;

TAB 3

Bill 83 CHAPTER 58

AN ACT TO AMEND THE AUTOMOBILE INSURANCE ACT.

(Assented to June 14, 1974)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Title am.

1 The title of The Automobile Insurance Act being Chapter 102 of the Statutes of Manitoba 1970 (Chapter A180 of the Continuing Consolidation of the Revised Statutes of Manitoba) is struck out and the following title is sustituted therefor:

"The Manitoba Public Insurance Corporation Act".

Sec. 1 am.

2 Section 1 of the Act is repealed and the following section is substituted therefor:

Definitions.

1 (1) In this Act, unless the context otherwise requires,

(a) "additional premium" means the premium charged against an applicant for a driver's certificate by reason of demerit points charged against the applicant's record for convictions for offences designated in the regulations;

(b) "adjuster" means, subject to section 25, an adjuster as defined in The Insurance Act;

(c) "agent" means, subject to section 25, an insurance agent as defined in The Insurance Act;

(d) "applicant" means a person who applies for insurance;

(e) "automobile" means a motor vehicle;

(f) "automobile insurance" means automobile insurance as defined in The Insurance Act;

(g) "basic premium" means that portion of the premium that is based upon criteria established under the regulations; but does not include additional premium or surcharge;

Disclosure of facts by directors.

2 (12) A director who, under subsection (10), is or may be debarred from being present at the time of the discussion of any matter or from voting thereon shall, when the matter arises, disclose any facts that so debar him, and shall withdraw; but, if the disability arises by reason of a question as to his having a significant beneficial interest as mentioned in subsection (10), and if the other directors declare, as provided in subsection (11) that he does not have such a significant interest, he may resume his seat on the board and discuss and vote on the matter.

Reports to minister.

2 (13) The chairman of the corporation shall report to such minister as may from time to time be designated by the Lieutenant Governor in Council.

Sec. 5 am.

4 Section 5 of the Act is repealed and the following section is substituted therefor:

Power to engage employees and duties of general manager.

5 The directors or, if authorized by the directors, the general manager may, appoint such officers and employees as they consider necessary to carry out the business of the corporation and may define their duties and determine their remuneration and the general manager is responsible and has the authority for the management, direction and control of the operations of the corporation and the day to day administration of its affairs.

Sec. 6 am.

5 Section 6 of the Act is repealed and the following section is substituted therefor:

Objects and powers.

6 (1) It is the function of the corporation and it has the power and capacity

(a) subject to the approval of the Lieutenant Governor in Council to engage in and carry on the activity of automobile insurance in all its classes;

(b) subject to the approval of the Lieutenant Governor in Council to operate and administer such plans of universal compulsory automobile insurance as may be set out in this Act and regulations and may provide plans of extension insurance upon such terms and conditions as may be prescribed by the regulations;

(c) subject to the approval of the Lieutenant Governor in Council to engage in and carry on, both within and without the Province, the business of insurance and re-insurance in all its classes and without limiting the generality of the foregoing, to engage in and carry on the business of insurance and re-insurance in all its branches in the following classes of insurance as such classes are defined in The Insurance Act:

(i) Accident insurance;

(ii) Aircraft insurance;

(iii) Boiler and machinery insurance;
(iv) Fire insurance;
(v) Guarantee insurance;
(vi) Inland transportation insurance;
(vii) Live stock insurance;
(viii) Marine insurance;
(ix) Plate glass insurance;
(x) Property damage insurance;
(xi) Public liability insurance;
(xii) Theft insurance;
(xiii) Weather insurance;

(d) to engage in and carry on the business of
(i) repairing any property insured by the Corporation; and
(ii) salvaging and disposing of by public or private sale any property insured and acquired under a contract by which the corporation may be liable as an insurer, or to make agreements with other persons for those purposes;

(e) to acquire by purchase, lease, licence, or otherwise, and hold, develop, construct, use, maintain, repair, operate, and improve, as owner or tenant or otherwise, for its own use and benefit, real property
(i) necessary or required for the conduct of its business; or
(ii) conveyed, mortgaged, or hypothecated to it by way of security; or
(iii) conveyed to it in satisfaction in whole or in part in respect of debts and judgments;
and to sell, lease, or otherwise dispose of the whole or any part of such real property, in each case upon such terms and conditions as the board deems proper;

(f) to acquire by purchase the business and property or any portion thereof of any other insurer, agent, or adjuster, or to enter into agreements to carry on jointly any class of insurance with another insurer whether within or without the province; and The Insurance Act does not apply to such agreements.

Additional powers.

6 (2) The corporation has the power and capacity to do all acts and things necessary or required for the purpose of carrying out its functions and powers and, without limiting the generality of the foregoing, the corporation may

(a) conduct surveys and research programs and obtain statistics for its purposes and for the purpose of establishing and administering any insurance plan;

(b) enter into agreements with, or retain agents or adjusters for the purpose of soliciting and receiving applications for insurance, for collecting premiums, adjusting claims, and doing of such other things on its behalf as the corporation considers necessary;

(c) prescribe forms of application, contracts, and forms of policy and such other forms as the corporation considers necessary;

(d) prescribe the information and detail required to be set out on any form;

(e) evaluate damages and losses and pay claims under a contract by which the corporation may be liable as an insurer;

(f) re-insure the contract or any portion thereof of any other insurer, and re-insure its risks under any plan or a contract or any portion thereof with any other insurer, whether or not the other insurer is within or without the Province, or is, or is not, licenced under The Insurance Act;

(g) do all things necessary for the purpose of settling, adjusting, investigating, defending and otherwise dealing with, in conformity with this Act and The Insurance Act insofar as is applicable, and the regulations made under both Acts, claims made in respect of contracts by which the corporation may be liable as insurer or in respect of any plan established under section 6;

(h) carry out either alone or jointly with any other board, commission, corporation, department or agency of Government, or any private person, agency, or association, introduce, establish, supervise, finance and promote research or educational programs relating to health, rehabilitation, safety and the reduction of risk in respect of any branch or class of insurance in which the corporation is engaged.

(i) promote or carry out programs of research into the causes of accidents and research into the more equitable distribution of losses resulting from highway traffic accidents;

(j) establish and maintain one or more repair shops to investigate, study, and apply techniques used or to be used in the repair of motor vehicles and to analyze the cost of repairs;

(k) negotiate and bargain with persons engaged in the business of motor vehicle and trailer repairs with a view to establishing fair and reasonable prices for motor vehicle and trailer repairs in relation to which payments may be made under this Act;

(l) make such by-laws and pass such resolutions, not contrary to the law or this Act, as it considers necessary or advisable for the conduct of the affairs of the corporation, and, without limiting the generality of the foregoing, make by-laws and pass resolutions with respect to the time and place of calling and holding meetings of the corporation, the procedure to be followed at the meetings, and generally with respect to the conduct in all other particulars of the affairs of the corporation, and may repeal, amend, or re-enact them.

Incorporation of certificates, etc.

6 (3) Any certificate and application for insurance forms prescribed and adopted by the corporation may be incorporated in the appropriate application forms and certificates of registration, registration cards, permits, stickers or licences prescribed for use or used under The Highway Traffic Act or The Taxicab Act.

Information required.

6 (4) The corporation may require an applicant for insurance or an insured person to furnish such information, statements and reports relating to or affecting the operation or administration of a plan of automobile insurance, as may be set out in the regulations.

Accident information.

6 (5) The corporation may require every driver or owner of a motor vehicle required to be registered and licensed in Manitoba that is involved in an accident out of which arises injury or death to a person or damage to property to furnish such information relating thereto to the corporation as may be set out in the regulations.

Furnishing proofs.

6 (6) The corporation may require an insured to furnish such notices, proofs of claim, proofs of loss, reports and statements, and to comply with any other methods of making and proving claims, as may be prescribed in the regulations.

Sec. 6.1 etc. added.

6 The Act is further amended by adding thereto, immediately after section 6 thereof, the following section:

Temporary borrowings.

6.1 Subject to any restrictions that may be placed thereon from time to time by the Lieutenant Governor in Council, the corporation may from time to time borrow or raise money for its temporary purposes by way of overdraft, line of credit, or loan, or otherwise, upon the credit of the corporation in such amounts, upon such terms, for such periods, and upon such conditions as the corporation may determine; and the Government may, on such terms as may be approved by the Lieutenant Governor in Council, guarantee the payment of the principal and interest on any borrowings of the corporation.

Advances from Consolidated Fund.

6.2 To the extent permitted by this Act and by any other Act of the Legislature, the Lieutenant Governor in Council may authorize the Minister of Finance to advance moneys to the corporation for its temporary purposes out of the Consolidated Fund upon such terms as the Lieutenant Governor in Council may determine.

Loans by Government.

6.3 (1) To the extent permitted by this Act or any other Act of the Legislature, the Lieutenant Governor in Council may authorize the raising by way of loan in the manner provided by The Financial Administration Act of such amounts as the Lieutenant Governor in Council may deem requisite for any of the purposes of the corporation under this Act; and any such sums shall be advanced to, and paid over by the Minister of Finance to, the corporation in such amount as the corporation may from time to time requisition, and the moneys shall be repaid by the corporation to the Minister of Finance at such times and on such terms and conditions as the Lieutenant Governor in Council may direct together with the interest thereon as provided in subsection (2).

Signature of Minister of Finance, etc.

6.5 (4) The signature of the Minister of Finance or of any such officer or officers for which provision is made in subsection (2) may be engraved, lithographed, printed or otherwise mechanically reproduced and the mechanically reproduced signature of any such person shall be conclusively deemed, for all purposes, the signature of that person, and is binding upon the Government of Manitoba, notwithstanding that the person whose signature is so reproduced may not have held office at the date of the notes, bonds, debentures or other securities or at the date of the delivery thereof, and notwithstanding that the person who holds any such office at the time when any such signature is affixed is not the person who holds that office at the date of the notes, bonds, debentures or other securities or at the date of the delivery thereof.

Investments.

6.6 (1) The corporation shall pay to the minister charged with the administration of The Financial Administration Act, for investment for the corporation, moneys in any reserve established under section 12 and such additional moneys as are not immediately required for the purposes of the corporation and are available for investment.

Moneys to be credited to corporation.

6.6 (2) Moneys paid under subsection (1) for investment shall form part of the trust and special division of the Consolidated Fund and may be invested in accordance with The Financial Administration Act, and the interest earnings thereon shall be credited to the account of the corporation in the trust and special division of the Consolidated Fund.

Payment of earnings.

6.6 (3) Any earnings, whether alone or with the principal sum invested for the corporation under this section, or any part thereof, shall be paid over to the corporation by the minister charged with the administration of The Financial Administration Act on the request of the corporation.

Sec. 7 am.

7 Section 7 of the Act is repealed and the following section is substituted therefor:

Employees not civil servants.

7 (1) Notwithstanding The Civil Service Act and The Civil Service Superannuation Act, and notwithstanding that officers and employees of the corporation may by order of the Lieutenant Governor in Council be made subject to The Civil Service Superannuation Act and designated as within the definition of "civil service" for the purposes of that Act, the officers and employees of the corporation are not otherwise or for any other purpose members of the civil service of the Government of Manitoba.

Powers respecting insurance plans for benefit of employees.

7 (2) The corporation may, alone or in co-operation with other corporations, departments, commissions, or other agents of the Crown, establish, support or participate in any one or more of

(a) a pension or superannuation plan; or
(b) a group insurance plan

for the benefit of officers and employees of the corporation and their dependents.

Sec. 8 am.

8 Section 8 of the Act is repealed and the following section is substituted therefor:

Property deemed to belong to the Crown.

8 (1) All property, whether real or personal, and all moneys acquired, administered, possessed, or received by the corporation, and all profits earned by the corporation shall be deemed to be the property of Her Majesty in right of Manitoba for all purposes, including exemption from taxation of whatever nature and description, and the corporation is an agent of Her Majesty in right of Manitoba.

Restriction on use of moneys by government.

8 (2) No moneys, funds, reserves, investments and property, whether real or personal, acquired, administered, possessed or held by the corporation, nor any profits earned by the corporation in the activity of universal compulsory automobile insurance, may be taken, used or appropriated by the government of Manitoba for any purpose whatever, except as provided under section 6.6 or in repayment of advances by or moneys borrowed from, the government of Manitoba and interest thereon.

Government may appropriate funds.

8 (3) Subject to subsection (2) and subsection 37.1 (1), the government of Manitoba may, for any purpose whatever, take, use or appropriate any moneys, funds, investments and property, whether real or personal, acquired, administered, possessed or held by the corporation or any profits earned by the corporation.

Premium tax.

8 (4) The Insurance Corporations Tax Act applies to the corporation, and the corporation is an insurer for the purposes of that Act.

Grant in lieu of cost of municipal and school services.

8 (5) The corporation, as an operating expense, shall make annually to any municipality in which land or personal property of the corporation, are situated, or in which the corporation, carries on business, such grant towards the cost of municipal and school services as the Lieutenant Governor in Council may approve.

Sec. 10 am.

9 Section 10 of the Act is repealed and the following section is substituted therefor:

Moneys of the corporation.

10 All moneys required by this Act and the regulations, or any other Act or regulations, to be paid to the corporation and all premiums and other consideration payable for insurance provided by the corporation, and any other moneys that may become due and payable to the corporation by the regulations or otherwise shall be paid to the corporation, and may be retained by the corporation and shall be used and dealt with for no other purpose than to carry out the powers of the corporation in accordance with this Act and the regulations.

Sec. 27 am.

23 Section 27 of the Act is repealed and the following section is substituted therefor:

Agreements.

27 The corporation may, with the approval of the Lieutenant Governor in Council, enter into agreements with Canada and any province of Canada, respecting

(a) uniformity of contracts and statutory conditions thereof; or

(b) deposit, security, and undertaking required in respect of carrying on business in other provinces of Canada; or

(c) any other matter in respect of carrying on business, or settlement of claims in other provinces of Canada.

Sec. 28 repealed.

24 Section 28 of the Act is repealed.

Sec. 29 am.

25 Section 29 of the Act is repealed and the following section is substituted therefor:

Regulations.

29 (1) For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant Governor in Council may make such regulations as are ancillary thereto and not inconsistent therewith; and every regulation shall be deemed to be part of this Act and has the force of law; and, without restricting the generality of the foregoing, the Lieutenant Governor in Council may make regulations

(a) establishing, amending, and revoking such plans of automobile insurance and plans of universal compulsory automobile insurance for the insurance within Manitoba of such losses, damages, injuries, or deaths arising out of the perils and risks attendant upon or relating to the use, operation, or ownership of motor vehicles and trailers as the Lieutenant Governor in Council may designate;

(b) establishing the terms, conditions, and limits of insurance under any plan;

(c) establishing classes and subclasses of drivers, by regions of the Province of Manitoba, or otherwise, establishing such regions, establishing classes of motor vehicles and trailers, and prescribing the premiums payable by drivers and owners of motor vehicles according to the regions, or otherwise, and according to the classes;

(d) designating those persons who are, or may be, insured under any plan, the benefits or insurance moneys payable to insured persons, and the perils or risks for which insurance may be provided;

(e) prescribing the duration of the period of coverage provided under any certificate;

(f) defining for the purposes of the regulations words not defined in the Act;

(g) prescribing such rights of salvage in favour of the corporation as may be considered necessary for the purposes of any plan;

(h) adopting any mode or system of classifying drivers provided for under any Act, or adopting or establishing a demerit or point system classifying drivers according to the number, nature, and kind of violations or offences committed by them in contravention of any section in The Highway Traffic Act, a municipal by-law relating to the regulation of vehicular traffic, or The Criminal Code, or any similar or like law in any other province, territory, state, or country, relating to the operation of or driving of a motor vehicle, and, according to the mode or system of classifying drivers or the demerit or point system, assessing and levying basic or additional premiums or surcharge under any plan against drivers at such times and under such terms and conditions as may be considered appropriate;

(i) establishing a plan for payment by the corporation to any person sustaining loss from bodily injury or death, or damage to property, arising out of the use or operation of a motor vehicle where

(i) the name of the owner or driver is not known; or

(ii) the name of the driver is not known and the owner is not liable;

the terms, conditions, and limits of liability of the corporation under the plan; and the duties and liabilities of owners and drivers of motor vehicles respecting reimbursement of the corporation for such payments;

(j) establishing and determining, with respect to any plan, the right of any person who would have a cause of action in Manitoba against the owner or driver of an uninsured motor vehicle to apply to the corporation for payment of damages, the terms and conditions and limits of liability of the corporation for payment of the claims for damages determining whether or not payment and the amount thereof is within the discretion of the corporation, and providing for the obtaining of consents to payment of those persons liable for the losses, damages, injuries, or deaths, and the execution under seal or otherwise of agreements by those persons liable for the repayment to the corporation of amounts paid to claimants;

(k) providing, with respect to any plan, for settlement and payment of a claim or judgment or unsatisfied portion of a judgment, for damages on account of injury to, or the death of, any person or loss of, or damage to, property occasioned in Manitoba by an uninsured motor vehicle owned or operated by a person within Manitoba, the terms and conditions governing the payment, and the maximum amount of money payable respecting any person, accident, or occurrence;

(l) determining the residence of persons for purposes of this Act, the regulations, and any plan, and determining the rights of non-residents to receive benefits or payments of any kind whatsoever under any plan, or exempting non-residents, as described in the regulations, from the provisions of this Act or the regulations;

(m) authorizing any additional services and expenditures by the corporation on behalf of a person insured under an owner's certificate and providing that the corporation may, in the name and on behalf of any person insured by an owner's certificate, defend at its cost any civil action brought against such person by anyone respecting a loss, damage, injury, or death for which that person may be liable, and designating the terms and conditions governing the provision of additional services and the making of additional expenditures;

(n) providing for and prescribing the conditions governing the refund or rebate of the whole or part of a premium paid to the corporation under this Act and any plan;

(o) respecting any matter considered necessary or deemed advisable by the Lieutenant Governor in Council for the effective carrying out of the intent and purpose of this Act and the regulations and any insurance plan established under this Act.

Condition precedent to obtaining benefits.

29 (2) Subject to section 20, the observance of any term or condition established under subsection (1) shall be a condition precedent to the obtaining of benefits, insurance moneys, or indemnification provided under any plan of insurance.

Exclusion of non-residents and motor vehicles.

29 (3) The Lieutenant Governor in Council may, by regulation, exclude or exempt any non-residents or class of non-residents and any motor vehicle or trailer or class thereof from the operation of this Act or the regulations, or any provision of this Act or the regulations, or any plan or part of a plan upon such terms and conditions as he may prescribe.

Sec. 29.1 added.

26 The Act is further amended by adding thereto immediately after section 29 thereof, the following section:

Limitation of actions.

29.1 (1) Every action or proceeding by an insured against the corporation in respect of loss of or damage to his motor vehicle or trailer or in respect of benefits payable under any plan of automobile insurance shall be commenced within two years next after the happening of the loss or damage or after the cause of action arose, as the case may be, and not afterwards.

Limitation of actions.

29.1 (2) Unless a longer period is provided in any contract or insurance plan, no action or other proceeding lies against the corporation in respect of any claim for loss or damage under a policy or plan of insurance unless the action or other proceeding is commenced within two years after the furnishing of reasonably sufficient proof of loss or claim under the policy or insurance plan.

TAB 4

Language Certificate:
I hereby certify that this Bill was printed in the English language only when copies were first distributed to the members of the House.
Dated this 18th day of June, 1984.

W. H. REMNANT, Clerk of the House.

Bill 18

CHAPTER 17

THE STATUTE LAW AMENDMENT ACT (1984)

(Assented to June 29, 1984)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Cl. 2(f) of Amusements Act rep. and sub.

1(1) Clause 2(f) of The Amusements Act, being chapter A70 of the Revised Statutes, (hereinafter in this section referred to as "the Act") is repealed and the following clause is substituted therefor:

(f) "film" means any moving picture film, cinematograph film, advertising film, video tape, video disc or other similar device for use in connection with a cinematograph or with any medium used to electronically reproduce images on a screen and includes any part or section of any such moving picture film, cinematograph film, advertising film, video tape, video disc or other similar device;.

Cl. 2(h) rep. and sub.

1(2) Clause 2(h) of the Act is repealed and the following clause is substituted therefor:

(h) "minister" means

(i) under Part II, the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of Part II, and

(ii) under Part III, the member of the Executive Council charged by the Lieutenant Governor in Council with the administration of Part III;.

Cl. 22(3)(a) am.

1(3) Clause 22(3)(a) of the Act is amended by striking out the words "intended to be used in connection with any cinematograph moving picture or other similar apparatus" in the 1st and 2nd lines thereof.

Subsec. 23(1) am.

1(4) Subsection 23(1) of the Act is amended by striking out the words "intended to be used in connection with any cinematograph, moving picture machine or other similar apparatus".

Assignments Act rep.

2(1) The Assignments Act, being chapter A150 of the Revised Statutes, is repealed.

Sec. 3 of Act to amend Cap. 85, S.M. 1982-83-84 rep.

2(2) Section 3 of An Act to amend Various Acts of the Legislature to Facilitate the Re-organization and Expansion of The Court of Queen's Bench, being chapter 85 of the Statutes of Manitoba, 1982-83-84, is repealed.

Cl. 1(1)(r) of Manitoba Public Insurance Corporation Act am.

3(1) Clause 1(1)(r) of The Manitoba Public Insurance Corporation Act, being chapter 102 of the Statutes of Manitoba, 1970 (chapter A180 of the Continuing Consolidation of the Statutes of Manitoba) (in this section referred to as "the Act") is amended by adding thereto, immediately before the word "general" in the 1st line thereof the words "president and".

Subsec. 2(1) of Manitoba Public Insurance Corporation Act. am.

3(2) Subsection 2(1) of the Act is amended by striking out the word "seven" in the 2nd line thereof and substituting therefor the figure "8".

Sec. 4 am.

3(3) Section 4 of the Act is amended by adding thereto, immediately before the word "general" in the 1st line thereof, the words "president and".

Subsec. 8(2) am.

3(4) Subsection 8(2) of the Act is amended by striking out the words "universal compulsory automobile insurance" in the 3rd and 4th lines thereof and substituting therefor the words "automobile insurance for which premiums are prescribed in the regulations".

Subsec. 11(1) am.

3(5) Subsection 11(1) of the Act is amended by striking out the words "the business of automobile insurance under this Act" in the last line thereof and substituting therefor the words "respect of that business of automobile insurance for which premiums are prescribed in the regulations".

TAB 5

THE INSURANCE ACT
(C.C.S.M. c. I40)

Classes of Insurance Regulation

LOI SUR LES ASSURANCES
(c. I40 de la C.P.L.M.)

Règlement sur les classes d'assurance

Regulation 221/2014
Registered August 25, 2014

Règlement 221/2014
Date d'enregistrement : le 25 août 2014

Classes of insurance prescribed

1(1) The following classes of insurance are prescribed for the purposes of *The Insurance Act*:

(a) accident and sickness insurance;

(b) aircraft insurance;

(c) automobile insurance;

(d) boiler and machinery insurance;

(e) credit insurance;

(f) credit protection insurance;

(g) fidelity insurance;

(h) hail insurance;

(i) legal expenses insurance;

(j) liability insurance;

(k) life insurance;

(l) marine insurance;

Classes d'assurance

1(1) Les classes d'assurance indiquées ci-dessous sont prescrites pour l'application de la *Loi sur les assurances* :

a) assurance-accidents corporels et maladie;

b) assurance aviation;

c) assurance-automobile;

d) assurance contre les bris ou pannes de machines;

e) assurance crédit;

f) assurance protection de crédit;

g) assurance contre les détournements;

h) assurance contre la grêle;

i) assurance de frais juridiques;

j) assurance de responsabilité;

k) assurance-vie;

l) assurance maritime;

SCHEDULE
(Section 1)

Class of Insurance	Particulars of Insurance (Inclusions and Exclusions)
Accident and sickness insurance	The class of accident and sickness insurance is insurance under which the insurer undertakes (a) to indemnify a person against loss, or to pay insurance money or another thing of value in respect of loss, resulting from bodily injury to, or the death of, a person caused by an accident; (b) to pay a specified amount of insurance money in the event of bodily injury to, or the death of, a person caused by an accident; (c) to indemnify a person against loss, or to pay insurance money or another thing of value in respect of loss, resulting from the sickness or disability of a person not caused by an accident, other than loss resulting from the death of the person as a consequence of sickness; (d) to pay a specified amount of insurance money in the event of the sickness or disability of a person not caused by an accident; or (e) to pay insurance money in respect of the health care — including dental care and preventative care — of a person.
Aircraft insurance	The class of aircraft insurance is insurance under which insurer undertakes (a) to indemnify a person against liability arising out of (i) bodily injury to or the death of another person, or (ii) the loss of or damage to property, caused by an aircraft or resulting from the use of an aircraft; or (b) to indemnify a person against, or to pay insurance money or another thing of value in respect of, the loss of or damage to, or the loss of use of, an aircraft.

Class of Insurance	Particulars of Insurance (Inclusions and Exclusions)
Automobile insurance	The class of automobile insurance is insurance under which insurer (a) undertakes to indemnify a person against liability arising out of (i) bodily injury to or the death of another person, or (ii) the loss of or damage to property, caused by an automobile or the use or operation of an automobile; (b) undertakes indemnify a person against, or to pay insurance money or another thing of value in respect of, the loss or loss of use of, or damage to, an automobile; or (c) as part of a contract of automobile insurance that provides the insurance described in subclause (a)(i), undertakes (i) to indemnify a person against loss, or to pay insurance money or another thing of value in respect of loss, resulting from bodily injury to, or the death of, a person caused by an accident, or (ii) to pay a specified amount of insurance money in the event of bodily injury to, or the death of, a person caused by an accident, when the accident is caused by an automobile or the use or operation of one, whether or not liability exists in respect of the accident.
Boiler and machinery insurance	The class of boiler and machinery insurance is insurance under which insurer undertakes (a) to indemnify a person against liability arising out of (i) bodily injury to or the death of another person, or (ii) the loss of or damage to property; caused by the explosion or rupture of, or accident to, a pressure vessel of any kind or pipes and machinery connected to or operated by the pressure vessel or by a breakdown of machinery; or (b) to indemnify a person against, or to pay insurance money or another thing of value in respect of, loss of or damage to property caused by the explosion or rupture of, or accident to, a pressure vessel of any kind or pipes and machinery connected to or operated by the pressure vessel or by a breakdown of machinery.
Credit insurance	The class of credit insurance is insurance under which the insurer undertakes to indemnify a person against loss, or to pay insurance money or another thing of value in respect of a person's loss, resulting from the insolvency or default of a person to whom the credit was given.

Class of Insurance	Particulars of Insurance (Inclusions and Exclusions)
Credit protection insurance	The class of credit protection insurance is insurance under which the insurer undertakes to pay insurance money to pay off, in whole or in part, credit balances or debts of an individual in the event of the impairment or potential impairment in the individual's income or ability to earn an income.
Fidelity insurance	The class of fidelity insurance is insurance under which the insurer undertakes (a) to indemnify a person against loss, or to pay insurance money or another thing of value in respect of loss, caused (i) by theft, (ii) by the abuse of trust, or (iii) by the unfaithful performance of duties, by a person in a position of trust; or (b) to pay insurance money or another thing of value to guarantee the proper fulfilment of the duties of an office.
Hail insurance	The class of hail insurance is insurance under which the insurer undertakes to indemnify a person against, or to pay insurance money in respect of, the loss of or damage to crops in the field caused by hail.
Legal expenses insurance	The class of legal expenses insurance is insurance under which insurer undertakes to indemnify a person against, to pay insurance money or another thing of value in respect of, costs incurred by the person for legal services specified in the legal expenses insurance policy, including (a) the retainer, if any, and fees incurred for the services, and (b) other costs incurred in respect of the provision of the services.
Liability insurance	The class of liability insurance is insurance under which the insurer, otherwise than incidentally to another class of insurance, (a) undertakes to indemnify a person against liability arising out of bodily injury to or the disability or death of a person, including an employee; (b) undertakes to indemnify a person against liability arising out of the loss of or damage to property; or (c) undertakes, as part of a contract of liability insurance that provides the insurance described in clause (a), to indemnify a person against, or to pay insurance money or another thing of value in respect of, expenses arising out of bodily injury to a person other than the insured or a member of the insured's family, whether or not liability exists.

TAB 6

THE MANITOBA PUBLIC INSURANCE CORPORATION ACT
(C.C.S.M. c. P215)

Automobile Insurance Coverage Regulation

LOI SUR LA SOCIÉTÉ D'ASSURANCE PUBLIQUE DU MANITOBA
(c. P215 de la C.P.L.M.)

Règlement sur l'assurance automobile

Regulation 290/88 R
Registered August 9, 1988

Règlement 290/88 R
Date d'enregistrement : le 9 août 1988

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Interpretation
1(1) In this regulation, except as otherwise provided,

"**Act**" means *The Manitoba Public Insurance Corporation Act*; (« *Loi* »)

"**antique vehicle**" means an antique motor vehicle as defined in subsection 53(1) of *The Drivers and Vehicles Act*; (« véhicule ancien »)

"**benefits**" means any payment for loss in respect of death or bodily injuries, that the corporation is authorized or required to make under Part II of this regulation or Part 2 of the Act; (« prestations »)

"**commercial truck**" means a commercial truck as defined in *The Drivers and Vehicles Act*; (« véhicule commercial »)

"**dependent child**" means

(a) a child who is under the age of 18 years and who is dependent upon an insured, or

(b) a person of 18 years of age or over, who, by reason of mental or physical infirmity, is unable to provide himself or herself with the necessaries of life, or

(c) a person who is enrolled, and in full time regular attendance, at a university, technical or professional training school, or other recognized institution of learning, and who is dependent upon an insured,

and, in any such case, the child or person is a child of the insured, or a child to whom the insured stands in loco parentis; (« enfant à charge »)

"**insurance moneys**" means any payment that the corporation is authorized or required to make under Part III, Part IV, Part VII, Part IX, Part X, Part XI, Part XII or Part XIII; (« sommes assurées »)

PARTIE I
DISPOSITIONS GÉNÉRALES

Définitions et interprétation
1(1) Sauf disposition contraire, les définitions qui suivent s'appliquent au présent règlement.

« **assuré** » Selon le cas :

a) personne, mentionnée ou non dans un certificat, à l'égard de laquelle des prestations sont payables au titre des dommages corporels qu'elle subit du fait des risques mentionnés à la partie II du présent règlement et à la partie 2 de la *Loi*;

b) personne à laquelle des sommes assurées sont payables au titre d'une perte ou de dommages relatifs à un véhicule du fait d'un des risques mentionnés à la partie III, IX, X ou XI;

c) personne, mentionnée ou non dans un certificat, à laquelle ou au nom de laquelle des sommes assurées sont payables au titre de dommages corporels causés à autrui, du décès d'autrui ou au titre de dommages aux biens, dont elle est légalement responsable et qui se produisent du fait d'un des risques mentionnés à la partie IV. ("insured")

« **camion** » Véhicule automobile conçu ou adapté principalement pour le transport de chargements ou de biens. ("truck")

« **enfant à charge** » Selon le cas :

a) enfant qui a moins de 18 ans et est une personne à la charge de l'assuré;

b) personne qui a 18 ans ou plus et qui, du fait d'une infirmité mentale ou physique, est incapable de pourvoir elle-même à ses besoins;

c) personne qui est à la charge d'un assuré et qui, étant inscrite à un établissement d'enseignement reconnu, notamment une université, une école technique ou de formation professionnelle, le fréquente à temps plein et de façon régulière.

"**insured**" means

(a) a person to whom, or in respect of whom, or to whose dependants, benefits are payable if bodily injuries are sustained by him or her as a result of the perils referred to in Part II of this regulation and Part 2 of the Act, whether or not he or she is named in a certificate, or

(b) a person to whom insurance moneys are payable, if loss or damage to a vehicle results from one of the perils set out in Part III, Part IX, Part X or Part XI, or

(c) a person to whom, or on whose behalf, insurance moneys are payable, if bodily injury to, or the death of, another, or damage to property, for which he or she is legally liable, results from one of the perils referred to in Part IV, whether or not he or she is named in a certificate; (« assuré »)

"**passenger vehicle**" means a motor vehicle designed or adapted primarily for the transportation of passengers, but excludes

(a) a bus that is not used solely for personal transportation, and

(b) a motorcycle or moped; (« véhicule de tourisme » ou « voiture de tourisme »)

"**truck**" means a motor vehicle designed or adapted primarily for the transportation of cargo or property; (« camion »)

"**truck tractor**" means a truck designed primarily for towing a semi-trailer connected by means of a fifth-wheel coupler, and not constructed for carrying any load other than part of the weight of the trailer; (« véhicule tracteur »)

"**universal compulsory automobile insurance**" means insurance provided under Parts II, III and IV or under Part 2 of the Act. (« régime universel obligatoire d'assurance-automobile »)

"**vehicle for hire**" means a vehicle for hire as defined in section 2 of *The Local Vehicles for Hire Act*, and includes the following, as defined in the *Automobile Insurance Plan Regulation*, Manitoba Regulation 49/2019:

(a) an accessible vehicle for hire,

Dans chaque cas, l'enfant à charge est l'enfant de l'assuré ou un enfant ou une personne à l'égard duquel l'assuré tient lieu de parent. ("dependent child")

« ***Loi*** » La *Loi sur la Société d'assurance publique du Manitoba*. ("Act")

« **prestations** » Les paiements que la Société peut ou doit effectuer en vertu de la partie II du présent règlement ou de la partie 2 de la *Loi*, en raison de pertes dues à un décès ou à des dommages corporels. ("benefits")

« **régime universel obligatoire d'assurance-automobile** » L'assurance prévue aux parties II, III et IV ou prévue à la partie 2 de la *Loi*. ("universal compulsory automobile insurance")

« **règlement sur les véhicules avec chauffeur** » Règlement sur les véhicules avec chauffeur au sens de l'article 2 de la *Loi sur la gestion locale des véhicules avec chauffeur*. ("vehicle for hire by-law")

« **sommes assurées** » Les paiements que la Société peut ou doit effectuer en vertu de la partie III, IV, VII, IX, X, XI, XII ou XIII. ("insurance moneys")

« **véhicule ancien** » Véhicule automobile ancien au sens du paragraphe 53(1) de la *Loi sur les conducteurs et les véhicules*. ("antique vehicle")

« **véhicule avec chauffeur** » Véhicule avec chauffeur au sens de l'article 2 de la *Loi sur la gestion locale des véhicules avec chauffeur*. La présente définition vise notamment les véhicules mentionnés ci-dessous au sens que leur donne le *Règlement sur les régimes d'assurance-automobile*, R.M. 49/2019 :

a) un véhicule accessible avec chauffeur;

b) un véhicule avec chauffeur (limousine);

c) un véhicule avec chauffeur (véhicule de tourisme);

d) un véhicule avec chauffeur (camion dont le poids en charge est d'au plus 4 499 kg);

e) un véhicule avec chauffeur (taxi). ("vehicle for hire")

(b) a limousine vehicle for hire,

(c) a passenger vehicle for hire (passenger vehicle),

(d) a passenger vehicle for hire (truck with 4,499 or less GVW),

(e) a taxicab vehicle for hire; (« véhicule avec chauffeur »)

"**vehicle for hire by-law**" means a vehicle for hire by-law as defined in section 2 of *The Local Vehicles for Hire Act*. (« règlement sur les véhicules avec chauffeur »)

1(2) In this regulation, the following expressions, namely:

(a) all purpose truck;

(b) [repealed] M.R. 50/2019;

(b.1) collector passenger vehicle;

(b.2) [repealed] M.R. 50/2019;

(b.3) collector truck;

(b.4) [repealed] M.R. 50/2019;

(c) [repealed] M.R. 140/2000;

(d) off-road vehicle;

(e) pleasure truck;

(f) [repealed] M.R. 50/2019;

(g) private passenger vehicle;

(h) state;

(i) [repealed] M.R. 50/2019;

have the meanings given to them, respectively, in the *Automobile Insurance Plan Regulation*.

M.R. 50/89; 38/90; 35/91; 27/92; 15/93; 43/94; 191/94; 25/95; 90/95; 22/96; 39/97; 22/98; 185/98; 140/2000; 39/2003; 96/2003; 36/2006; 41/2014; 19/2018; 41/2019; 50/2019; 37/2020

« **véhicule commercial** » S'entend au sens de la *Loi sur les conducteurs et les véhicules*. ("commercial truck")

« **véhicule de tourisme** » ou « **voiture de tourisme** » Véhicule automobile conçu ou adapté principalement pour le transport de passagers. La présente définition exclut :

a) les autobus qui ne sont pas utilisés uniquement à des fins personnelles;

b) les motocyclettes et les cyclomoteurs. ("passenger vehicle")

« **véhicule tracteur** » Camion qui est conçu principalement pour tracter une semi-remorque attelée au moyen d'une sellette d'attelage mais qui n'est pas construit pour porter une charge autre qu'une partie du poids de la semi-remorque. ("truck tractor")

1(2) Dans le présent règlement, ont le sens qui leur est attribué dans le *Règlement sur les régimes d'assurance-automobile* les termes suivants :

a) camion (tarif universel);

b) [abrogé] R.M. 50/2019;

b.1) véhicule de tourisme de collection;

b.2) [abrogé] R.M. 50/2019;

b.3) camion de collection;

b.4) [abrogé] R.M. 50/2019;

c) [abrogé] R.M. 140/2000;

d) véhicule à caractère non routier;

e) camion de plaisance;

f) [abrogé] R.M. 50/2019;

g) véhicule de tourisme privé;

h) État;

i) [abrogé] R.M. 50/2019.

R.M. 50/89; 38/90; 35/91; 27/92; 15/93; 43/94; 191/94; 25/95; 90/95; 22/96; 39/97; 22/98; 185/98; 140/2000; 39/2003; 96/2003; 36/2006; 41/2014; 19/2018; 41/2019; 50/2019; 37/2020

TAB 7

MANITOBA

THE DRIVERS AND VEHICLES ACT

C.C.S.M. c. D104

LOI SUR LES CONDUCTEURS ET LES VÉHICULES

c. D104 de la *C.P.L.M.*

As of 25 Oct 2021, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 25 oct. 2021. Son contenu était à jour pendant la période indiquée en bas de page.

LEGISLATIVE HISTORY

The Drivers and Vehicles Act, C.C.S.M. c. D104

Enacted by	Proclamation status (for provisions in force by proclamation)
SM 2005, c. 37, Sch. A	whole Act: in force on 1 Mar 2006 (Man. Gaz.: 11 Mar 2006)
Amended by	
SM 2005, c. 56, s. 5	in force on 16 Dec 2006 (Man. Gaz.: 16 Dec 2006)
SM 2008, c. 17, s. 21	not proclaimed, but repealed by SM 2018, c. 30, Sch. A, s. 13
SM 2008, c. 36, Part 1 and s. 58	s. 1; s. 2 except insofar as it enacts the definition "enhanced driver's licence" and clause (a) of the definition "eligibility criteria"; s. 3, 14, 17 to 20 and 22; and s. 23 except insofar as it enacts s. 126(6)(a); and s. 25 to 27, 32 and 33: in force on 19 Jan 2009 (Man. Gaz.: 31 Jan 2009) s. 2 insofar as it enacts the definition "enhanced driver's licence" and clause (a) of the definition "eligibility criteria"; s. 4 to 13, 15, 16 and 21; s. 23 insofar as it enacts s. 126(6)(a); and s. 24, 28, 30, 31 and 58: in force on 1 Sep 2009 (Man. Gaz.: 25 Apr 2009) s. 29: in force on 1 Nov 2009 (Man. Gaz.: 25 Apr 2009)
SM 2008, c. 42, s. 24	
SM 2009, c. 15, s. 232	s. 232(1) and (2)(a): in force on 1 Jan 2019 (proc: 4 Dec 2018) s. 232(2)(b): not yet proclaimed
SM 2010, c. 26	
SM 2010, c. 33, s. 13	
SM 2010, c. 52, Part 2	in force on 15 Aug 2011 (Man. Gaz.: 2 Jul 2011)
SM 2013, c. 39, Sch. A, s. 46	in force on 1 May 2014 (Man. Gaz.: 3 May 2014)
SM 2013, c. 47, Sch. A, s. 123 (am. by SM 2017, c. 26, s. 20)	s. 123(1) and (2): in force on 20 Nov 2017 (proc: 14 Aug 2017)
SM 2013, c. 49, s. 32	in force on 1 Sep 2015 (proc: 17 Jun 2015)
SM 2013, c. 54, s. 25	
SM 2014, c. 23, s. 8	in force on 1 Dec 2014 (proc: 27 Nov 2014)
SM 2014, c. 32, s. 7	
SM 2014, c. 38	in force on 1 Oct 2014
SM 2015, c. 39, Part 1	in force on 1 Dec 2015 (proc: 26 Nov 2015)
SM 2017, c. 17, s. 12	in force on 7 Oct 2017 (proc: 4 Oct 2017)
SM 2017, c. 22, Part 2	in force on 1 Dec 2017 (proc: 28 Nov 2017)
SM 2017, c. 36, s. 14	in force on 28 Feb 2018
SM 2018, c. 10, Sch. C	in force on 1 Mar 2019 (proc: 8 Dec 2018)
SM 2018, c. 12, Part 1	in force on 1 Nov 2018 (proc: 13 Oct 2018)
SM 2018, c. 19, s. 1 and 7	
SM 2018, c. 29, s. 14 (am. by SM 2021, c. 4, s. 23)	
SM 2019, c. 6, s. 10	in force on 16 Dec 2019 (proc: 22 Jul 2019)
SM 2021, c. 4, s. 13	
SM 2021, c. 15, s. 83	not yet proclaimed
SM 2021, c. 20	not yet proclaimed
SM 2021, c. 48, s. 5	not yet proclaimed

HISTORIQUE

Loi sur les conducteurs et les véhicules, c. D104 de la C.P.L.M.

Édictée par	**État des dispositions qui entrent en vigueur par proclamation**
L.M. 2005, c. 37, Sch. A	l'ensemble de la Loi : en vigueur le 1er mars 2006 (Gaz. du Man. : 11 mars 2006)
Modifiée par	
L.M. 2005, c. 56, art. 5	en vigueur le 16 déc. 2006 (Gaz. du Man. : 16 déc. 2006)
L.M. 2008, c. 17, art. 21	non proclamé, mais abrogé par L.M. 2018, c. 30, ann. A, art. 13
L.M. 2008, c. 36, partie 1 et art. 58	art. 1; art. 2 sauf dans la mesure où il édicte la définition de « permis de conduire amélioré » et l'alinéa a) de la définition de « critère d'admissibilité »; art. 3, 14, 17 à 20 et 22; et art. 23 sauf dans la mesure où il édicte l'alinéa 126(6)a), et art. 25 à 27, 32 et 33 : en vigueur le 19 janv. 2009 (Gaz. du Man. : 31 janv. 2009) art. 2 dans la mesure où il édicte la définition de « permis de conduire amélioré » et l'alinéa a) de la définition de « critère d'admissibilité »; art. 4 à 13, 15, 16 et 21; art. 23 dans la mesure où il édicte l'alinéa 126(6)a); et art. 24, 28, 30, 31 et 58 : en vigueur le 1er sept. 2009 (Gaz. du Man. : 25 avr. 2009) art. 29 : en vigueur le 1er nov. 2009 (Gaz. du Man. : 25 avr. 2009)
L.M. 2008, c. 42, art. 24	
L.M. 2009, c. 15, art. 232	par. 232(1) et l'alinéa (2)a) : en vigueur le 1er janv. 2019 (proclamation : 4 déc. 2018) l'alinéa 232(2)b) : non proclamé
L.M. 2010, c. 26	
L.M. 2010, c. 33, art. 13	
L.M. 2010, c. 52, partie 2	en vigueur le 15 août 2011 (Gaz. du Man. : 2 juill. 2011)
L.M. 2013, c. 39, ann. A, art. 46	en vigueur le 1er mai 2014 (Gaz. du Man. : 3 mai 2014)
L.M. 2013, c. 47, ann. A, art. 123 (modifiée par L.M. 2017, c. 26, art. 20)	par. 123(1) et (2) : en vigueur le 20 nov. 2017 (proclamation : 14 août 2017)
L.M. 2013, c. 49, art. 32	en vigueur le 1er sept. 2015 (proclamation : 17 juin 2015)
L.M. 2013, c. 54, art. 25	
L.M. 2014, c. 23, art. 8	en vigueur le 1er déc. 2014 (proclamation : 27 nov. 2014)
L.M. 2014, c. 32, art. 7	
L.M. 2014, c. 38	en vigueur le 1er oct. 2014
L.M. 2015, c. 39, partie 1	en vigueur le 1er déc. 2015 (proclamation : 26 nov. 2015)
L.M. 2017, c. 17, art. 12	en vigueur le 7 oct. 2017 (proclamation : 4 oct. 2017)
L.M. 2017, c. 22, partie 2	en vigueur le 1er déc. 2017 (proclamation : 28 nov. 2017)
L.M. 2017, c. 36, art. 14	en vigueur le 28 févr. 2018
L.M. 2018, c. 10, ann. C	en vigueur le 1er mars 2019 (proclamation : 8 déc. 2018)
L.M. 2018, c. 12, partie 1	en vigueur le 1er nov. 2018 (proclamation : 13 oct. 2018)
L.M. 2018, c. 19, art. 1 et 7	
L.M. 2018, c. 29, art. 14 (modifié par L.M. 2021, c. 4, art. 23)	
L.M. 2019, c. 6, art. 10	en vigueur le 16 déc. 2019 (proclamation : 22 juill. 2019)
L.M. 2021, c. 4, art. 13	
L.M. 2021, c. 15, art. 83	non proclamé
L.M. 2021, c. 20	non proclamé
L.M. 2021, c. 48, art. 5	non proclamé

CHAPTER D104

THE DRIVERS AND VEHICLES ACT

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PARTIE 10
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CHAPTER D104

THE DRIVERS AND VEHICLES ACT

(Assented to June 16, 2005)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

PART 1

DEFINITIONS AND INTERPRETATION

Definitions

1(1) The following definitions apply in this Act.

"certificate of insurance" means a certificate of insurance issued under *The Manitoba Public Insurance Corporation Act* or the regulations under that Act to the holder of a driver's licence, whether it is issued as part of the driver's licence or as a separate document. (« certificat d'assurance »)

"class", in relation to

(a) a driver's licence, means a driver's licence of a class prescribed in the regulations under this Act that authorizes the licence holder to drive one or more classes of motor vehicle as prescribed in those regulations; and

CHAPITRE D104

LOI SUR LES CONDUCTEURS ET LES VÉHICULES

(Date de sanction : 16 juin 2005)

SA MAJESTÉ, sur l'avis et avec le consentement de l'Assemblée législative du Manitoba, édicte :

PARTIE 1

DÉFINITIONS ET INTERPRÉTATION

Définitions

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

« agent de la paix »

a) Les agents de la Gendarmerie royale du Canada, les officiers de police, les agents de police ou les autres personnes employées à la protection et au maintien de l'ordre public;

b) les personnes nommées en vertu de la présente loi en vue de son application ou de l'application des règlements. ("peace officer")

PART 2

ADMINISTRATION OF THIS ACT

Designation of administrator

2(1) The Manitoba Public Insurance Corporation is the administrator for the purposes of this Act and the regulations under this Act and for the purposes of any other Act or regulation that imposes a duty or confers a power on the administrator.

Administrator's duties and powers

2(2) The administrator must perform the duties that are imposed on it by this or another Act, or a regulation, and any other duties that the minister may require. The administrator may exercise the powers conferred on it by this or another Act, or a regulation.

Directions by minister

2(3) The minister may give directions to the administrator or the registrar to achieve the purposes of this Act, *The Highway Traffic Act, The Off-Road Vehicles Act* and the regulations under any of those Acts, including, but not limited to, directions for the purpose of

(a) achieving provincial objectives and priorities respecting the regulation of Manitoba highways and persons and vehicles using highways;

(b) providing guidelines for the administrator to follow in administering this Act, and for the administrator and the registrar in performing their duties and exercising their powers; and

(c) coordinating the work of the administrator and the registrar with the programs, policies and work of the government in regulating highways and transportation.

PARTIE 2

APPLICATION DE LA PRÉSENTE LOI

Nomination de l'administrateur

2(1) La Société d'assurance publique du Manitoba est désignée à titre d'administrateur pour l'application de la présente loi et des règlements ainsi que pour l'application de toute autre loi ou de tout autre règlement qui confère des attributions à l'administrateur.

Attributions de l'administrateur

2(2) L'administrateur exerce les attributions qui lui sont conférées en vertu de la présente loi, d'une autre loi ou d'un règlement, et toute autre fonction que le ministre peut lui assigner. Il peut également exercer les pouvoirs qui lui sont attribués par les lois et les règlements du Manitoba.

Directives du ministre

2(3) Le ministre peut donner des directives à l'administrateur ou au registraire afin de réaliser les objectifs visés par la présente loi, le *Code de la route*, la *Loi sur les véhicules à caractère non routier* et les règlements d'application de ces textes. Les directives peuvent notamment porter sur les sujets suivants :

a) les objectifs et les priorités d'application provinciale relativement à la réglementation des routes du Manitoba et à la sécurité de ceux qui les utilisent;

b) les lignes directrices que l'administrateur doit suivre pour assurer l'application de la présente loi et que l'administrateur et le registraire doivent suivre dans l'exercice de leurs attributions;

c) l'agencement des activités de l'administrateur et du registraire avec les activités menées notamment dans le cadre de programmes ou de politiques par le gouvernement à l'égard de la réglementation des routes et du transport.

Delegation
2(4) The administrator may delegate any of its duties or powers to an officer or employee of the administrator, who is then authorized to perform the duty or exercise the power.

Délégation
2(4) L'administrateur peut déléguer ses attributions à un de ses dirigeants ou de ses employés.

Appointment of Registrar of Motor Vehicles
3(1) The administrator may appoint one of its officers or employees as registrar of Motor Vehicles for the purposes

(a) of this Act and the regulations, and of any other Act or a regulation under another Act that imposes a duty or confers a power on the registrar; and

(b) of subsection 320.32(6) of the *Criminal Code* (Canada).

Nomination du registraire des véhicules automobiles
3(1) L'administrateur peut nommer un de ses dirigeants ou de ses employés à titre de registraire des véhicules automobiles pour l'application :

a) des lois et des règlements qui confèrent des attributions au registraire;

b) du paragraphe 320.32(6) du *Code criminel* (Canada).

Appointment of Deputy-Registrar
3(2) For the purposes of an Act or regulation mentioned in subsection (1), the administrator may appoint one of its officers or employees as Deputy-Registrar of Motor Vehicles. Under the supervision of the registrar, the deputy-registrar may carry out the registrar's duties and exercise the registrar's powers under this Act or the regulations or under any other Act or a regulation under any other Act.

Nomination du registraire adjoint
3(2) Pour l'application d'une loi ou d'un règlement mentionné au paragraphe (1), l'administrateur peut nommer un de ses dirigeants ou de ses employés à titre de registraire adjoint des véhicules automobiles. Sous la supervision du registraire, le registraire adjoint peut exercer les attributions que les lois et les règlements du Manitoba confèrent au registraire.

Registrar may delegate
3(3) The registrar may authorize an officer or employee of the administrator or an employee of the minister's department to perform any of the registrar's duties or exercise any of the registrar's powers under this Act or the regulations or under any other Act or a regulation under any other Act.

S.M. 2015, c. 39, s. 2; S.M. 2018, c. 19, s. 7.

Délégation
3(3) Le registraire peut déléguer à un dirigeant ou à un employé de l'administrateur ou à un employé du ministère relevant du ministre des attributions que lui confèrent les lois et les règlements du Manitoba.

L.M. 2015, c. 39, art. 2; L.M. 2018, c. 19, art. 7.

TAB 8

Public Utilities Board

Régie des services publics

Order No. 176/19

MANITOBA PUBLIC INSURANCE CORPORATION (MPI OR THE CORPORATION): COMPULSORY 2020/2021 DRIVER AND VEHICLE INSURANCE PREMIUMS AND OTHER MATTERS

December 3, 2019

BEFORE: Irene A. Hamilton, Q.C., Panel Chair
Robert Gabor, Q.C., Board Chair
Carol Hainsworth, Member

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forecast in the 2019 GRA and for this year, particularly considering the evidence of MPI in this hearing which indicated that its financial position would have been worse, potentially resulting in rate increases, had the SIRF, or the 50/50 (representing the midpoint between Naïve and SIRF) interest rate forecasts been used for rate-setting purposes in the 2019 GRA.

With respect to the means of recognizing the expected return on investment assets supporting Basic Total Equity, and with the implementation of an appropriate Capital Management Plan, the Board sees merit in the Corporation's position to group all capital related adjustments through its Capital Management Plan separate from the break-even rate indication. As such, the Board is accepting the Corporation's definition of the break-even rate indication such that it should only capture cash flows relating to policies for the coming rating year.

With respect to the choice of loss development assumptions in deriving rate indications by Major Use Class, the Board notes the Corporation's undertaking to review its approach in this regard and anticipates receiving a discussion of the findings in this regard with the next GRA.

4. RESERVES REGULATION

4.1. BACKGROUND

In prior GRAs, the Board has deliberated on and determined the appropriate methodology for setting the target level of Total Equity to be retained by the Corporation to support the Rate Stabilization Reserve for Basic insurance (Basic RSR). The purpose of the Basic RSR is to protect motorists from rate increases that would otherwise have been necessary due to unexpected variances from forecasted results and due to events and losses arising from non-recurring events or factors.

During the last several GRAs, the Board has stated its preference for utilizing an adaptation of Dynamic Capital Adequacy Testing (DCAT) to determine a target capital

range for the RSR. Essentially, the DCAT methodology is a stochastic analysis of the Corporation's particular risk profile based upon the impact of the likelihood of various adverse events over a forecast period.

MPI, on the other hand, has repeatedly stated its preference for the use of the Minimum Capital Test (MCT) to determine a single target capital level for the Basic RSR. Essentially, the MCT is a solvency test of general application established by the Office of the Superintendent of Financial Institutions (OSFI) for private federally-regulated Property and Casualty Insurers, to ensure an adequate margin of assets over liabilities is maintained by the insurer. Although maintaining an appropriate MCT ratio is not a requirement for MPI, the Corporation believes that maintaining a 100% MCT ratio for the Basic RSR is reasonable and prudent. The Board also notes that in last year's GRA, the upper target level for the Basic RSR using the DCAT methodology, as approved by the Board, equated to 88% MCT. As such, the difference in the target capital levels under the two methodologies has narrowed.

The significance of the methodology chosen is that it has a direct bearing on the determination of just and reasonable rates for Basic insurance. The Basic RSR target has been an integral element of the Board's rate approval process since 1989. The Board has been granted broad authority with respect to the factors to be considered in its rate-approval exercise, and historically the Board has taken into account such factors as projected revenues and expenses for the rating year, the Corporation's prudence in managing costs and the overall health of the Corporation, including reserves. Setting the levels for the Basic RSR has been integral element of the rate approval function in determining: (1) the appropriate level of the Basic RSR for rate-setting purposes; (2) the appropriate methodology for the Basic RSR level; (3) whether additional premiums should be charged to bring the Basic RSR level within an appropriate range of capital target rate-setting; and (4) whether a rebate should be given to consumers. Over the past three decades, the Board has ordered rebates related to excessive Basic RSR levels, and has also ordered additional premiums related to low Basic RSR levels.

Prior to the filing of this Application, the Government of Manitoba enacted the *Reserves Regulation*, M.R. 76/2019 (the Regulation), which set out the manner of determining the amount to be maintained by the Corporation in its reserves supporting the Basic, Extension and Special Risk Extension lines of business for the purposes of *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c. P215 (the MPIC Act). In particular, the Regulation set the minimum amount that must be maintained by the Corporation for the Basic RSR at 100% MCT. The Regulation also restricted the use of any surplus reserve funds in the Basic RSR, requiring that any amounts in excess of the amount required by the Regulation be used only for the purpose of reducing the Basic rate indication in a subsequent year. Accordingly, the effect of the Regulation was to set the Basic RSR at a minimum level of the amount determined using a MCT ratio of 100%, rather than having the range for the Basic RSR capital level set by the Board through the GRA process. Specifically, the Regulation states as follows:

> **Purpose**
>
> **1** This regulation sets out the manner of determining the amount to be maintained by the corporation in its reserves for the purposes of the Act and restricts the use of any surplus reserve funds.
>
> **Amount to be held in reserves**
>
> **2** For the purpose of section 18 of the Act, the minimum amount the corporation must maintain
>
> (a) in its rate stabilization reserve is the amount determined using a MCT ratio of 100%;
>
> (b) in its extension reserve is the amount determined using a MCT ratio of 200%; and
>
> (c) in its special risk extension reserve is the amount determined using a MCT ratio of 300%.
>
> **Use of surplus moneys in rate stabilization reserve**
>
> **3** The corporation may use amounts in the rate stabilization reserve that are in excess of the amount required under clause 2(a) only for the purpose of reducing the rate indication required for the plan of universal compulsory automobile insurance in a subsequent year.

CAC filed a challenge to the validity of the Regulation, stating that it usurped the jurisdiction of the Board to set just and reasonable rates in the public interest. In accordance with the requirements of *The Constitutional Questions Act*, C.C.S.M. c. C180, CAC gave notice of the challenge to the Attorneys General of Manitoba and Canada. The Board heard submissions from the Attorney General of Manitoba (the AG), in support of the validity of the Regulation. The Attorney General of Canada declined to participate.

4.2. ***POSITIONS OF THE PARTIES***

CAC

As the party challenging the validity of the Regulation, CAC bore the onus of establishing that the Regulation is invalid.

In summary, CAC's argument was that the purpose of the legislative scheme as set out in the MPIC Act, *The Public Utilities Board Act*, C.C.S.M. c. P280 (the PUB Act), and *The Crown Corporations Governance and Accountability Act*, C.C.S.M. c. C336 (the CCGA Act) is to grant the Board independent rate approval authority for Basic, free from political interference. In support of its position, CAC filed a number of non-judicial documents, such as Hansard excerpts from the Manitoba Legislative Assembly, government reports and historical legislation to establish the legislative facts surrounding the creation of the Corporation in 1971 and the origin of the Board's rate approval mandate in 1988. Chief among these was the report of Judge Robert Kopstein, Commissioner of The Autopac Review Commission in 1988 which, according to CAC, on noting public suspicions of political interference in rate-setting and the support by many members of the public for independent public scrutiny of rates resulted in the enactment of legislation to provide for Board approval of changes to Basic insurance rates.

CAC submitted that, since at least 1989, the Board has considered the magnitude and constitution of the Basic RSR an integral part of the fixing of rates charged by the Corporation. By interfering with, and being inconsistent with, the Board's independent rate approval authority, the Regulation is inconsistent with the legislative scheme and is

Council to require through regulation, that the NB Board apply a particular revenue to cost ratio when fixing rates and tariffs for the sale of natural gas.

Section 4(1) of that regulation directed the Board to apply "the cost of service method or technique". However, section 4(1) went on to direct the Board to apply a "revenue to cost ratio not exceeding 1.2:1" for any class of customers. Finally, section 4(1) also added a proviso that the rates and tariffs determined according to the "cost of service method or technique" were not to exceed those rates that would have been fixed had the Board adopted the "market based method or technique".

The Court found that, although the directive in the regulation that required the Board to adopt "the cost of service method or technique" was consistent with the wording of section 52(5)(a) and the intent of the legislative scheme and, therefore, *intra vires*, the direction to apply a set revenue to cost ratio was *ultra vires* the regulation-making authority of the Lieutenant Governor in Council .

In concluding that the Lieutenant Governor in Council lacked the authority to prescribe a revenue to cost ratio as found in section 4(1) of the regulation, the Court noted the following (see paras 9-11):

> The Board, which is established under the *Energy and Utilities Board Act*, S.N.B. 2006, c. E-9.18, is a specialized and independent tribunal responsible for approving the rates that Enbridge may charge its customers. Section 52(5) of the *Gas Distribution Act, 1999* authorizes the Board to fix rates that are "just and reasonable". Prior to 2012, neither the *Gas Distribution Act, 1999*, nor the Regulations adopted thereunder, fettered the Board's authority to set rates based on those considerations it deemed relevant. Prior to 2012, the Board had been applying the "market based method or technique" when fixing rates. However, in 2011 the *Act* was amended to permit the LGC to fetter the Board's rate-setting powers through the former's regulation-making authority. The fetter is found in s. 52(5) which came into effect on April 16, 2012. As stated earlier, s. 52(5)(*a*) provides that in approving or fixing rates, the Board "shall adopt the methods or techniques prescribed by regulation." But s. 52(5)(*a*) is not the only fetter placed on the Board's independent authority to fix rates. Paragraphs (b), (c) and (d) provide that the Board is not to consider various matters relating to the utility's "deferral account", except in the circumstances and in the manner prescribed by regulation.

> If this Court were to adopt the broad interpretation which the Province places on s. 52(5)(*a*) of the *Gas Distribution Act, 1999*, it would have been unnecessary for the Legislature to include the statutory directives found in ss. 52(5)(b), (c) and (d). In other words, the LGC could have simply relied on paragraph (a) to adopt a regulation that also incorporated the matters dealt with in paragraphs (b), (c) and (d). Of course, it makes no sense to take the first of the four fetters and interpret it in a manner that eliminates the need to impose the remaining three. There is a presumption that legislatures are capable and intent on drafting legislation that embraces the qualities of rationality and internal coherence. There is also a presumption that legislatures do not intend "absurd" results. That is why the Province's interpretative argument is fatally flawed. And that is why it makes better sense to acknowledge that the phrase "methods or techniques" is a technical term whose meaning is best understood by those who must interpret and apply the legislation within a regulated industry. (On this point see para. 14, *infra*)
>
> If one looks to the *Act* and the *Regulation*, it is clear the Legislature was addressing itself to two known "methods or techniques" for fixing rates: (1) cost of service; and (2) market based. There may be others. But regardless, the phrase "methods or techniques" cannot be reasonably interpreted to include the right of the LGC to direct the Board to apply, for example, a designated "cost to service ratio". It may well be true, as suggested by counsel for the Province, that the Board has never exceeded the prescribed ratio of 1.2:1. But that is not a matter relevant to the task of statutory interpretation. The point is simply this. As the *Act* presently reads, it is for the Board to determine what the ratio should be and that is why the directive is *ultra vires* the regulation-making authority of the LGC.

Therefore, even a specific, as opposed to a general, regulation-making provision must not be inconsistent with the regulatory scheme.[20]

Taking all of the foregoing into consideration, the Board finds that the Regulation is inconsistent and in conflict with the Board's rate approval mandate in section 6.4 of the MPIC Act and the Board's powers under the PUB Act and CCGA Act. As set out above, the determination of the methodology and setting of capital target levels for the RSR is integral to the determination of just and reasonable rates. As such, any regulation which predetermines the methodology or level of the Basic RSR is inconsistent and in conflict with the Board's mandate.

[20] See also: *Gulf Canada Resources Ltd. v. Alberta*, 2001 ABQB 286; *Action Réseau Consommateur v. Quebec (AG)*, 2000 CanLII 19024 (QCCS).

Section 2(a) of the Regulation, in setting the level of the Basic RSR at 100% MCT, and section 3, in restricting the manner in which amounts in the Basic RSR in excess of 100% MCT are to be used, circumscribe the Board's rate-setting jurisdiction, in conflict with the relevant legislative framework.

Given the Board's determination that the Regulation is *ultra vires*, it is unnecessary to determine whether the Basic RSR, a reserve to provide protection against unexpected variances from forecasted results and due to events and losses arising from non-recurring events or factors, is considered a reserve to meet payments as provided in section 18 of the MPIC Act.

5. CAPITAL MANAGEMENT PLAN AND BASIC TARGET CAPITAL LEVELS

In Order 159/18, the Board approved a Basic Total Equity target capital range of $140 to $315 million for 2019/20, based on the Corporation's scenario testing approach adapted from its Basic DCAT investigation.

For the 2020 GRA, Order 159/18 also directed the Corporation to bring forward a thorough Capital Management Plan, encompassing the entire Corporation and including:

- Minimum, maximum, and/or target capital level for all lines of business;
- A Capital Maintenance Provision built into ratemaking;
- A capital build and release methodology based on the capital targets;
- Clearly defined policy-based constraints on the speed and magnitude of the combined rate impact of rate changes, capital maintenance, capital build, and capital release provisions;
- Clearly defined rules on the transfer of capital from other lines of business; and

Extension insurance coverage is specific to the Taxi VFH class (up to $300.00) and the Personal Passenger VFH class (20% for those with four time bands).

Accordingly, MPI stated that there was a misunderstanding, as a result of the taxi representatives' mistaken belief that the rate increase being discussed related to Basic insurance rates, rather than Extension All-Perils insurance rates. MPI went on to state that allowing the DSR vehicle premium discounts to be applied to taxi registered owners, commencing in 2018, resulted in an overall reduction in Basic insurance rates of 21% for the Taxi VFH class. At that time, it was anticipated that, due to competition from other VFH groups, the loss ratio for the Taxi VFH class would decrease. Unfortunately, the taxi class claims experience has not changed since implementation of VFH and, as a result, there is a need for the proposed 10.53% Basic rate increase for the Taxi VFH class for 2020/21. Finally, MPI stated that the Taxi Companies' suggestion that the Taxi VFH class is subsidizing the Personal Passenger VFH class is not accurate, as the Taxi VFH policy holders are not subsidizing the other VFH policy holders.

In reply, the Taxi Companies say that the June 20th discussion was in respect of the proposed rate increase in the 2020 GRA, and not about an interim increase. Further, this year's requested increase in premiums widened the gap between the Taxi VFH class and the Personal Passenger VFH class, rather than narrowing the gap to create a more level playing field. Therefore, the Taxi Companies submitted that the proposed increase in premiums was unreasonable, unfair and inconsistent with the relevant statistical data.

12. IT IS THEREFORE RECOMMENDED THAT:

12.1 Agile be tested by the Corporation on a larger-scale project (a cost of approximately $10 million), before the Corporation fully commits to Agile for all aspects of Project Nova.

13. IT IS THEREFORE ORDERED THAT:

13.1 There shall be an overall 0.6% rate decrease in compulsory vehicle insurance premiums for the 2020/21 insurance year, effective March 1, 2020, for a period of thirteen (13) months, for all major classes combined, which rate decrease BE AND IS HEREBY APPROVED. This rate decrease is as derived in accordance with Accepted Actuarial Practice in Canada, based on a Naïve interest rate forecast taking into account interest rates as at September 30, 2019.

13.2 The Corporation shall file for approval by the Board, within five (5) business days from the date of this Order or such other time as may be agreed to by the Corporation and the Board, a table of indicated rate changes and approved rate changes (i.e., after capping and rebalancing) by Major Class (and overall) reflecting the overall approved 0.6% rate decrease.

13.3 The Corporation's request that there be a discontinuance of the anti-theft discount for newly insured vehicles, and no changes to miscellaneous permits and certificates, the Driver Safety Rating system, vehicle premium discounts, service and transaction fees, or fleet rebates and surcharges BE AND IS HEREBY APPROVED.

13.4 In the 2021 GRA, the Corporation shall bring forward its rate application derived in accordance with Accepted Actuarial Practice in Canada, based on a Naïve interest rate forecast.

13.5 Section 2(a) and 3 of the *Reserves Regulation*, M.R. 76/2019, enacted pursuant to *The Manitoba Public Insurance Corporation Act*, C.C.S.M. c P215, are *ultra vires* the regulation-making authority of the Lieutenant Governor-in-Council and accordingly are not binding on the Board.

13.6 The Board hereby approves the Corporation's proposed Capital Management Plan as presented, including the 100% Minimum Capital Test Basic target capital level, for the 2020/21 and 2021/22 insurance years.

13.7 With respect to the Driver Safety Rating (DSR) system, the Corporation shall:

(a) File information in the 2021 GRA as to which rating model it intends to proceed with;

(b) File a pricing examination in the 2021 GRA, including the financial impact on premium revenue and the cost of modifying the system, of the Registered Owner and Primary Driver rating models;

(c) File information in the 2021 GRA as to whether it has collected data to recalibrate the amounts of driver premium to be charged under DSR system to be more statistically sound, based on experience; and

(d) Conduct a review of best practices for rating models in other Canadian jurisdictions and file the results of the review in the 2021 GRA.

13.8 In the 2021 GRA, the Corporation shall file its updated Information Technology Strategy.

13.9 In the 2021 GRA, the Corporation shall file updated Information Technology staff and consultant numbers, including titles and responsibilities.

13.10 The Corporation shall meet with the Board Advisors on a date to be agreed, but no later than six (6) months prior to the filing of the 2021 GRA, wherein the Corporation will provide the Board with an update on the following Information Technology (IT) initiatives:

(a) Project Nova, including an update on all aspects of the project including but not limited to resourcing, training, component progress, budget and prototypes;

(b) IT staffing and consultant strategy and progress towards reduction;

(c) IT Strategy;

TAB 9

Bell ExpressVu Limited Partnership *Appellant*

v.

Richard Rex, Richard Rex, c.o.b. as 'Can-Am Satellites', and c.o.b as 'Can Am Satellites' and c.o.b. as 'CanAm Satellites' and c.o.b. as 'Can Am Satellite' and c.o.b. as 'Can Am Sat' and c.o.b. as 'Can-Am Satellites Digital Media Group' and c.o.b. as 'Can-Am Digital Media Group' and c.o.b. as 'Digital Media Group', Anne Marie Halley a.k.a. Anne Marie Rex, Michael Rex a.k.a. Mike Rex, Rodney Kibler a.k.a. Rod Kibler, Lee-Anne Patterson, Michelle Lee, Jay Raymond, Jason Anthony, John Doe 1 to 20, Jane Doe 1 to 20 and any other person or persons found on the premises or identified as working at the premises at 22409 McIntosh Avenue, Maple Ridge, British Columbia, who operate or work for businesses carrying on business under the name and style of 'Can-Am Satellites', 'Can Am Satellites', 'CanAm Satellites', 'Can Am Satellite', 'Can Am Sat', 'Can-Am Satellites Digital Media Group', 'Can-Am Digital Media Group', 'Digital Media Group', or one or more of them *Respondents*

and

The Attorney General of Canada, the Canadian Motion Picture Distributors Association, DIRECTV, Inc., the Canadian Alliance for Freedom of Information and Ideas, and the Congres Iberoamericain du Canada *Interveners*

INDEXED AS: BELL EXPRESSVU LIMITED PARTNERSHIP *v.* REX

Neutral citation: 2002 SCC 42.

File No.: 28227.

2001: December 4; 2002: April 26.

Bell ExpressVu Limited Partnership *Appelante*

c.

Richard Rex, Richard Rex, faisant affaire sous les dénominations sociales 'Can-Am Satellites', 'Can Am Satellites', 'CanAm Satellites', 'Can Am Satellite', 'Can Am Sat', 'Can-Am Satellites Digital Media Group', 'Can-Am Digital Media Group' et 'Digital Media Group', Anne Marie Halley, alias Anne Marie Rex, Michael Rex, alias Mike Rex, Rodney Kibler, alias Rod Kibler, Lee-Anne Patterson, Michelle Lee, Jay Raymond, Jason Anthony, M. Untel 1 à 20, M^me^ Unetelle 1 à 20 et toute autre personne qui a été vue travaillant dans les locaux situés au 22409, avenue McIntosh, Maple Ridge, Colombie-Britannique, ou identifiée comme étant une telle personne, qui exploite des entreprises, ou l'une ou plusieurs de celles-ci, faisant affaire sous les dénominations sociales 'Can-Am Satellites', 'Can Am Satellites', 'CanAm Satellites', 'Can Am Satellite', 'Can Am Sat', 'Can-Am Satellites Digital Media Group', 'Can-Am Digital Media Group', 'Digital Media Group', ou qui travaille pour ces entreprises ou pour l'une ou plusieurs de celles-ci *Intimés*

et

Le procureur général du Canada, l'Association canadienne des distributeurs de films, DIRECTV, Inc., la Canadian Alliance for Freedom of Information and Ideas et le Congres Iberoamericain du Canada *Intervenants*

RÉPERTORIÉ : BELL EXPRESSVU LIMITED PARTNERSHIP *c.* REX

Référence neutre : 2002 CSC 42.

N° du greffe : 28227.

2001 : 4 décembre; 2002 : 26 avril.

Present: L'Heureux-Dubé, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Communications law — Radiocommunications — Direct-to-home distribution of television programming — Decoding in Canada of encrypted signals originating from foreign satellite distributor — Whether s. 9(1)(c) of Radiocommunication Act prohibits decoding of all encrypted satellite signals, with a limited exception, or whether it bars only unauthorized decoding of signals that emanate from licensed Canadian distributors — Radiocommunication Act, R.S.C. 1985, c. R-2, s. 9(1)(c).

Statutes — Interpretation — Principles — Contextual approach — Grammatical and ordinary sense — "Charter values" to be used as an interpretive principle only in circumstances of genuine ambiguity.

Appeals — Constitutional questions — Factual record necessary for constitutional questions to be answered.

The appellant engages in the distribution of direct-to-home (DTH) television programming and encrypts its signals to control reception. The respondents sell U.S. decoding systems to Canadian customers that enable them to receive and watch U.S. DTH progamming. They also provide U.S. mailing addresses to their customers who do not have one, since the U.S. broadcasters will not knowingly authorize their signals to be decoded by persons outside the United States. The appellant, as a licensed distribution undertaking, brought an action in the British Columbia Supreme Court, pursuant to ss. 9(1)(*c*) and 18(1) of the *Radiocommunication Act*, requesting in part an injunction prohibiting the respondents from assisting resident Canadians in subscribing to and decoding U.S. DTH programming. Section 9(1)(*c*) enjoins the decoding of encrypted signals without the authorization of the "lawful distributor of the signal or feed". The chambers judge declined to grant the injunctive relief. A majority of the Court of Appeal held that there is no contravention of s. 9(1)(*c*) where a person decodes unregulated signals such as those broadcast by the U.S. DTH companies, and dismissed the appellant's appeal.

Présents : Les juges L'Heureux-Dubé, Iacobucci, Major, Bastarache, Binnie, Arbour et LeBel.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Droit des communications — Radiocommunication — Distribution de programmation télévisuelle par satellite de radiodiffusion directe — Décodage au Canada de signaux encodés émanant de distributeurs étrangers utilisant des satellites — L'article 9(1)c) de la Loi sur la radiocommunication interdit-il le décodage de tous les signaux encodés émis par des satellites, sous réserve d'une exception limitée, ou prohibe-t-il seulement le décodage de signaux émanant de distributeurs canadiens titulaires de licence? — Loi sur la radiocommunication, L.R.C. 1985, ch. R-2, art. 9(1)c).

Lois — Interprétation — Principes — Approche contextuelle — Sens ordinaire et grammatical — Recours aux « valeurs de la Charte » comme principe d'interprétation seulement en cas d'ambiguïté véritable.

Appels — Questions constitutionnelles — Refus de répondre aux questions constitutionnelles pour cause d'absence de fondement factuel.

L'appelante, une entreprise de distribution de programmation télévisuelle par satellite de radiodiffusion directe (« SRD »), encode ses signaux pour en circonscrire la réception. Les intimés vendent à des clients canadiens des décodeurs américains leur permettant de recevoir et de regarder de la programmation SRD américaine. Ils fournissent en outre une adresse postale aux États-Unis à ceux de leurs clients qui n'en possèdent pas déjà une, car les radiodiffuseurs américains n'autorisent pas sciemment le décodage de leurs signaux par des personnes se trouvant à l'extérieur des États-Unis. L'appelante, à titre d'entreprise de distribution titulaire d'une licence, a intenté une action devant la Cour suprême de la Colombie-Britannique en vertu de l'al. 9(1)*c*) et du par. 18(1) de la *Loi sur la radiocommunication*, sollicitant notamment une injonction interdisant aux intimés d'aider des résidants canadiens à s'abonner à la programmation SRD américaine et à décoder les signaux pertinents. L'alinéa 9(1)*c*) interdit « de décoder, sans l'autorisation de leur distributeur légitime, [. . .] un signal d'abonnement ou une alimentation réseau ». Le juge siégeant en chambre a refusé l'injonction demandée. La Cour d'appel à la majorité a jugé que la personne qui décode des signaux non visés par la réglementation, tels ceux diffusés par les entreprises SRD américaines, ne contrevient pas à la disposition en question et elle a rejeté l'appel formé par l'appelante.

Held: The appeal should be allowed. Section 9(1)(*c*) of the Act prohibits the decoding of all encrypted satellite signals, with a limited exception.

It is necessary in every case for the court charged with interpreting a provision to undertake the preferred contextual and purposive interpretive approach before determining that the words are ambiguous. This requires reading the words of the Act 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. It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids, including other principles of interpretation such as the strict construction of penal statutes and the "*Charter* values" presumption.

When the entire context of s. 9(1)(*c*) is considered, and its words are read in their grammatical and ordinary sense in harmony with the legislative framework in which the provision is found, there is no ambiguity and accordingly no need to resort to any of the subsidiary principles of statutory interpretation. Because the *Radiocommunication Act* does not prohibit the broadcasting of subscription programming signals (apart from s. 9(1)(*e*), which forbids their unauthorized retransmission within Canada) and only concerns decrypting that occurs in Canada or other locations contemplated in s. 3(3), this does not give rise to any extra-territorial exercise of authority. Parliament intended to create an absolute bar on Canadian residents' decoding encrypted programming signals. The only exception to this prohibition occurs where authorization is acquired from a distributor holding the necessary legal rights in Canada to transmit the signal and provide the required authorization. The U.S. DTH distributors in the present case are not "lawful distributors" under the Act. This interpretation of s. 9(1)(*c*) as an absolute prohibition with a limited exception accords well with the objectives set out in the *Broadcasting Act* and complements the scheme of the *Copyright Act*.

The constitutional questions stated in this appeal are not answered because there is no *Charter* record permitting this Court to address the stated questions. A party cannot rely upon an entirely new argument that would have required additional evidence to be adduced at trial. "*Charter* values" cannot inform the interpretation given to s. 9(1)(*c*) of the *Radiocommunication Act*, for these

Arrêt : Le pourvoi est accueilli. L'alinéa 9(1)*c*) interdit le décodage de tous les signaux encodés transmis par satellite, sous réserve d'une exception limitée.

Le tribunal appelé à interpréter une disposition législative doit, dans chaque cas, se livrer à l'analyse contextuelle et téléologique privilégiée avant de décider si le texte de la disposition est ambigu. À cette fin, il lui faut lire les mots de la disposition dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de celle-ci et l'intention du législateur. C'est uniquement lorsque au moins deux interprétations plausibles, qui s'harmonisent chacune également avec l'intention du législateur, créent une ambiguïté véritable que les tribunaux doivent recourir à des moyens d'interprétation externes, y compris d'autres principes d'interprétation — telles l'interprétation stricte des lois pénales et la présomption de respect des « valeurs de la *Charte* ».

L'examen du contexte global de l'al. 9(1)*c*) et l'interprétation des mots qui le composent suivant leur sens ordinaire et grammatical, en conformité avec le cadre législatif dans lequel s'inscrit cette disposition, ne révèlent aucune ambiguïté et il n'est en conséquence pas nécessaire de recourir à l'un ou l'autre des principes subsidiaires d'interprétation législative. Puisque la *Loi sur la radiocommunication* n'interdit pas la radiodiffusion de signaux d'abonnement (exception faite de l'al. 9(1)*e*) qui interdit la retransmission non autorisée au Canada de tels signaux) et ne s'applique qu'au décodage survenant au Canada et aux autres endroits prévus au par. 3(3), la présente affaire ne soulève aucune question touchant à l'exercice extra-territorial de certains pouvoirs. Le législateur entendait interdire de manière absolue aux résidants du Canada de décoder des signaux d'abonnement encodés. La seule exception à cette interdiction est le cas où l'intéressé a obtenu l'autorisation de le faire du distributeur détenant au Canada les droits requis pour transmettre le signal concerné et en permettre le décodage. En l'espèce, les radiodiffuseurs SRD américains ne sont pas des « distributeurs légitimes » au sens de la Loi. Le fait de considérer que l'al. 9(1)*c*) établit une interdiction absolue assortie d'une exception limitée est une interprétation qui s'accorde bien avec les objets de la *Loi sur la radiodiffusion* et qui complète le régime établi par la *Loi sur le droit d'auteur*.

Aucune réponse n'a été donnée à l'égard des questions constitutionnelles, puisque le dossier ne comportait pas d'éléments relatifs à la *Charte* propres à permettre à la Cour de se prononcer sur ces questions. Une partie ne peut invoquer un argument entièrement nouveau qui aurait nécessité la production d'éléments de preuve additionnels au procès. Les « valeurs de la *Charte* » ne peuvent être

values are to be used as an interpretive principle only in circumstances of genuine ambiguity. A blanket presumption of *Charter* consistency could sometimes frustrate true legislative intent, contrary to what is mandated by the preferred approach to statutory construction, and wrongly upset the dialogic balance among the branches of governance. Where a statute is unambiguous, courts must give effect to the clearly expressed legislative intent and avoid using the *Charter* to achieve a different result.

Cases Cited

Not followed: *R. v. Love* (1997), 117 Man. R. (2d) 123; *R. v. Ereiser* (1997), 156 Sask. R. 71; *R. v. LeBlanc*, [1997] N.S.J. No. 476 (QL); *R. v. Thériault*, [2000] R.J.Q. 2736, aff'd Sup. Ct. Drummondville, No. 405-36-000044-003, June 13, 2001; *R. v. Gregory Électronique Inc.*, [2000] Q.J. No. 4923 (QL), aff'd [2001] Q.J. No. 4925 (QL); *R. v. S.D.S. Satellite Inc.*, C.Q. Laval, No. 540-73-000055-980, October 31, 2000; *R. v. Branton* (2001), 53 O.R. (3d) 737; **referred to:** *Canada (Attorney General) v. Mossop*, [1993] 1 S.C.R. 554; *R. v. Open Sky Inc.*, [1994] M.J. No. 734 (QL), aff'd (1995), 106 Man. R. (2d) 37, leave to appeal ref'd (1996), 110 Man. R. (2d) 153; *R. v. King*, [1996] N.B.J. No. 449 (QL), rev'd (1997), 187 N.B.R. (2d) 185; *R. v. Knibb* (1997), 198 A.R. 161, aff'd [1998] A.J. No. 628 (QL); *ExpressVu Inc. v. NII Norsat International Inc.*, [1998] 1 F.C. 245, aff'd (1997), 222 N.R. 213; *WIC Premium Television Ltd. v. General Instrument Corp.* (2000), 272 A.R. 201, 2000 ABQB 628; *Canada (Procureure générale) v. Pearlman*, [2001] R.J.Q. 2026; *Ryan v. 361779 Alberta Ltd.* (1997), 208 A.R. 396; *R. v. Scullion*, [2001] R.J.Q. 2018; *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536; *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27; *R. v. Gladue*, [1999] 1 S.C.R. 688; *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3; *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56; *Stoddard v. Watson*, [1993] 2 S.C.R. 1069; *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015; *Marcotte v. Deputy Attorney General for Canada*, [1976] 1 S.C.R. 108; *R. v. Goulis* (1981), 33 O.R. (2d) 55; *R. v. Hasselwander*, [1993] 2 S.C.R. 398; *R. v. Russell*, [2001] 2 S.C.R. 804, 2001 SCC 53; *Westminster Bank Ltd. v. Zang*, [1966] A.C. 182; *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743; *Quebec (Attorney General) v. Carrières Ste-Thérèse Ltée*, [1985] 1 S.C.R. 831; *Corbiere v. Canada (Minister of Indian*

utilisées pour éclairer l'interprétation de l'al. 9(1)*c*), puisqu'elles ne doivent être utilisées comme principe d'interprétation qu'en cas d'ambiguïté véritable. L'application d'une présomption générale de conformité à la *Charte* pourrait parfois contrecarrer le respect de l'intention véritable du législateur, contrairement à ce que prescrit la démarche privilégiée en matière d'interprétation législative, et perturber à tort l'équilibre dialogique entre les pouvoirs législatif, exécutif et judiciaire. Lorsqu'une loi n'est pas ambiguë, les tribunaux doivent donner effet à l'intention clairement exprimée par le législateur et éviter d'utiliser la *Charte* pour arriver à un résultat différent.

Jurisprudence

Arrêts non suivis : *R. c. Love* (1997), 117 Man. R. (2d) 123; *R. c. Ereiser* (1997), 156 Sask. R. 71; *R. c. LeBlanc*, [1997] N.S.J. No. 476 (QL); *R. c. Thériault*, [2000] R.J.Q. 2736, conf. par C.S. Drummondville, nº 405-36-000044-003, 13 juin 2001; *R. c. Gregory Électronique Inc.*, [2000] J.Q. nº 4923 (QL), conf. par [2001] J.Q. nº 4925 (QL); *R. c. S.D.S. Satellite Inc.*, C.Q. Laval, nº 540-73-000055-980, 31 octobre 2000; *R. c. Branton* (2001), 53 O.R. (3d) 737; **arrêts mentionnés :** *Canada (Procureur général) c. Mossop*, [1993] 1 R.C.S. 554; *R. c. Open Sky Inc.*, [1994] M.J. No. 734 (QL), conf. par (1995), 106 Man. R. (2d) 37, autorisation d'appel refusée (1996), 110 Man. R. (2d) 153; *R. c. King*, [1996] N.B.J. No. 449 (QL), inf. par (1997), 187 R.N.-B. (2d) 185; *R. c. Knibb* (1997), 198 A.R. 161, conf. par [1998] A.J. No. 628 (QL); *ExpressVu Inc. c. NII Norsat International Inc.*, [1998] 1 C.F. 245, conf. par [1997] A.C.F. nº 1563 (QL); *WIC Premium Television Ltd. c. General Instrument Corp.* (2000), 272 A.R. 201, 2000 ABQB 628; *Canada (Procureure générale) c. Pearlman*, [2001] R.J.Q. 2026; *Ryan c. 361779 Alberta Ltd.* (1997), 208 A.R. 396; *R. c. Scullion*, [2001] R.J.Q. 2018; *Stubart Investments Ltd. c. La Reine*, [1984] 1 R.C.S. 536; *Québec (Communauté urbaine) c. Corp. Notre-Dame de Bon-Secours*, [1994] 3 R.C.S. 3; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 R.C.S. 27; *R. c. Gladue*, [1999] 1 R.C.S. 688; *R. c. Araujo*, [2000] 2 R.C.S. 992, 2000 CSC 65; *R. c. Sharpe*, [2001] 1 R.C.S. 45, 2001 CSC 2; *Chieu c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2002] 1 R.C.S. 84, 2002 CSC 3; *R. c. Ulybel Enterprises Ltd.*, [2001] 2 R.C.S. 867, 2001 CSC 56; *Stoddard c. Watson*, [1993] 2 R.C.S. 1069; *Pointe-Claire (Ville) c. Québec (Tribunal du travail)*, [1997] 1 R.C.S. 1015; *Marcotte c. Sous-procureur général du Canada*, [1976] 1 R.C.S. 108; *R. c. Goulis* (1981), 33 O.R. (2d) 55; *R. c. Hasselwander*, [1993] 2 R.C.S. 398; *R. c. Russell*, [2001] 2 R.C.S. 804, 2001 CSC 53; *Westminster Bank Ltd. c. Zang*, [1966] A.C. 182; *CanadianOxy Chemicals Ltd. c. Canada (Procureur général)*, [1999] 1 R.C.S. 743; *Québec (Procureur général) c. Carrières Ste-Thérèse Ltée*, [1985] 1 R.C.S. 831;

and Northern Affairs), [1999] 2 S.C.R. 203; *Bisaillon v. Keable*, [1983] 2 S.C.R. 60; *Perka v. The Queen*, [1984] 2 S.C.R. 232; *Idziak v. Canada (Minister of Justice)*, [1992] 3 S.C.R. 631; *R. v. Gayle* (2001), 54 O.R. (3d) 36, leave to appeal to S.C.C. refused, [2002] 1 S.C.R. vii; *Moysa v. Alberta (Labour Relations Board)*, [1989] 1 S.C.R. 1572; *Danson v. Ontario (Attorney General)*, [1990] 2 S.C.R. 1086; *Baron v. Canada*, [1993] 1 S.C.R. 416; *R. v. Mills*, [1999] 3 S.C.R. 668; *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *RWDSU v. Dolphin Delivery Ltd.*, [1986] 2 S.C.R. 573; *Cloutier v. Langlois*, [1990] 1 S.C.R. 158; *R. v. Salituro*, [1991] 3 S.C.R. 654; *R. v. Golden*, [2001] 3 S.C.R. 679, 2001 SCC 83; *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156, 2002 SCC 8; *Hills v. Canada (Attorney General)*, [1988] 1 S.C.R. 513; *Slaight Communications Inc. v. Davidson*, [1989] 1 S.C.R. 1038; *R. v. Zundel*, [1992] 2 S.C.R. 731; *R. v. Nova Scotia Pharmaceutical Society*, [1992] 2 S.C.R. 606; *R. v. Lucas*, [1998] 1 S.C.R. 439; *Symes v. Canada*, [1993] 4 S.C.R. 695; *Willick v. Willick*, [1994] 3 S.C.R. 670; *Vriend v. Alberta*, [1998] 1 S.C.R. 493.

Statutes and Regulations Cited

Broadcasting Act, Direction to the CRTC (Ineligibility of Non-Canadians), SOR/96-192.

Broadcasting Act, S.C. 1991, c. 11, ss. 2(1) "broadcasting", "broadcasting undertaking", "distribution undertaking", (2) [rep. & sub. 1993, c. 38, s. 81], (3), 3.

Canadian Charter of Rights and Freedoms, ss. 1, 2(*b*).

Copyright Act, R.S.C. 1985, c. C-42, ss. 21 [rep. 1994, c. 47, s. 59; ad. 1997, c. 24, s. 14], 31(2) [rep. c. 10 (4th Supp.), s. 7; ad. 1988, c. 65, s. 63; s. 28.01 renumbered as s. 31, 1997, c. 24, s. 16].

Interpretation Act, R.S.C. 1985, c. I-21, ss. 10, 12.

Radiocommunication Act, R.S.C. 1985, c. R-2, ss. 2, "broadcasting", "encrypted" [ad. 1991, c. 11, s. 81], "lawful distributor" [*idem*], "radiocommunication" or "radio", "subscription programming signal" [*idem*], 3(3)(*a*), (*b*) [rep. & sub. 1989, c. 17, s. 4], (*c*) [*idem*; am. 1996, c. 31, s. 94], 5(1)(*a*), 9(1)(*c*) [ad. 1989, c. 17, s. 6; am. 1991, c. 11, s. 83], (*e*) [ad. 1991, c. 11, s. 83], 10(1)(*b*) [ad. 1989, c. 17, s. 6], (2.1) [ad. 1991, c. 11, s. 84], (2.5) [*idem*], 18(1) [*idem*, s. 85], (6) [*idem*].

Rules of the Supreme Court of Canada, SOR/83-74, Rule 32.

Authors Cited

Canadian Oxford Dictionary. Edited by Katherine Barber. Toronto: Oxford University Press, 1998, "a".

Corbiere c. Canada (Ministre des Affaires indiennes et du Nord canadien), [1999] 2 R.C.S. 203; *Bisaillon c. Keable*, [1983] 2 R.C.S. 60; *Perka c. La Reine*, [1984] 2 R.C.S. 232; *Idziak c. Canada (Ministre de la Justice)*, [1992] 3 R.C.S. 631; *R. c. Gayle* (2001), 54 O.R. (3d) 36, autorisation d'appel à la C.S.C. refusée, [2002] 1 R.C.S. vii; *Moysa c. Alberta (Labour Relations Board)*, [1989] 1 R.C.S. 1572; *Danson c. Ontario (Procureur général)*, [1990] 2 R.C.S. 1086; *Baron c. Canada*, [1993] 1 R.C.S. 416; *R. c. Mills*, [1999] 3 R.C.S. 668; *Borowski c. Canada (Procureur général)*, [1989] 1 R.C.S. 342; *SDGMR c. Dolphin Delivery Ltd.*, [1986] 2 R.C.S. 573; *Cloutier c. Langlois*, [1990] 1 R.C.S. 158; *R. c. Salituro*, [1991] 3 R.C.S. 654; *R. c. Golden*, [2001] 3 R.C.S. 679, 2001 CSC 83; *S.D.G.M.R., section locale 558 c. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 R.C.S. 156, 2002 CSC 8; *Hills c. Canada (Procureur général)*, [1988] 1 R.C.S. 513; *Slaight Communications Inc. c. Davidson*, [1989] 1 R.C.S. 1038; *R. c. Zundel*, [1992] 2 R.C.S. 731; *R. c. Nova Scotia Pharmaceutical Society*, [1992] 2 R.C.S. 606; *R. c. Lucas*, [1998] 1 R.C.S. 439; *Symes c. Canada*, [1993] 4 R.C.S. 695; *Willick c. Willick*, [1994] 3 R.C.S. 670; *Vriend c. Alberta*, [1998] 1 R.C.S. 493.

Lois et règlements cités

Charte canadienne des droits et libertés, art. 1, 2*b*).

Loi d'interprétation, L.R.C. 1985, ch. I-21, art. 10, 12.

Loi sur la radiocommunication, L.R.C. 1985, ch. R-2, art. 2 « distributeur légitime » [aj. 1991, ch. 11, art. 81], « encodage » [*idem*], « radiocommunication » ou « radio », « radiodiffusion », « signal d'abonnement » [*idem*], 3(3)*a*), *b*) [abr. & rempl. 1989, ch. 17, art. 4], *c*) [*idem*; mod. 1996, ch. 31, art. 94], 5(1)*a*), 9(1)*c*) [aj. 1989, ch. 17, art. 6; mod. 1991, ch. 11, art. 83], *e*) [aj. 1991, ch. 11, art. 83], 10(1)*b*) [aj. 1989, ch. 17, art. 6]; (2.1) [aj. 1991, ch. 11, art. 84], (2.5) [*idem*], 18(1) [*idem*, art. 85], (6) [*idem*].

Loi sur la radiodiffusion, L.C. 1991, ch. 11, art. 2(1) « entreprise de distribution », « entreprise de radiodiffusion », « radiodiffusion », (2) [abr. & rempl. 1993, ch. 38, art. 81], (3), 3.

Loi sur la radiodiffusion, Instructions au CRTC (inadmissibilité de non-Canadiens), DORS/96-192.

Loi sur le droit d'auteur, L.R.C. 1985, ch. C-42, art. 21 [abr. 1994, ch. 47, art. 59; aj. 1997, ch. 24, art. 14], 31(2) [abr. ch. 10 (4^{e} suppl.), art. 7; aj. 1988, ch. 65, art. 63; art. 28.01 devient l'art. 31, 1997, ch. 24, art. 16; mod. *idem*, art. 52(1)*a*)].

Règles de la Cour suprême du Canada, DORS/83-74, art. 32.

Doctrine citée

Crane, Brian A., and Henry S. Brown. *Supreme Court of Canada Practice 2000*. Scarborough, Ont. : Thomson Professional Publishing Canada, 1999.

Crane, Brian A., and Henry S. Brown. *Supreme Court of Canada Practice 2000*. Scarborough, Ont.: Thomson Professional Publishing Canada, 1999.
Driedger, Elmer A. *Construction of Statutes*, 2nd ed. Toronto: Butterworths, 1983.
Eliadis, F. Pearl, and Stuart C. McCormack. "Vanquishing Wizards, Pirates and Musketeers: The Regulation of Encrypted Satellite TV Signals" (1993), 3 *M.C.L.R.* 211.
Handa, Sunny, et al. *Communications Law in Canada*, loose-leaf ed. Toronto: Butterworths, 2000 (including Service Issues 2001).
Sullivan, Ruth. *Driedger on the Construction of Statutes*, 3rd ed. Toronto: Butterworths, 1994.
Willis, John. "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1.

APPEAL from a judgment of the British Columbia Court of Appeal (2000), 191 D.L.R. (4th) 662, 9 W.W.R. 205, 142 B.C.A.C. 230, 233 W.A.C. 230, 79 B.C.L.R. (3d) 250, [2000] B.C.J. No. 1803 (QL), 2000 BCCA 493, dismissing an appeal from a decision of the British Columbia Supreme Court, [1999] B.C.J. No. 3092 (QL), refusing to grant an injunction. Appeal allowed.

K. William McKenzie, *Eugene Meehan*, *Q.C.*, and *Jessica Duncan*, for the appellant.

Alan D. Gold and *Maureen McGuire*, for all respondents except Michelle Lee.

Graham R. Garton, *Q.C.*, and *Christopher Rupar*, for the intervener the Attorney General of Canada.

Roger T. Hughes, *Q.C.*, for the intervener the Canadian Motion Picture Distributors Association.

Christopher D. Bredt, *Jeffrey D. Vallis* and *Davit D. Akman*, for the intervener DIRECTV, Inc.

Ian W. M. Angus, for the intervener the Canadian Alliance for Freedom of Information and Ideas.

Alan Riddell, for the intervener the Congres Iberoamerican du Canada.

The judgment of the Court was delivered by

IACOBUCCI J. —

I. Introduction

1 This appeal involves an issue that has divided courts in our country. It concerns the proper interpretation of s. 9(1)(*c*) of the *Radiocommunication*

Driedger, Elmer A. *Construction of Statutes*, 2nd ed. Toronto : Butterworths, 1983.
Eliadis, F. Pearl, and Stuart C. McCormack. « Vanquishing Wizards, Pirates and Musketeers : The Regulation of Encrypted Satellite TV Signals » (1993), 3 *M.C.L.R.* 211.
Grand Robert de la langue française, 2e éd., t. 6. Paris : Dictionnaires Le Robert, 2001, « un, une ».
Handa, Sunny, et al. *Communications Law in Canada*, loose-leaf ed. Toronto : Butterworths, 2000 (including Service Issues 2001).
Sullivan, Ruth. *Driedger on the Construction of Statutes*, 3rd ed. Toronto : Butterworths, 1994.
Willis, John. « Statute Interpretation in a Nutshell » (1938), 16 *R. du B. can.* 1.

POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (2000), 191 D.L.R. (4th) 662, 9 W.W.R. 205, 142 B.C.A.C. 230, 233 W.A.C. 230, 79 B.C.L.R. (3d) 250, [2000] B.C.J. No. 1803 (QL), 2000 BCCA 493, qui a rejeté l'appel formé contre une décision de la Cour suprême de la Colombie-Britannique, [1999] B.C.J. No. 3092 (QL). Pourvoi accueilli.

K. William McKenzie, *Eugene Meehan*, *c.r.*, et *Jessica Duncan*, pour l'appelante.

Alan D. Gold et *Maureen McGuire*, pour tous les intimés, à l'exception de Michelle Lee.

Graham R. Garton, *c.r.*, et *Christopher Rupar*, pour l'intervenant le procureur général du Canada.

Roger T. Hughes, *c.r.*, pour l'intervenante l'Association canadienne des distributeurs de films.

Christopher D. Bredt, *Jeffrey D. Vallis* et *Davit D. Akman*, pour l'intervenante DIRECTV, Inc.

Ian W. M. Angus, pour l'intervenante la Canadian Alliance for Freedom of Information and Ideas.

Alan Riddell, pour l'intervenant le Congres Iberoamericain du Canada.

Version française du jugement de la Cour rendu par

LE JUGE IACOBUCCI —

I. Introduction

Le présent pourvoi porte sur une question qui divise les tribunaux du pays, en l'occurrence l'interprétation qu'il convient de donner à l'al.

Scullion, [2001] R.J.Q. 2018 (C.Q.); *R. v. Branton* (2001), 53 O.R. (3d) 737 (C.A.).

As can be seen, the schism is not explained simply by the adoption of different approaches in different jurisdictions. Although the highest courts in British Columbia and Ontario have now produced decisions that bind the lower courts in those provinces to the restrictive interpretation, and although the Federal Court of Appeal has similarly bound the Trial Division courts under it to the contrary interpretation, the trial courts in Alberta, Manitoba, and Quebec have produced irreconcilable decisions. Those provinces remain without an authoritative determination on the matter. This appeal, therefore, places this Court in a position to harmonize the interpretive dissonance that is echoing throughout Canada.

In attempting to steer its way through this maze of cases, the Court of Appeal for British Columbia, in my respectful view, erred in its interpretation of s. 9(1)(*c*). In my view, there are five aspects of the majority's decision that warrant discussion. First, it commenced analysis from the belief that an ambiguity existed. Second, it placed undue emphasis on the sheer number of judges who had disagreed as to the proper interpretation of s. 9(1)(*c*). Third, it did not direct sufficient attention to the context of the *Radiocommunication Act* within the regulatory *régime* for broadcasting in Canada, and did not consider the objectives of that *régime*, feeling that it was unnecessary to address these "wider policy issues". Fourth, the majority did not read s. 9(1)(*c*) grammatically in accordance with its structure, namely, a prohibition with a limited exception. Finally, the majority of the court effectively inverted the words of the provision, such that the signals for which a lawful distributor could provide authorization to decode (i.e., the exception) defined the very scope of the prohibition.

R. c. Scullion, [2001] R.J.Q. 2018 (C.Q.); *R. c. Branton* (2001), 53 O.R. (3d) 737 (C.A.).

Comme on peut le constater, cette divergence d'interprétations ne s'explique pas seulement par le fait que différentes juridictions dans diverses provinces ont adopté des démarches distinctes. Bien que les tribunaux de dernier ressort de la Colombie-Britannique et de l'Ontario se soient prononcés en faveur de l'interprétation restrictive et que ces décisions lient les tribunaux inférieurs de ces provinces, et que la Cour d'appel fédérale ait rendu une décision à l'effet contraire liant la Section de première instance de cette cour, les tribunaux de première instance de l'Alberta, du Manitoba et du Québec ont rendu des décisions inconciliables et il n'y a pas encore, dans ces provinces, d'arrêt contraignant sur la question. Le présent pourvoi offre donc à notre Cour l'occasion d'harmoniser les interprétations discordantes qui existent dans l'ensemble du Canada. 24

En toute déférence, j'estime que la Cour d'appel de la Colombie-Britannique a mal interprété l'al. 9(1)*c*) en tentant de trouver son chemin dans ce dédale de décisions contradictoires. À mon avis, cinq aspects de la décision des juges majoritaires requièrent examen. Premièrement, les juges majoritaires ont commencé leur analyse en tenant pour acquis qu'il y avait ambiguïté. Deuxièmement, ils ont accordé une importance excessive au seul fait qu'un grand nombre de juges avaient divergé d'opinions quant à l'interprétation de l'al. 9(1)*c*). Troisièmement, ils ne se sont pas arrêtés suffisamment à la place de la *Loi sur la radiocommunication* au sein du régime de réglementation de la radiodiffusion au Canada ni pris en considération les objectifs de ce régime, estimant plutôt qu'il était inutile d'examiner ces [TRADUCTION] « questions de principe plus générales ». Quatrièmement, les juges majoritaires n'ont pas interprété le texte anglais de la disposition conformément à sa structure grammaticale, à savoir une interdiction suivie d'une exception limitée. Enfin, ils ont dans les faits inversé les éléments du texte de la disposition, de telle sorte que les signaux dont un distributeur légitime pouvait permettre le décodage (c'est-à-dire l'exception) se trouvaient à définir l'étendue même de l'interdiction. 25

B. *Does Section 9(1)(c) of the Radiocommunication Act Create an Absolute Prohibition Against Decoding, Followed by a Limited Exception, or Does it Allow all Decoding, Except for Those Signals for Which There Is a Lawful Distributor who Has not Granted its Authorization?*

(1) Principles of Statutory Interpretation

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: see, for example, *Stubart Investments Ltd. v. The Queen*, [1984] 1 S.C.R. 536, at p. 578, *per* Estey J.; *Québec (Communauté urbaine) v. Corp. Notre-Dame de Bon-Secours*, [1994] 3 S.C.R. 3, at p. 17; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21; *R. v. Gladue*, [1999] 1 S.C.R. 688, at para. 25; *R. v. Araujo*, [2000] 2 S.C.R. 992, 2000 SCC 65, at para. 26; *R. v. Sharpe*, [2001] 1 S.C.R. 45, 2001 SCC 2, at para. 33, *per* McLachlin C.J.; *Chieu v. Canada (Minister of Citizenship and Immigration)*, [2002] 1 S.C.R. 84, 2002 SCC 3, at para. 27. I note as well that, in the federal legislative context, this Court's preferred approach is buttressed 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".

27 The preferred approach recognizes the important role that context must inevitably play when a court construes the written words of a statute: as Professor John Willis incisively noted in his seminal article "Statute Interpretation in a Nutshell" (1938), 16 *Can. Bar Rev.* 1, at p. 6, "words, like

B. *L'alinéa 9(1)c) de la Loi sur la radiocommunication interdit-il le décodage de manière absolue, sous réserve d'une exception limitée, ou autorise-t-il le décodage de tous les signaux, sauf ceux pour lesquels il existe un distributeur légitime qui n'a pas donné l'autorisation de le faire?*

(1) Principes d'interprétation législative

Voici comment, à la p. 87 de son ouvrage *Construction of Statutes* (2e éd. 1983), Elmer Driedger a énoncé le principe applicable, de la manière qui fait maintenant autorité :

> [TRADUCTION] Aujourd'hui, il n'y a qu'un seul principe ou solution : il faut lire les termes d'une loi dans leur contexte global en suivant le sens ordinaire et grammatical qui s'harmonise avec l'esprit de la loi, l'objet de la loi et l'intention du législateur.

Notre Cour a à maintes reprises privilégié la méthode moderne d'interprétation législative proposée par Driedger, et ce dans divers contextes : voir, par exemple, *Stubart Investments Ltd. c. La Reine*, [1984] 1 R.C.S. 536, p. 578, le juge Estey; *Québec (Communauté urbaine) c. Corp. Notre-Dame de Bon-Secours*, [1994] 3 R.C.S. 3, p. 17; *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 R.C.S. 27, par. 21; *R. c. Gladue*, [1999] 1 R.C.S. 688, par. 25; *R. c. Araujo*, [2000] 2 R.C.S. 992, 2000 CSC 65, par. 26; *R. c. Sharpe*, [2001] 1 R.C.S. 45, 2001 CSC 2, par. 33, le juge en chef McLachlin; *Chieu c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [2002] 1 R.C.S. 84, 2002 CSC 3, par. 27. Je tiens également à souligner que, pour ce qui est de la législation fédérale, le bien-fondé de la méthode privilégiée par notre Cour est renforcé par l'art. 12 de la *Loi d'interprétation*, L.R.C. 1985, ch. I-21, qui dispose que tout texte « est censé apporter une solution de droit et s'interprète de la manière la plus équitable et la plus large qui soit compatible avec la réalisation de son objet ».

Cette méthode reconnaît le rôle important que joue inévitablement le contexte dans l'interprétation par les tribunaux du texte d'une loi. Comme l'a fait remarquer avec perspicacité le professeur John Willis dans son influent article intitulé « Statute Interpretation in a Nutshell » (1938), 16 *R. du B.*

people, take their colour from their surroundings". This being the case, where the provision under consideration is found in an Act that is itself a component of a larger statutory scheme, the surroundings that colour the words and the scheme of the Act are more expansive. In such an instance, the application of Driedger's principle gives rise to what was described in *R. v. Ulybel Enterprises Ltd.*, [2001] 2 S.C.R. 867, 2001 SCC 56, at para. 52, as "the principle of interpretation that presumes a harmony, coherence, and consistency between statutes dealing with the same subject matter". (See also *Stoddard v. Watson*, [1993] 2 S.C.R. 1069, at p. 1079; *Pointe-Claire (City) v. Quebec (Labour Court)*, [1997] 1 S.C.R. 1015, at para. 61, *per* Lamer C.J.)

can. 1, p. 6, [TRADUCTION] « les mots, comme les gens, prennent la couleur de leur environnement ». Cela étant, lorsque la disposition litigieuse fait partie d'une loi qui est elle-même un élément d'un cadre législatif plus large, l'environnement qui colore les mots employés dans la loi et le cadre dans lequel celle-ci s'inscrit sont plus vastes. En pareil cas, l'application du principe énoncé par Driedger fait naître ce que notre Cour a qualifié, dans *R. c. Ulybel Enterprises Ltd.*, [2001] 2 R.C.S. 867, 2001 CSC 56, par. 52, de « principe d'interprétation qui présume l'harmonie, la cohérence et l'uniformité entre les lois traitant du même sujet ». (Voir également *Stoddard c. Watson*, [1993] 2 R.C.S. 1069, p. 1079; *Pointe-Claire (Ville) c. Québec (Tribunal du travail)*, [1997] 1 R.C.S. 1015, par. 61, le juge en chef Lamer.)

Other principles of interpretation — such as the strict construction of penal statutes and the "*Charter* values" presumption — only receive application where there is ambiguity as to the meaning of a provision. (On strict construction, see: *Marcotte v. Deputy Attorney General for Canada*, [1976] 1 S.C.R. 108, at p. 115, *per* Dickson J. (as he then was); *R. v. Goulis* (1981), 33 O.R. (2d) 55 (C.A.), at pp. 59-60; *R. v. Hasselwander*, [1993] 2 S.C.R. 398, at p. 413; *R. v. Russell*, [2001] 2 S.C.R. 804, 2001 SCC 53, at para. 46. I shall discuss the "*Charter* values" principle later in these reasons.)

28 D'autres principes d'interprétation — telles l'interprétation stricte des lois pénales et la présomption de respect des « valeurs de la *Charte* » — ne s'appliquent que si le sens d'une disposition est ambiguë. (Voir, relativement à l'interprétation stricte : *Marcotte c. Sous-procureur général du Canada*, [1976] 1 R.C.S. 108, p. 115, le juge Dickson (plus tard Juge en chef du Canada); *R. c. Goulis* (1981), 33 O.R. (2d) 55 (C.A.), p. 59-60; *R. c. Hasselwander*, [1993] 2 R.C.S. 398, p. 413, et *R. c. Russell*, [2001] 2 R.C.S. 804, 2001 CSC 53, par. 46. Je vais examiner plus loin le principe du respect des « valeurs de la *Charte* ».)

What, then, in law is an ambiguity? To answer, an ambiguity must be "real" (*Marcotte*, *supra*, at p. 115). The words of the provision must be "reasonably capable of more than one meaning" (*Westminster Bank Ltd. v. Zang*, [1966] A.C. 182 (H.L.), at p. 222, *per* Lord Reid). By necessity, however, one must consider the "entire context" of a provision before one can determine if it is reasonably capable of multiple interpretations. In this regard, Major J.'s statement in *CanadianOxy Chemicals Ltd. v. Canada (Attorney General)*, [1999] 1 S.C.R. 743, at para. 14, is apposite: "It is only when genuine ambiguity arises between two or more plausible readings, each equally in accordance with the intentions of the statute, that the courts need to resort to external interpretive aids" (emphasis added), to

29 Qu'est-ce donc qu'une ambiguïté en droit? Une ambiguïté doit être « réelle » (*Marcotte*, précité, p. 115). Le texte de la disposition doit être [TRADUCTION] « raisonnablement susceptible de donner lieu à plus d'une interprétation » (*Westminster Bank Ltd. c. Zang*, [1966] A.C. 182 (H.L.), p. 222, lord Reid). Il est cependant nécessaire de tenir compte du « contexte global » de la disposition pour pouvoir déterminer si elle est raisonnablement susceptible de multiples interprétations. Sont pertinents à cet égard les propos suivants, prononcés par le juge Major dans l'arrêt *CanadianOxy Chemicals Ltd. c. Canada (Procureur général)*, [1999] 1 R.C.S. 743, par. 14 : « C'est uniquement lorsque deux ou plusieurs interprétations plausibles, qui s'harmonisent chacune

TAB 10

1(

Citation: Manitoba (Hydro-Electric Board) v Manitoba (Public Utilities Board) et al, 2020 MBCA 60

Date: 20200609
Docket: AI18-30-09116

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Diana M. Cameron
Mr. Justice William J. Burnett
Madam Justice Janice L. leMaistre

IN THE MATTER OF: ***The Public Utilities Board Act, CCSM c P280***

AND IN THE MATTER OF: ***The Manitoba Hydro Act, CCSM c H190***

AND IN THE MATTER OF: ***The Crown Corporations Governance and Accountability Act, CCSM c C336***

AND IN THE MATTER OF: ***An Appeal from Order No. 59/18 dated May 1, 2018, Order No. 68/18 dated May 29, 2018 and Order No. 90/18 dated July 13, 2018 of the Public Utilities Board of Manitoba***

BETWEEN:

MANITOBA HYDRO-ELECTRIC BOARD	)	***P. J. Ramage***,
	)	***H. D. Van Iderstine*** *and*
	)	***D. A. Barchyn***
(Applicant) Appellant	)	*for the Appellant*
	)	
	)	***R. F. Peters***,
- and -	)	***D. M. Steinfeld*** *and*
	)	***K. Hart***
	)	*for the Respondent*
PUBLIC UTILITIES BOARD OF MANITOBA	)	
	)	***J. B. Williams***
	)	*for the Intervener*
	)	*Consumers' Association*
Respondent	)	*of Canada*
	)	
	)	***C. Fox*** *and*
- and -	)	***E. Guglielmin***
	)	*for the Intervener*
	)	*Assembly of Manitoba*

CONSUMERS' ASSOCIATION OF CANADA (MANITOBA) and ASSEMBLY OF MANITOBA CHIEFS	)	*Chiefs*
	)	*Appeal heard:*
	)	***January 22, 2020***
	)	
	)	*Judgment delivered:*
Interveners	)	***June 9, 2020***

CAMERON JA

Introduction and Background

[1] This is an appeal by the applicant (Manitoba Hydro) from Directive 6 (the directive) of Order No 59/18 of the respondent (the PUB) (all PUB orders referred to herein were accessed online: *Public Utilities Board*, <www.pubmanitoba.ca/v1/proceedings-decisions/orders/electricity.html> (date accessed: 26 May 2020)). Order No 59/18 was made in response to a General Rate Application filed by Manitoba Hydro seeking, among other things, a 7.9 per cent rate increase to all components of the rates for all customer classes to be effective April 1, 2018.

[2] The PUB unanimously denied the 7.9 per cent increase, ordering instead a 3.6 per cent average revenue increase. However, by way of the directive, a majority of the PUB ordered Manitoba Hydro to create a First Nations On-Reserve Residential customer class (the on-reserve class) that was to receive a zero per cent rate increase.

[3] The sole dissenting member of the PUB was of the opinion that the PUB did not have jurisdiction to create the on-reserve class.

[4] In *Manitoba Hydro-Electric Board v Public Utilities Board (Man) et al*, 2019 MBCA 54, leave to appeal the directive to this Court was granted by Michel Monnin JA pursuant to section 58(2) of *The Public Utilities Board Act*, CCSM c P280 (the *PUB Act*) on the question of "whether the PUB

> Factors to be considered, Mr. Speaker, we have given the [PUB] some direction as to what factors are to be considered. Not only are they to look at financial considerations but, if there are compelling social factors that can be presented in an argument, we have mandated the [PUB] to look at those, to take those into account before they reach their decision.

[83] Bill affordability is an issue of social policy. It forms part of the PUB's concerns when dealing with a rate application, described by Michel Monnin JA in *Consumers' Association of Canada (Man) Inc et al v Manitoba Hydro, Electric Board*, 2005 MBCA 55, as "the interests of the utility's ratepayers, and the financial health of the utility" (at para 65).

[84] In addition, although not determinative to the PUB's decision, I am not persuaded that the PUB erred in considering the *PTRA* and the social policy underlying that legislation in reaching its conclusion.

[85] Nevertheless, the ability to consider factors such as social policy and bill affordability in approving and fixing rates for service does not equate to the authority to direct the creation of customer classifications implementing broader social policy aimed at poverty reduction and which have the effect of redistributing Manitoba Hydro's funds and revenues to alleviate such conditions.

[86] A plain and purposive reading of section 43(3) of the *Hydro Act* evidences that funds and revenue of Manitoba Hydro are not to be used by the government to serve any purpose other than that of Manitoba Hydro.

[87] I agree with the dissenting member of the PUB that the directive constitutes "a realm that is reserved for the federal and provincial governments" (Order No 59/18 at p 235; see also, for example, section 91(24)

TAB 11

Lang Transport Ltd. v. Plus Factor International Trucking Limited et al.
[Indexed as: Lang Transport Ltd. v. Plus Factor International Trucking Ltd.]

32 O.R. (3d) 1
[1997] O.J. No. 182
No. C13950

Court of Appeal for Ontario,
McMurtry C.J.O., Catzman and Weiler JJ.A.
January 23, 1997

Agency -- Liability of disclosed principal -- Rule of alternative liability -- Third party contracting with agent to carry goods for disclosed principal -- Third party believing it was contracting with principal and not with agent -- Rule of alternative liability of principal and agent not applying -- Prima facie disclosed principal only liable and no claim against agent for breach of contract -- Trial judge incorrectly holding that default judgment against agent precluding judgment against disclosed principal -- Court of appeal setting aside default judgment against agent and granting judgment against disclosed principal.

Contract -- Liability of disclosed principal -- Rule of alternative liability -- Third party contracting with agent to carry goods for disclosed principal -- Third party believing it was contracting with principal and not with agent -- Rule of alternative liability of principal and agent not applying -- Prima facie disclosed principal only liable and no claim against agent for breach of contract -- Trial judge incorrectly holding that default judgment against agent precluding judgment against disclosed principal -- Court of Appeal setting aside default judgment against agent and granting judgment against disclosed principal.

The plaintiff L Ltd. was in the trucking business, and it sought out the defendant CT Ltd. about entering into a contract to move goods for it. CT Ltd. told the plaintiff that it had a dispatch arm handling freight, and the plaintiff was directed to contact the defendant PF Ltd. The plaintiff did not appreciate that PF Ltd. was an agent and not a division of CT Ltd. No written contract was signed, but the plaintiff subsequently hauled about 20 loads and sent the billings to PF Ltd. as it had been directed to do. The plaintiff was paid for this work. The plaintiff continued to haul loads, but when it was not paid, the plaintiff attended at PF Ltd.'s offices to obtain payment and only then learned that PF Ltd. was not a division of CT Ltd. The evidence established that CT Ltd. had sent the money for some of the unpaid loads to PF Ltd. but that PF Ltd. improperly had not sent the money to the plaintiff. The plaintiff, who remained unpaid, then sued CT Ltd. as principal and PF Ltd. as agent for payment of $89,156 plus prejudgment interest. PF Ltd. did not defend, and the plaintiff signed default judgment against it and proceeded to trial against CT Ltd. At trial, its claim was dismissed by the trial judge who, purporting to apply the rule of alternative liability, held that because the plaintiff had obtained judgment against the agent PF Ltd., it was precluded from obtaining judgment against the principal CT Ltd. Further, the trial judge held that

the judgment against PF Ltd. could not be set aside to allow judgment to be taken out against CT Ltd. The plaintiff appealed.

Held, the appeal should be allowed.

Per McMurtry C.J.O. and Weiler J.A.: At common law, the rule of alternative liability provides that either the principal or the agent but not both may be liable to the third contracting party. The alternative liability continues until the third contracting party elects to take judgment against one or the other. Under this rule, the signing of a default judgment is considered to be conclusive of an election to accept the party against whom default judgment is signed as the only debtor. This rule was applied by the trial judge, but this was an error. The rule of alternative liability applies only where the third contracting party has a choice of parties who could be liable under the contract. For the rule of alternative liability to apply, both the agent and the principal must be capable of being held to be personally liable on the contract. The rule of alternative liability has no application unless the plaintiff has an election to make. In the immediate case, the plaintiff had no choice because PF Ltd. was not personally liable. The immediate case was a case of a contract where there was a disclosed principal-agent relationship and prima facie it is only the principal who can sue and be sued in such a case. Although this rule may be excluded by the express or implied intention of the parties to make the agent solely or jointly liable, in the immediate case, the evidence established that the plaintiff intended to contract only with CT Ltd. However, before the plaintiff could obtain judgment against CT Ltd., it was necessary to set aside the judgment against PF Ltd. because judgment having been obtained on the wrong factual premise that PF Ltd. was liable as agent, it could not simultaneously be obtained against CT Ltd. on a contrary set of facts. The Court of Appeal has the jurisdiction to set aside the default judgment taken out against PF Ltd. and it was appropriate in the circumstances of this case to exercise that jurisdiction. To preclude the liability of CT Ltd. in the circumstances of this case by refusing to set aside the default judgment was inconsistent with the due administration of justice. In the result, the trial judgment should be set aside and judgment should be granted to the plaintiff.

Per Catzman J.A. (dissenting): The main point of the plaintiff's argument on appeal was that the rule of alternative liability did not apply in the case of a contract involving a disclosed principal. However attractive this point in theory, it was not the law. The current law was well entrenched that the liability of disclosed principal and agent, where both are liable on the same contract, must be regarded as alternative and so extinguished by judgment against either. Further, it was inappropriate in this case for the Court of Appeal to set aside the default judgment when this relief was not sought by the plaintiff, who submitted it could have judgment without setting aside the judgment against PF Ltd. It was not proper for the court to undertake an examination of the evidence to determine whether the judgment should be set aside. It was unfair to the parties to engage in an examination of evidence and to reach a conclusion on questions that were not in issue and in respect of which other evidence might have been led by either or both of the parties.

APPEAL from a judgment dismissing a claim for payment under a contract to ship goods.

Cases referred to Ainsworth v. Wilding, [1896] 1 Ch. 673, 65 L.J. Ch. 432, 74 L.T. 193, 44 W.R. 540, 12 T.L.R. 270, 40 Sol. Jo. 354; Algocen Transport Inc. v. Hinspergers Poly Industries Ltd.

(1988), 64 O.R. (2d) 445 (Dist. Ct.); Barrington v. Lee, [1972] 1 Q.B. 326, [1971] 3 All E.R. 1231, [1971] 3 W.L.R. 962, 115 Sol. Jo. 833 (C.A.); CFGM 1320 Radio Broadcasting Ltd. v. Doyle (1987), 17 C.P.C. (2d) 65 (Ont. Dist. Ct.); Calder v. Dobell (1871), L.R. 6 C.P. 486, 40 L.J.C.P. 224, 25 L.T. 129, 19 W.R. 978 (Ex. Ch.); Capital Carbon & Ribbon Co. v. West End Bakery, [1948] O.W.N. 815 (C.A.); Clarkson, Booker Ltd. v. Andjel, [1964] 2 Q.B. 775, [1964] 3 All E.R. 260, [1964] 3 W.L.R. 466, 108 Sol. Jo. 580 (C.A.); Cross & Co. v. Matthews & Wallace (1904), 91 L.T. 500, 20 T.L.R. 603 (K.B.); Debenham's Ltd. v. Perkins (1925), 133 L.T. 252; Edborg v. Royal Bank (1914), 16 D.L.R. 385, 19 B.C.R. 514, 6 W.W.R. 180 (S.C.); Esprit de Corp (1980) Ltd. v. Papadimitriou (1995), 23 O.R. (3d) 733 (Gen. Div.); Findlay v. Findlay, [1952] 1 S.C.R. 96, [1951] 4 D.L.R. 769; French v. Howie, [1906] 2 K.B. 674, 75 L.J.K.B. 980, 95 L.T. 274 (C.A.); Gershman Produce Co. v. Douglas Traffic Consulting Ltd. (1991), 50 B.L.R. 129 (Ont. Gen. Div.); Hill v. Hill (1966), 56 W.W.R. 260, 57 D.L.R. (2d) 760 (B.C.C.A.); Isaacs & Sons v. Salbstein, [1916] 2 K.B. 139, 85 L.J.K.B. 1433, 114 L.T. 924, 32 T.L.R. 370, 60 Sol. Jo. 444 (Q.B.); Kendall v. Hamilton (1879), 4 App. Cas. 504, [1874-80] All E.R. Rep. 932, 48 L.J.Q.B. 705, 41 L.J. 418, 28 W.R. 97 (H.L.); Longman v. Hill (1891), 7 T.L.R. 639 (Q.B.); M. Brennen & Sons Manufacturing Co. v. Thompson (1915), 33 O.L.R. 465, 22 D.L.R. 375 (C.A.); McLeod v. Power, [1898] 2 Ch. 295 (C.A.); Manulife Bank of Canada v. Conlin (1996), 203 N.R. 81, 139 D.L.R. (4th) 426 (S.C.C.); Morel Bros. & Co. v. Westmoreland (Earl), [1904] A.C. 11, [1900-3] All E.R. Rep. 397, 73 L.J.K.B. 93, 89 L.T. 702, 52 W.R. 353, 20 T.L.R. 38 (H.L.); Murray v. Delta Copper Co., [1926] S.C.R. 144, [1925] 4 D.L.R. 1061; Partington v. Hawthorne (1888), 52 J.P. 807; Priestly v. Fernie (1865), 3 H. & C. 977, 159 E.R. 820, 34 L.J. Ex. 172, 13 L.T. 208, 11 Jur. N.S. 813, 13 W.R. 1089, 2 Mar. L.C. 281; RMKRM v. MRMVL, [1926] A.C. 761 (P.C.); S. Kaprow & Co. v. Maclelland & Co., [1948] 1 All E.R. 264 (C.A.); Scarf v. Jardine (1882), 7 App. Cas. 345, [1881-5] All E.R. Rep. 651 (H.L.); Swanton Seed Service Ltd. v. Kulba (1968), 64 W.W.R. 161, 68 D.L.R. (2d) 38 (Man. Q.B.); Tedrick v. Big T Restaurants of Canada Ltd. (1982), 21 Sask. R. 147, [1983] 2 W.W.R. 135 (Q.B.); United Australia Ltd. v. Barclays Bank Ltd., [1941] A.C. 1, [1940] All E.R. 20, 109 L.J.K.B. 919, 164 L.T. 139, 51 T.L.R. 13, 46 Com. Cas. 1 (H.L.); Wabi Iron Works Ltd. v. Patricia Syndicate (1923), 54 O.L.R. 640, [1924] 3 D.L.R. 363 (C.A.); Westar Aluminum & Glass Ltd. v. Brenner (1993), 17 C.P.C. (3d) 228 (Ont. Gen. Div.) Statutes referred to Courts of Justice Act, R.S.O. 1990, c. C.43, ss. 134(1), 139(1), 146 Rules and regulations referred to Rules of Civil Procedure, R.R.O. 1990, Reg. 194, rule 19.08 Rules of Practice, R.R.O. 1980, Reg. 540, Rules 54, 65 Authorities referred to Anson on Contract, 17th ed. (1929), pp. 419, 424-25, 427 Bowstead on Agency, 14th ed. (1976), pp. 231, 271, 351 Cheshire and Fifoot, Law of Contract, 12th ed. (1991), pp. 480-91 Cheshire, Fifoot and Furmston, The Law of Contract, 8th ed. (1972), pp. 461, 467 Fridman, Law of Agency, 6th ed. (1990), pp. 194, 203, 224 Halsbury's Laws of England, 4th ed., vol. 1(2) (Reissue), para. 143, p. 100 Markensinis and Munday, An Outline of the Law of Agency, 2nd ed. (1986), p. 122-23 Reynolds, "Election Distributed" (1970), 86 [CF2]L.Q.R.[CF1] 318, pp. 337-41 Spencer, Bower and Turner, Res Judicata, 2nd ed. (1969), pp. 386, 390 Waddams, The Law of Contracts, 3rd ed. (1993), pp. 167, 172-73

Donald J. MacLennan, Q.C., for appellant.
Donald R. Arthurs, for respondent.

McMURTRY C.J.O. and WEILER J.A.: -- Lang Transport sued Canadian Tire as principal and Plus Factor as agent on a contract. Plus Factor did not defend the action and default judgment

Spencer, Bower and Turner in Res Judicata, 2nd ed. (1969), at p. 390, illustrate the application of the rule in a situation where the agent has contracted on behalf of an undisclosed principal. They state that the principle of alternative liability has no application unless the plaintiff has an election to make. [See Note 3 at end of document.] Longman v. Hill (1891), 7 T.L.R. 639 (Q.B.), and Isaacs & Sons v. Salbstein, [1916] 2 K.B. 139, 85 L.J.K.B. 1433 (C.A.), are two authorities in which the court declined to apply the rule of alternative liability because the person initially sued on the contract could not be personally liable. In these cases, the subsequent action was not barred because the plaintiff had no real choice or election of debtor to make as one of the defending parties was never liable on the contract.

English and Canadian cases have not always confined the application of the role of alternative liability to situations where there is an undisclosed principal or to cases where the agent could be personally liable in addition to the principle. Reynolds (the editor of Bowstead on Agency), in "Election Distributed" (1970), 86 L.Q.R. 318 at pp. 337-41, is critical of such cases. He is critical, in part, because they contain mutually inconsistent dicta and do not clearly articulate any one view of the doctrine of alternative liability in so far as substantive law is concerned. Morel Bros. & Co. v. Westmoreland (Earl), [1904] A.C. 11, [1900-3] All E.R. Rep. 397 (H.L.), is a case in point. In that case, a creditor sued both the Countess to whom he had given credit and her husband. The creditor obtained summary judgment against the Countess and subsequently proceeded against the Earl. The court held that the presumption in law that a wife had authority to pledge her husband's credit for necessaries could be rebutted on proof that he had given her a sufficient allowance even though the creditor did not know of the arrangement. As a result, the court found that there was no evidence of the husband and wife having taken on a joint liability. The court also held that the rule of practice which had been used to defeat the common law where the parties were jointly liable -- that judgment against one defendant was not a bar to proceeding against other defendants -- had no application where the right of action was in the alternative against one or the other of two defendants. Reynolds, supra, in criticizing the decision in Morel, supra, says at p. 339:

> The normal interpretation of a contract under which a wife obtains goods for the family establishment is that she contracts either as agent for her husband or for herself. If she contracted for herself, the Earl was not liable. If she contracted as agent, the judgment against her was wrong and the plaintiff should have been able to sue the Earl as the person truly liable, on the principle of Isaacs v. Salbstein, supra.

Reynolds' view is that part of the explanation of cases such as Morel may lie in the distinction between substance and procedure. The decision in United Australia Ltd. v. Barclays Bank Ltd., [1941] A.C. 1, [1940] All E.R. 20 (H.L.), recognizes that the role of alternative liability has both a procedural and doctrinal foundation. In so far as the procedural aspect was concerned, Lord Atkin stated at p. 29:

> When these ghosts of the past stand in the path of justice clanking their medieval chains the proper course for the judge is to pass through them undeterred.

. . . . .

> It seems to me that in this respect it is essential to bear in mind the distinction between choosing one of two alternative remedies, and choosing one of two inconsistent rights.

As an example of a choice to be made respecting inconsistent rights, Lord Atkin cited the right of a third party, who has dealt with the agent for an undisclosed principal, to choose between the liability of the agent or the principal, and mentions the application of Scarf v. Jardine, supra.

In Findlay v. Findlay, [1952] 1 S.C.R. 96 at p. 110, [1951] 4 D.L.R. 769, the decision of Kellock and Locke J. discusses Lord Atkin's comments on Lord Blackburn's decision in Scarf v. Jardine, supra:

> In this judgment Lord Blackburn, as pointed out by Lord Atkin in United Australia v. Barclays Bank is dealing not with alternative remedies but with the case of a person who is presented with two inconsistent rights, and the important thing to observe for present purposes is that in order that a plaintiff becomes disentitled to a right by electing to enforce another, he must, to begin with, have actually had a choice of two rights. This underlies the judgments of all of their Lordships.

(Emphasis added)

Rand J. also acknowledges at p. 107 of his judgment that an election implies a plurality of real rights. In Finlay the court held that the right of a wife to sue her husband for support pursuant to a separation agreement and to sue for support under a statute granting support to deserted wives was not subject to the rule of alternative liability because no election could be made between her statutory right and the agreement. Nor was the action estopped or barred on the basis of res judicata. Thus the judgment dismissing the wife's claim as a deserted wife under the statute did not prevent her from suing for arrears under the separation agreement.

The decision in Findlay, supra, supports the position that the rule of alternative liability does not automatically apply. In Murray v. Delta Copper Co., supra, the court did not analyze the underlying doctrinal basis of the rule of alternative liability. The court in Findlay, supra, did so, and concluded that, for the rule to apply, the plaintiff must actually have a choice between two rights pursuant to one contract. [See Note 4 at end of document.]

To summarize, in order for the rule of alternative liability to apply, the third party to the contract must have had a choice of suing either the principal or the agent on the contract. The question is, therefore, did Lang have a choice of suing Plus Factor or Canadian Tire on the contract? To put it another way, could Plus Factor have been personally liable on the contract. Cheshire and Fifoot, supra, note 3, at p. 480, sets out the general rule of liability where there is a disclosed principal-agent relationship, as in the case at bar. The rule is:

> The contract is the contract of the principal, not the agent, and prima facie at common law the only person who can sue is the principal and the only person who can be sued is the principal.

Having said this, there are cases where this rule may be excluded by the express intention of the parties. In such a case, express language will make the agent jointly or solely liable on the contract. Further, an intention to make an agent personally liable may also be inferred from the form, terms, and circumstances surrounding the contract.

The trial judge appears to have accepted the evidence of the president of the appellant, Mr. Lang, and of Lang's employee, Kelly Fotheringham, with respect to the circumstances surrounding the contract. Their evidence was reviewed in her reasons and can be summarized as follows.

Lang's president was in the cattle business in Western Canada. He got into the trucking business to ship cattle to Ontario. He wanted to transport goods from Ontario to the west on the return trips. Kelly Fotheringham, an employee of Lang, obtained the proper licensing. Kelly Fotheringham also called Frank Caruso, the manager of Canadian Tire's direct shipping program, which involved shipping directly to Canadian Tire stores. Kelly Fotheringham testified that Frank Caruso told him Canadian Tire had a dispatch arm handling freight, gave Fotheringham the phone number to contact and told him to speak to a person named Rene. This was done. In November 1987, Lang received a call with respect to a load and was advised to send the billing to Plus Factor. The goods were moved and the bill sent as directed from then on until April 1988. About 20 loads were hauled for which Lang was paid. Kelly Fotheringham became concerned about some invoices for loads which had not been paid. Kelly Fotheringham called Rene and was told a cheque would be coming. Excuses followed. Finally Lang and Fotheringham attended at the Plus Factor offices and were introduced to a Mr. Robertson. Fotheringham testified that it was only then that Lang learned Plus Factor was not a division of Canadian Tire but was, in fact, a load broker.

Corbett J.'s reasons indicate that the principal, Canadian Tire, was known all along but the existence of the agent was not known until Lang was not paid. This was not a written contract and there is no express language making Plus Factor jointly or solely liable on the contract. An intention to make Plus Factor personally liable on the contract cannot be inferred from the circumstances surrounding the contract because Lang did not know that Plus Factor was an agent at any time throughout the contract. It was only after payment was not received for some time that Lang became aware Plus Factor was an agent and not a part of Canadian Tire. The only party with whom Lang intended to, and did, contract, was Canadian Tire. As a result Plus Factor is not personally liable on the contract either alone or with Canadian Tire.

The substantive basis for the rule of alternative liability is that the third party has a choice of suing either the principal or the agent. Based on the evidence which Corbett J. accepted, Plus Factor was not personally liable as agent on the contract. Lang never had a choice of whether to make the principal or the agent liable. No election took place by suing Plus Factor to judgment because Plus Factor could not be personally liable on the contract. No merger of alternative causes of action took place in the judgment because there was no alternative cause of action against the agent.

The decision of Riddell J. in M. Brennen & Sons Manufacturing Co. v. Thompson (1915), 33 O.L.R. 465 at p. 470, 22 D.L.R. 375 (C.A.), which applied the rule of alternative liability in a situation where there was an undisclosed principal, is nevertheless instructive for its very careful

TAB 12

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Felty v. Ernst & Young LLP*, 2015 BCCA 445

Date: 20151028
Docket: CA40959

Between:

Anita Felty

Appellant
(Plaintiff)

And

Ernst & Young LLP

Respondent
(Defendant)

Before: The Honourable Madam Justice Newbury
The Honourable Madam Justice Fenlon
The Honourable Madam Justice Dickson

On appeal from: Orders of the Supreme Court of British Columbia, dated May 9, 2013 and November 19, 2013 (*Felty v. Ernst & Young LLP*, 2013 BCSC 815, 2013 BCSC 2083, Vancouver Docket No. S114999).

Counsel for the Appellant:	B.G. Baynham, Q.C. J.A. Morris
Counsel for the Respondent:	D.R. Brown
Place and Date of Hearing:	Vancouver, British Columbia September 28, 2015
Place and Date of Judgment:	Vancouver, British Columbia October 28, 2015

Written Reasons by:
The Honourable Madam Justice Newbury

Concurred in by:
The Honourable Madam Justice Fenlon
The Honourable Madam Justice Dickson

Summary:

The plaintiff sued defendant accounting firm for negligence in giving tax advice in context of a divorce settlement. Plaintiff alleged the error resulted in a liability for U.S. tax of more than $500,000. Her divorce lawyer had signed the agreement retaining the defendant. It contained a limitation of liability clause restricting damages for negligence or otherwise, to the amount of fees paid to defendant. Trial judge found that divorce lawyer signed the agreement personally and on behalf of her law firm. As well he found she had signed as agent of her client, who was a disclosed principal. The limitation clause was not unenforceable by reason of unconscionability. Plaintiff was bound by the clause and her damages were limited to amount of the fees paid to the defendant, some $15,000.

Held: Appeal dismissed. In determining whether plaintiff is bound by the agreement, the 'objective intentions' of the parties must be determined. Looking at the nature and terms of the agreement, the surrounding circumstances, and the presence of a solicitor-client relationship, plaintiff was bound as a disclosed principal to the entire agreement. Trial judge did err by failing to consider whether limitation clause should be unenforceable on public policy grounds, but the giving of erroneous advice in this case was not so 'reprehensible' that it would be contrary to the public interest to refuse to enforce the limitation clause.

> retain and that was the plaintiff's income tax accounting firm that had a different and less onerous limitation of liability provision in its Engagement Agreement. [At paras. 256-8; emphasis added.]

[20] Finally, the Court dismissed the plaintiff's claim against Ms. Jacob, finding that she had not been negligent in her advice to Ms. Robin; nor had she had a duty to analyze or question Mr. Hobson's opinion when it was received. (Paras. 224-6.)

[21] Shortly after the Court issued its reasons, counsel for the parties sought clarification of the final paragraph of the trial judgment, in which the judge had stated:

> ... I must limit the plaintiff's claims to the amount of the fees paid to EY [for] its services of $15,314.95.

Plaintiff's counsel pointed out that nowhere in his reasons had the judge found that EY was negligent in providing its services.

[22] In supplemental reasons indexed as 2013 BCSC 2083, the judge clarified that there had been "no issue" at trial that EY's California office had been negligent in the tax advice given under the Engagement Agreement, a breach of the standard of care having been essentially conceded at the outset of trial. As well, he confirmed that the $15,314.95 awarded in favour of the plaintiff "constituted damages equal to the fees charged for the negligent services of Mr. Hobson at [EY's] California office." (My emphasis.)

On Appeal

[23] On appeal to this court, Ms. Felty submits that the trial judge erred in finding that she was a party to the Engagement Agreement, in failing to find Clause 15 unenforceable on public policy grounds, and in finding that Ms. Felty's damages were limited to the amount of fees paid to EY. It is important to note that the Court's finding on the issue of unconscionability was not challenged; nor was the finding that Ms. Robin had signed the Engagement Agreement on behalf of her firm "in its own right". A cross appeal originally filed by EY was abandoned prior to the hearing of the appeal.

Agency

[24] I turn first to the question of whether, in signing the Engagement Agreement, Ms. Robin bound only her own firm, or bound both her firm and the plaintiff – i.e., whether Ms. Robin or her firm had also signed as Ms. Felty's agent. It is clear that this 'dual capacity' is possible in law: see *Bowstead & Reynolds on Agency* (17th ed., 2001) at §9-002; *Barnett v. Rademaker* 2004 BCSC 1060 at para. 41; and *Ontario Marble Co. Ltd. v. Creative Memorials Ltd.* (1963) 39 D.L.R. (2d) 149 (Sask. Q.B.), *aff'd* (1964) 45 D.L.R. (2d) 244 (Sask. C.A.).

[25] There is no doubt that EY was aware of Ms. Felty's existence as Ms. Robin's client and, of course, of her personal circumstances – her citizenship, the nature of the shares in DHL, information relating to her financial circumstances, the value of her assets, etc. Thus, if Ms. Robin was signing as Ms. Felty's agent, Ms. Felty would have been a "disclosed principal" – i.e., one whose existence is, in the words of Professor Fridman, "revealed to the third party [EY] by the agent with whom the third-party is transacting .... In such instances the third party knows the person for whom the agent is acting." (Gerald Fridman, *Canadian Agency Law* (2nd ed., 2012) at 142.) Professor Fridman goes on to state with respect to contracts not under seal that:

> If an agent has made a parol or a written contract with a third party on behalf of a disclosed principal who actually exists and has authorized the agent to make such a contract, the principal can sue and be sued by the third party on such contract. A direct contractual relationship is thereby created between a principal and third-party by the acts of the agent, who is not, himself, a party to that relationship, "unless the agent expressly or by implication incurred or intended to incur personal responsibility under the contract." [At 143; emphasis added.]

[26] In support, he cites *Turf Masters Landscaping Ltd. v. T.A.G. Developments Ltd.* [1994] N.S.J. No. 421 (N.S.S.C.), *rev'd* on other grounds [1995] N.S.J. No. 339, *lve. to app. refused* (1996) 151 N.S.R. (2d) 240n (S.C.C.); *Lambur Scott Architects Ltd. v. 413643 Alberta Ltd.* (1993) 9 C.L.R. (2d) 262 (Alta. Q.B.); *Maghun v. Richardson Securities of Canada Ltd.* (1986) 34 D.L.R. (4th) 524 (Ont. C.A.). None of these cases, however, can be said to have applied the particular 'rule' stated by

the learned author or to have commented directly on the contractual liability of a principal.

[27] Fridman's statement of the law is substantially adopted by C. Harvey and D. MacPherson in *Agency Law Primer* (4th ed., 2009), who write:

> If the third party knows that s/he is dealing with an agent, but does not know the identity of the principal, then the principal is an unnamed principal. When an agent acts with actual (or presumed) authority on behalf of a named or unnamed principal to make a contract with a third party, subject to a couple of exceptions, the resulting contract is between the third party and the principal. [At 103.]

and by Prof. S. Waddams in *The Law of Contracts* (4th ed., 1999), who writes:

> Where an agent in fact is expressly or impliedly authorized to contract with a third person on behalf of his principal, and the third person knows it and deals with the agent on that basis, there is no difficulty in concluding that a contract is formed between the principal and the third party. It is as though the principal were dealing directly with the third party, an agent forming a mere means of communication between two principle parties. [At para. 257; emphasis added.]

[28] Fridman also adds in his 2012 text that:

> The onus is on a third party seeking to make a principal liable on a transaction negotiated by an agent said to have acted with apparent authority to prove that the agent had either real, that is, actual authority, or apparent or ostensible authority to enter into the transaction on behalf of the principal. To discharge this onus the third party must establish that the principal, deliberately, or intentionally, "held out" the one dealing with the third party as his or her agent. Such a holding may occur when the agent originally was expressly authorized to act as agent but later had such authority terminated or revoked but continued to act as an agent in the absence of any notification of such termination or revocation by the principal to the third party. [At 79.]

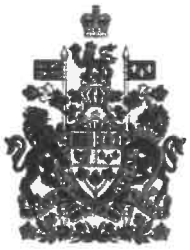
As I understand it, it is implicit in EY's submission that Ms. Felty authorized the law firm to contract with EY specifically, or with a tax advisor generally, on her behalf and that Ms. Robin was acting within the scope of such authority when she retained EY.

[29] In response to the foregoing authorities, counsel for Ms. Felty contends that whether an agent that has contracted "instead of or in addition to the principal," is a

TAB 13

1

Canadian Human Rights Tribunal



Tribunal canadien des droits de la personne

Citation: 2016 CHRT 2
Date: January 26, 2016
File No.: T1340/7008

Between:

First Nations Child and Family Caring Society of Canada

- and -

Assembly of First Nations

Complainants

- and -

Canadian Human Rights Commission

Commission

- and -

Attorney General of Canada

(Representing the Minister of Indian Affairs and Northern Development Canada)

Respondent

- and -

Chiefs of Ontario

- and -

Amnesty International

Interested Parties

Decision

Members: Sophie Marchildon and Edward Lustig

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[37] The present case raises human rights issues in the context of AANDC's activities. As opposed to labour relations matters, human rights matters are not presumptively provincial. The *CHRA* applies to "...matters coming within the legislative authority of Parliament" (see *CHRA* at s. 2). While the activities of FNCFS Agencies and provincial governments may well be within provincial jurisdiction for labour relations purposes, this does not have any bearing on the Tribunal's jurisdiction over AANDC's activities in this case.

[38] The Complaint is filed against, and is focused upon, the activities of AANDC. AANDC is a federal government department created by Parliament through the *Department of Indian Affairs and Northern Development Act.* Its mandate is derived from a number of federal statutes, including the *Indian Act*. Therefore, any actions taken by AANDC come within the legislative authority of Parliament and could be subject to the *CHRA*.

[39] The issue in this case is not whether AANDC's activities fall outside the jurisdiction of the *CHRA* because they do not come within the legislative authority of Parliament. Rather, it is whether the *CHRA* applies to AANDC's activities because its actions are in the provision of a service. The fact that other actors, including provincial actors, may be involved in the provision of the service is not determinative and does not necessarily shield AANDC from human rights scrutiny (see for example *Eldridge v. British Columbia (Attorney General)*, [1997] 3 SCR 624 [*Eldridge*]). As mentioned above, it is for the Tribunal to consider all relevant factors to determine the nature and extent of AANDC's involvement and whether that involvement rises to the status of a "service" under section 5 of the *CHRA*.

b. Funding can constitute a service

[40] Similarly, even if AANDC's role in the child and family welfare of First Nations is limited to funding, there is nothing in the *CHRA* that excludes funding from the purview of section 5. That is, funding can constitute a service if the facts and evidence of the case

indicate that the funding is a benefit or assistance offered to the public pursuant to the criteria outlined above.

[41] A similar argument to the one advanced by AANDC was rejected by the British Columbia Human Rights Tribunal in *Bitonti et al. v. College of Physicians & Surgeons of British Columbia et al.*, (1999) 36 CHRR D/263 (BCHRT) (*Bitonti*). Among other things, the complainants in that case argued that the allocation of funding provided by the Ministry of Health did not provide foreign medical school graduates with a real opportunity to obtain internships. The Ministry of Health responded that the expenditure of funds by the provincial government was a legislative act that was immune from the Tribunal's review. While the BCHRT ultimately found there was no service relationship between the Ministry of Health and the complainants, at paragraph 315 it was not prepared to accept the Ministry's argument regarding immunity for funding:

> Carried to its extreme, that position would mean, for example, that if the Ministry of Health provided funding for internships but stipulated that it would only pay male interns, that conduct would be immune from review. I am not prepared to go that far.

[42] Similarly, in *Kelso v. The Queen*, [1981] 1 SCR 199 at page 207 (*Kelso*), the Supreme Court stated (**emphasis added**):

> No one is challenging the general right of the Government to allocate resources and manpower as it sees fit. But this right is not unlimited. It must be exercised according to law. **The government's right to allocate resources cannot override a statute such as the *Canadian Human Rights Act*.**

[43] Indeed, the Supreme Court has confirmed the quasi-constitutional nature of the *CHRA* on many occasions (see for example *Robichaud v. Canada (Treasury Board)*, [1987] 2 SCR 84 at pp. 89-90 (*Robichaud*); *Canada (House of Commons) v. Vaid*, 2005 SCC 30 at para. 81 (*Vaid*); and, *Canada (Canadian Human Rights Commission) v. Canada (Attorney General)*, 2011 SCC 53 at para. 62 [*Mowat*]). It expresses fundamental values and pursues fundamental goals for our society, such as the fundamental Canadian value of equality (see s. 2 of the *CHRA*; see also *Mowat* at para. 33; and, *Canada (Attorney General) v. Mossop*, [1993] 1 SCR 554 at p. 615, per Justice L'Heureux-Dubé).

Therefore, the *CHRA* is to be interpreted in a broad, liberal, and purposive manner befitting of this special status (see *Mowat* at para. 62).

[44] Conversely, any exemption from its provisions must be clearly stated (see *Vaid* at para. 81). Again, there is no indication in the *CHRA* or otherwise that Parliament intended to exclude funding from scrutiny under the *Act*, subject of course to the funding being determined to be a service. In line with *Kelso*, where the Government of Canada is involved in the provision of a service, including where the service involves the allocation of funding, that service and the way resources are allocated pursuant to that service must respect human rights principles.

[45] Therefore, the Panel dismisses the argument that funding cannot constitute a "service" within the meaning of section 5 of the *CHRA*. In any event, as will be examined in the following pages, the evidence in this case indicates the essential nature of the "assistance" or "benefit" offered by AANDC for the provision of child and family services on First Nations reserves is something more than funding.

c. The "assistance" or "benefit" provided by AANDC

[46] AANDC's FNCFS Program applies to FNCFS Agencies in all provinces and the Yukon Territory, except Ontario. In Ontario, AANDC has a cost-sharing agreement with the province for the provision of child and family services on First Nations reserves. AANDC also has agreements with the provinces of Alberta and British Columbia to provide child and family services to certain First Nations reserves. A similar agreement is also in place with the Yukon Territory. The provision of child and family services to First Nations in the Northwest Territories and Nunavut were not the subject of this Complaint.

[47] The FNCFS Program were developed to address concerns over the lack of child and family services provided by the provinces to First Nations reserves. Traditionally, assistance to First Nations children and their families was provided informally, by custom, within the network of their extended family. However, over time, this informal assistance became insufficient to meet the needs of children and families living on First Nations reserves.

TAB 14

14

Cuddy Chicks Limited *Appellant*

v.

Ontario Labour Relations Board and United Food and Commercial Workers International Union, Local 175 *Respondents*

and

The Attorney General of Canada, the Attorney General for Ontario, the Attorney General for Saskatchewan, Canada Employment and Immigration Commission and Marcelle Tétreault-Gadoury *Interveners*

INDEXED AS: CUDDY CHICKS LTD. *v.* ONTARIO (LABOUR RELATIONS BOARD)

File No.: 21675.

1990: November 7; 1991: June 6.

Present: Lamer C.J. and Wilson, La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin and Stevenson JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Constitutional law — Administrative tribunals — Jurisdiction — Board granted power to consider questions of law — Whether Board can make constitutional determination regarding its own enabling legislation — Canadian Charter of Rights and Freedoms, s. 24(1) — Constitution Act, 1982, s. 52 — Labour Relations Act, R.S.O. 1980, c. 228, ss. 2(b), 106(1), 124.

Administrative law — Boards — Jurisdiction — Board granted power to consider questions of law — Whether Board can make constitutional determination regarding its own enabling legislation — Canadian Charter of Rights and Freedoms, s. 24(1) — Constitution Act, 1982, s. 52 — Labour Relations Act, R.S.O. 1980, c. 228, ss. 2(b), 106(1), 124.

Respondent union filed an application for certification before the Ontario Labour Relations Board relating

Cuddy Chicks Limited *Appelante*

c.

La Commission des relations de travail de l'Ontario et l'Union internationale des travailleurs unis de l'alimentation et du commerce, section locale 175 *Intimées*

et

Le procureur général du Canada, le procureur général de l'Ontario, le procureur général de la Saskatchewan, la Commission de l'emploi et de l'immigration du Canada et Marcelle Tétreault-Gadoury *Intervenants*

RÉPERTORIÉ: CUDDY CHICKS LTD. *c.* ONTARIO (COMMISSION DES RELATIONS DE TRAVAIL)

N° du greffe: 21675.

1990: 7 novembre; 1991: 6 juin.

Présents: Le juge en chef Lamer et les juges Wilson, La Forest, L'Heureux-Dubé, Sopinka, Gonthier, Cory, McLachlin et Stevenson.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Droit constitutionnel — Tribunaux administratifs — Compétence — La Commission a compétence pour examiner des questions de droit — La Commission peut-elle se prononcer sur la constitutionnalité de sa propre loi habilitante? — Charte canadienne des droits et libertés, art. 24(1) — Loi constitutionnelle de 1982, art. 52 — Loi sur les relations de travail, L.R.O. 1980, ch. 228, art. 2b), 106(1), 124.

Droit administratif — Commissions — Compétence — La Commission a compétence pour examiner des questions de droit — La Commission peut-elle se prononcer sur la constitutionnalité de sa propre loi habilitante? — Charte canadienne des droits et libertés, art. 24(1) — Loi constitutionnelle de 1982, art. 52 — Loi sur les relations de travail, L.R.O. 1980, ch. 228, art. 2b), 106(1), 124.

Le syndicat intimé a déposé une demande d'accréditation devant la Commission des relations de travail de

to employees at the chicken hatchery of Cuddy Chicks Ltd. Section 2(*b*) of the *Labour Relations Act*, however, provided that the Act did not apply to persons employed in agriculture and the appellant maintained that the employees in question should be so designated. On filing the application, the union gave notice that it would request the Board to hold s. 2(*b*) invalid as being contrary to ss. 2(*d*) and 15 of the *Canadian Charter of Rights and Freedoms* if the employees were found to be agricultural employees.

Prior to the commencement of the hearing, Cuddy Chicks disputed the jurisdiction of the Board to subject its enabling statute to *Charter* scrutiny. At that point, a separate hearing was convened to determine whether the panel had jurisdiction to entertain the *Charter* issues raised by the Union. The first panel found the employees to be in the agricultural sector so that the Act did not apply. A majority of the panel then held that the Board had jurisdiction to rule on the *Charter* issue because the Board was a "court of competent jurisdiction" within the meaning of s. 24(1) of the *Charter* and because s. 52 of the *Constitution Act, 1982* imposed an obligation on the Board to ensure that the law it applies is consistent with the supreme law of Canada. The Board, under s. 106(1) of the Act, has jurisdiction to decide questions of law relevant to the proceedings before it.

The Divisional Court held that the Board had jurisdiction to deal with the *Charter* issue. A majority of the Court of Appeal held that s. 52(1) of the *Constitution Act, 1982* conferred jurisdiction on the Board to decide the constitutionality of its enabling statute. At issue here were: (1) whether s. 52 of the *Constitution Act, 1982* conferred the right and duty on an administrative agency such as the OLRB to decide the constitutional validity of its enabling statute; (2) whether the OLRB had the jurisdiction to decide the constitutional validity of s. 2(*b*) of its enabling statute by applying the *Charter* as part of its duty to consider statutes bearing on proceedings before it; and, (3) whether the OLRB was a "court of competent jurisdiction" under s. 24(1) of the *Charter*.

Held: The appeal should be dismissed.

Per Lamer C.J. and La Forest, Sopinka, Gonthier, Cory, McLachlin and Stevenson JJ.: An administrative

l'Ontario relativement aux employés du couvoir de Cuddy Chicks Ltd. L'alinéa 2*b*) de la *Loi sur les relations de travail* précise toutefois que la Loi ne s'applique pas aux personnes qui sont employées à l'agriculture, et l'appelante a soutenu que les employés en question étaient des ouvriers agricoles. En déposant la demande, le syndicat a donné avis que si l'on jugeait que les employés étaient des ouvriers agricoles, il demanderait à la Commission de déclarer l'al. 2*b*) invalide parce que contraire à l'al. 2*d*) et à l'art. 15 de la *Charte canadienne des droits et libertés*.

Avant l'audition de la question, Cuddy Chicks a contesté la compétence de la Commission de se prononcer sur la conformité de sa loi habilitante avec la *Charte*. À ce moment, une audience distincte a été convoquée afin de déterminer si la formation était habilitée à être saisie des questions relatives à la *Charte* soulevées par le syndicat. La première formation a conclu que les employés en cause étaient employés à l'agriculture, de sorte que la Loi ne s'appliquait pas. La formation a ensuite conclu à la majorité que la Commission avait la compétence nécessaire pour se prononcer sur la question relative à la *Charte* parce qu'elle était «un tribunal compétent» au sens du par. 24(1) de la *Charte* et parce que l'art. 52 de la *Loi constitutionnelle de 1982* impose à la Commission l'obligation de s'assurer que la loi qu'elle applique est conforme à la loi suprême du Canada. Selon le par. 106(1) de la Loi, la Commission a compétence pour trancher les questions de droit soulevées à l'occasion d'une affaire qui lui est soumise.

La Cour divisionnaire a conclu que la Commission avait compétence pour trancher la question ayant trait à la *Charte*. La Cour d'appel à la majorité a statué que le par. 52(1) de la *Loi constitutionnelle de 1982* conférait à la Commission la compétence nécessaire pour décider de la constitutionnalité de sa loi habilitante. Les questions en litige étaient les suivantes: (1) l'art. 52 de la *Loi constitutionnelle de 1982* confère-t-il à un organisme administratif tel que la CRTO le droit et l'obligation de décider de la validité constitutionnelle de sa loi habilitante, (2) la CRTO a-t-elle compétence pour décider de la validité constitutionnelle de l'al. 2*b*) de sa loi habilitante en appliquant la *Charte* dans le cadre de l'obligation qui lui est faite d'examiner les lois ayant une incidence sur les procédures dont elle est saisie, et (3) la CRTO est-elle un «tribunal compétent» au sens du par. 24(1) de la *Charte*.

Arrêt: Le pourvoi est rejeté.

Le juge en chef Lamer et les juges La Foret, Sopinka, Gonthier, Cory, McLachlin et Stevenson: Le tribunal

tribunal which has been given the power to interpret law holds a concomitant power to determine whether that law is constitutionally valid. It must respect the Constitution as the supreme law because of the principle of supremacy of the Constitution confirmed by s. 52(1) of the *Constitution Act, 1982*.

Section 52(1) of the *Constitution Act, 1982* neither specifies which bodies may rule on *Charter* questions nor confers jurisdiction on an administrative tribunal. Jurisdiction over the whole of the matter—the parties, subject matter and remedy sought—must have expressly or impliedly been conferred on the tribunal by its enabling statute or otherwise. An administrative tribunal, however, need not be a court of competent jurisdiction within the meaning of s. 24(1) of the *Charter* in order to have the necessary authority to subject its enabling statute to *Charter* scrutiny. The relevant inquiry in this case was not whether the tribunal was a "court" but whether the legislature intended to confer on the tribunal the power to interpret and apply the *Charter*.

In conducting this inquiry, it first must be determined whether the tribunal has jurisdiction over the whole of the matter before it. Here, the issue centred on the Board's jurisdiction over the subject matter and remedy. The subject matter was not simply an application for certification, which fell squarely within the Board's authority, but one requiring the Board to subject s. 2(*b*) of the Act to *Charter* scrutiny in order to determine whether the application for certification was properly before it. Similarly, the remedy of certification required the Board to refuse to give effect to s. 2(*b*) of the Act because of inconsistency with the *Charter*. The authority to apply the *Charter* had to be found in the Board's enabling statute because the subject matter and remedy were premised on the application of the *Charter*.

The Act expressly, and without reservation, granted the Board the authority to decide points of law and to determine questions of law and fact relating to its own jurisdiction. This authority with respect to questions of law encompasses the question of whether a law violates the *Charter*. The Board therefore had the authority to rule on the constitutionality of s. 2(*b*) of its enabling statute in the course of considering the Union's application for certification.

administratif à qui l'on a conféré le pouvoir d'interpréter la loi a aussi le pouvoir concomitant de déterminer si la loi est constitutionnelle. Il doit respecter la Constitution en tant que loi suprême en raison du principe de la primauté de la Constitution confirmé par le par. 52(1) de la *Loi constitutionnelle de 1982*.

Le paragraphe 52(1) de la *Loi constitutionnelle de 1982* ne précise pas les organismes qui peuvent étudier les questions relatives à la *Charte*, ni ne confère compétence aux tribunaux administratifs. La compétence sur l'ensemble de la question—soit les parties, l'objet du litige et la réparation recherchée—doit avoir été conférée au tribunal expressément ou implicitement par sa loi constitutive ou autrement. Un tribunal administratif n'a toutefois pas à être un tribunal compétent au sens du par. 24(1) de la *Charte* pour avoir l'autorité nécessaire pour examiner sa loi habilitante à la lumière de la *Charte*. En l'espèce, la question pertinente ne consiste pas à savoir si le tribunal administratif est un «tribunal» au sens du par. 24(1), mais plutôt si le législateur entendait conférer au tribunal le pouvoir d'interpréter et d'appliquer la *Charte*.

En examinant cette question, il faut d'abord déterminer si le tribunal a compétence à l'égard de l'ensemble de l'affaire qui lui est soumise. La question portait en l'espèce sur la compétence de la Commission à l'égard de l'objet du litige et de la réparation recherchée. L'objet n'était pas simplement une demande d'accréditation, laquelle relevait sans aucun doute de la compétence de la Commission, mais une demande qui exigeait que la Commission examine l'al. 2*b*) de la Loi à la lumière de la *Charte* afin de déterminer si la demande d'accréditation lui était régulièrement soumise. De la même façon, en raison de la réparation recherchée, soit l'accréditation, la Commission devait refuser de donner effet à l'al. 2*b*) de la Loi compte tenu de son manque de conformité avec la *Charte*. Puisque l'objet du litige et la réparation supposent l'application de la *Charte*, le pouvoir d'appliquer celle-ci doit se trouver dans la loi habilitante de la Commission.

La Loi confère expressément et sans réserve à la Commission le pouvoir de trancher des questions de droit et celui de trancher des questions de droit et de fait visant sa propre compétence. Ce pouvoir à l'égard des questions de droit peut s'étendre à la question de savoir si une loi viole la *Charte*. La Commission était donc habilitée à statuer sur la constitutionnalité de l'al. 2*b*) de sa loi habilitante, dans le cadre de la demande d'accréditation du syndicat.

The jurisdiction of the Board is limited in at least one crucial respect: it can expect no curial deference with respect to constitutional decisions. Further, a formal declaration of invalidity is not a remedy which is available to the Board. Instead, the Board simply treats any impugned provision as invalid for the purposes of the matter before it. Given that this is not tantamount to a formal declaration of invalidity, which is a remedy exercisable only by the superior courts, the ruling of the Board on a *Charter* issue does not constitute a binding legal precedent but is limited in its applicability to the matter in which it arises.

Per Wilson and L'Heureux-Dubé JJ.: The reasons of La Forest J. were concurred with subject to the qualification that the absence of legislative authority to deal with the *Charter* issue in the governing statute is not necessarily determinative of a tribunal's jurisdiction, since the authority and obligation to apply the law may be grounded elsewhere.

Cases Cited

By La Forest J.

Considered: *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570; **referred to**: *Mills v. The Queen*, [1986] 1 S.C.R. 863; *Tétreault-Gadoury v. Canada (Employment and Immigration Commission)*, [1991] 2 S.C.R. 22; *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227; *Northern Telecom Canada Ltd. v. Communication Workers of Canada*, [1983] 1 S.C.R. 733; *The Queen v. Ontario Labour Relations Board, Ex parte Dunn* (1963), 39 D.L.R. (2d) 346; *Canada Labour Relations Board v. Paul L'Anglais Inc.*, [1983] 1 S.C.R. 147; *Four B Manufacturing Ltd. v. United Garment Workers of America*, [1980] 1 S.C.R. 1031.

By Wilson J.

Referred to: *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570; *McLeod v. Egan*, [1975] 1 S.C.R. 517; *Mills v. The Queen*, [1986] 1 S.C.R. 863.

Statutes and Regulations Cited

Canadian Charter of Rights and Freedoms, ss. 1, 2(*d*), 15, 24(1).
Constitution Act, 1982, s. 52(1).

La compétence de la Commission est restreinte au moins sur un point essentiel: elle ne peut s'attendre à aucune retenue judiciaire à l'égard de ses décisions en matière constitutionnelle. En outre, une déclaration formelle d'invalidité n'est pas une réparation qui s'offre à la Commission. Celle-ci considère plutôt simplement comme invalide la disposition contestée, aux fins de l'affaire dont elle est saisie. Comme cela n'équivaut pas à une déclaration formelle d'invalidité, réparation que seules les cours supérieures peuvent accorder, l'affirmation de la Commission à l'égard d'une question relative à la *Charte* ne constitue pas un précédent judiciaire impératif, mais elle se limite dans son application à l'affaire dont elle procède.

Les juges Wilson et L'Heureux-Dubé: Il est souscrit aux motifs du juge La Forest, avec toutefois la réserve suivante: l'absence d'autorisation d'examiner la question relative à la *Charte* dans la loi habilitante n'est pas nécessairement concluante quant à la compétence d'un tribunal puisque le pouvoir et l'obligation d'appliquer le droit peuvent se trouver ailleurs.

Jurisprudence

Citée par le juge La Forest

Arrêt considéré: *Douglas/Kwantlen Faculty Assn. c. Douglas College*, [1990] 3 R.C.S. 570; **arrêts mentionnés**: *Mills c. La Reine*, [1986] 1 R.C.S. 863; *Tétreault-Gadoury c. Canada (Commission de l'emploi et de l'immigration)*, [1991] 2 R.C.S. 22; *Syndicat canadien de la Fonction publique, section locale 963 c. Société des alcools du Nouveau-Brunswick*, [1979] 2 R.C.S. 227; *Northern Telecom Canada Ltée c. Syndicat des travailleurs en communication du Canada*, [1983] 1 R.C.S. 733; *The Queen v. Ontario Labour Relations Board, Ex parte Dunn* (1963), 39 D.L.R. (2d) 346; *Conseil canadien des relations de travail c. Paul L'Anglais Inc.*, [1983] 1 R.C.S. 147; *Four B Manufacturing Ltd. c. Travailleurs unis du vêtement d'Amérique*, [1980] 1 R.C.S. 1031.

Citée par le juge Wilson

Arrêts mentionnés: *Douglas/Kwantlen Faculty Assn. c. Douglas College*, [1990] 3 R.C.S. 570; *McLeod c. Egan*, [1975] 1 R.C.S. 517; *Mills c. La Reine*, [1986] 1 R.C.S. 863.

Lois et règlements cités

Charte canadienne des droits et libertés, art. 1, 2*d*), 15, 24(1).
Labour Code, R.S.B.C. 1979, ch. 212.

Labour Code, R.S.B.C. 1979, c. 212.
Labour Relations Act, R.S.O. 1980, c. 228, ss. 2(*b*), 106(1), 124.

APPEAL from a judgment of the Ontario Court of Appeal (1989), 70 O.R. (2d) 179, 62 D.L.R. (4th) 125, 35 O.A.C. 94, 44 C.R.R. 75, 89 C.L.L.C. ¶14,051, 39 Admin. L.R. 48, dismissing an appeal from a judgment of the Divisional Court (1988), 66 O.R. (2d) 284, 32 O.A.C. 7, 88 C.L.L.C. ¶14,053, 33 Admin. L.R. 304, dismissing an appeal from a judgment of the Ontario Labour Relations Board. Appeal dismissed.

George W. Adams, Q.C., Patrick E. Hurley and *Ralph N. Nero*, for the appellant.

Stephen T. Goudge, Q.C., and *Christopher M. Dassios*, for the respondent Ontario Labour Relations Board.

Douglas J. Wray, for the respondent United Food and Commercial Workers International Union, Local 175.

Gaspard Côté, Q.C., and *Carole Bureau*, for the interveners Canada Employment and Immigration Commission and the Attorney General of Canada.

Robert E. Charney, for the intervener the Attorney General for Ontario.

Robert G. Richards and *Ross MacNab*, for the intervener the Attorney General for Saskatchewan.

Jean-Guy Ouellet and *Gilbert Nadon*, for the intervener Marcelle Tétreault-Gadoury.

The judgment of Lamer C.J. and La Forest, Sopinka, Gonthier, Cory, McLachlin and Stevenson JJ. was delivered by

LA FOREST J.—This appeal concerns the jurisdiction of the Ontario Labour Relations Board to determine the constitutionality of a provision of its enabling statute, the *Labour Relations Act*, R.S.O. 1980, c. 228, in the course of proceedings before it.

Loi constitutionnelle de 1982, art. 52(1).
Loi sur les relations de travail, L.R.O. 1980, ch. 228, art. 2*b*), 106(1), 124.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (1989), 70 O.R. (2d) 179, 62 D.L.R. (4th) 125, 35 O.A.C. 94, 44 C.R.R. 75, 89 C.L.L.C. ¶14,051, 39 Admin. L.R. 48, qui a rejeté un appel contre un jugement de la Cour divisionnaire (1988), 66 O.R. (2d) 284, 32 O.A.C. 7, 88 C.L.L.C. ¶14,053, 33 Admin. L.R. 304, qui avait rejeté un appel contre une décision de la Commission des relations de travail de l'Ontario. Pourvoi rejeté.

George W. Adams, c.r., Patrick E. Hurley et *Ralph N. Nero*, pour l'appelante.

Stephen T. Goudge, c.r., et *Christopher M. Dassios*, pour l'intimée la Commission des relations de travail de l'Ontario.

Douglas J. Wray, pour l'intimée l'Union internationale des travailleurs unis de l'alimentation et du commerce, section locale 175.

Gaspard Côté, c.r., et *Carole Bureau*, pour les intervenantes la Commission de l'emploi et de l'immigration du Canada et le procureur général du Canada.

Robert E. Charney, pour l'intervenant le procureur général de l'Ontario.

Robert G. Richards et *Ross MacNab*, pour l'intervenant le procureur général de la Saskatchewan.

Jean-Guy Ouellet et *Gilbert Nadon*, pour l'intervenante Marcelle Tétreault-Gadoury.

Version française du jugement du juge en chef Lamer et des juges La Forest, Sopinka, Gonthier, Cory, McLachlin et Stevenson rendu par

LE JUGE LA FOREST—Le présent pourvoi porte sur la compétence de la Commission des relations de travail de l'Ontario de décider de la constitutionnalité d'une disposition de sa loi habilitante, la *Loi sur les relations de travail*, L.R.O. 1980, ch. 228, dans le cadre d'une procédure dont elle est saisie.

of s. 2(*b*) of its enabling statute, in the course of the Union's application for certification.

Practical Considerations

The discussion of practical considerations in the *Douglas College* decision entailed an analysis of the institutional characteristics of administrative tribunals, such as their narrow range of expertise and the speed with which they deal with matters, in relation to the fundamental and often complex nature of *Charter* issues. This analysis concerned administrative tribunals in general, and the ultimate conclusion that practical concerns favour the finding of jurisdiction in administrative tribunals holds in the present case. My purpose here is not to rehearse that comprehensive discussion, but simply to identify those considerations which are more pronounced in the particular case of the Board.

The overarching consideration is that labour boards are administrative bodies of a high calibre. The tripartite model which has been adopted almost uniformly across the country combines the values of expertise and broad experience with acceptability and credibility. In *Canadian Union of Public Employees, Local 963 v. New Brunswick Liquor Corp.*, [1979] 2 S.C.R. 227, at pp. 235-36, Dickson J. (as he then was) characterized the particular competence of labour boards as follows:

> 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.

It must be emphasized that the process of *Charter* decision making is not confined to abstract ruminations on constitutional theory. In the case of *Charter* matters which arise in a particular regulatory context,

Charte. La Commission est donc habilitée à appliquer la *Charte* et à statuer sur la constitutionnalité de l'al. 2*b*) de sa loi habilitante, dans le cadre de la demande d'accréditation du syndicat.

Considérations d'ordre pratique

L'analyse des considérations d'ordre pratique dans l'arrêt *Douglas College* comportait l'analyse des caractéristiques institutionnelles des tribunaux administratifs, comme leur champ restreint d'expertise et la rapidité avec laquelle ils traitent des questions dont ils sont saisis, par rapport à la nature fondamentale et souvent complexe des questions ayant trait à la *Charte*. Cette analyse visait les tribunaux administratifs en général, et la conclusion finale selon laquelle les considérations d'ordre pratique militent en faveur de l'existence de la compétence des tribunaux administratifs est valable en l'espèce. Mon propos n'est pas ici de reprendre cette analyse globale, mais simplement de relever les considérations qui sont les plus pertinentes dans le cas particulier de la Commission.

La considération primordiale est que les commissions des relations du travail sont des organismes administratifs de haut calibre. Le modèle tripartite qui a été adopté presque uniformément dans tout le pays allie l'expertise et la vaste expérience avec l'acceptabilité et la crédibilité. Dans l'arrêt *Syndicat canadien de la Fonction publique, section locale 963 c. Société des alcools du Nouveau-Brunswick*, [1979] 2 R.C.S. 227, aux pp. 235 et 236, le juge en chef Dickson (alors juge puîné) a qualifié comme suit la compétence particulière des commission des relations du travail:

> La commission est un tribunal spécialisé chargé d'appliquer une loi régissant l'ensemble des relations de travail. Aux fins de l'administration de ce régime, une commission n'est pas seulement appelée à constater des faits et à trancher des questions de droit, mais également à recourir à sa compréhension du corps jurisprudentiel qui s'est développé à partir du système de négociation collective, tel qu'il est envisagé au Canada, et à sa perception des relations de travail acquise par une longue expérience dans ce domaine.

Il faut souligner que le processus consistant à rendre des décisions à la lumière de la *Charte* ne se limite pas à des ruminations abstraites sur la théorie constitutionnelle. Lorsque des questions relatives à la

the ability of the decision maker to analyze competing policy concerns is critical. Therefore, while Board members need not have formal legal training, it remains that they have a very meaningful role to play in the resolution of constitutional issues. The informed view of the Board, as manifested in a sensitivity to relevant facts and an ability to compile a cogent record, is also of invaluable assistance. This is evidenced clearly by the weight which the judiciary has given the factual record provided by labour boards in division of powers cases; see, for example, *Northern Telecom Canada Ltd. v. Communication Workers of Canada*, [1983] 1 S.C.R. 733.

That having been said, the jurisdiction of the Board is limited in at least one crucial respect: it can expect no curial deference with respect to constitutional decisions. Furthermore, a formal declaration of invalidity is not a remedy which is available to the Board. Instead, the Board simply treats any impugned provision as invalid for the purposes of the matter before it. Given that this is not tantamount to a formal declaration of invalidity, a remedy exercisable only by the superior courts, the ruling of the Board on a *Charter* issue does not constitute a binding legal precedent, but is limited in its applicability to the matter in which it arises.

An additional practical consideration which bears mention here is whether the Attorney General of the province will participate in proceedings before an administrative tribunal. Before the courts, a provision to obtain this participation exists. Finlayson J.A. commented that this sort of participation may be inappropriate in the case of tribunals established by government, but at the same time the lack of participation of the Attorney General unfairly places the burden of defending legislation on the parties. However, the Attorney General for Ontario expressed a willingness to intervene and make submissions in appropriate cases, and has in the past done so before

Charte sont soulevées dans un contexte de réglementation donné, la capacité du décisionnaire d'analyser des considérations de principe opposées est fondamentale. Par conséquent, bien que les membres de la Commission n'aient pas à avoir une formation juridique professionnelle, il n'en reste pas moins qu'ils ont à jouer un rôle très significatif dans la détermination de questions constitutionnelles. Le point de vue éclairé de la Commission, qui se traduit par l'attention qu'elle accorde aux faits pertinents et sa capacité de compiler un dossier convaincant, est aussi d'une aide inestimable. On le constate clairement au poids que les juges ont accordé au dossier des faits fournis par les commissions des relations du travail en matière de partage des pouvoirs; voir par exemple l'arrêt *Northern Telecom Canada Ltée c. Syndicat des travailleurs en communication du Canada*, [1983] 1 R.C.S. 733.

Cela étant dit, la compétence de la Commission est restreinte au moins sur un point essentiel: elle ne peut s'attendre à aucune retenue judiciaire à l'égard de ses décisions en matière constitutionnelle. En outre, une déclaration formelle d'invalidité n'est pas une réparation qui s'offre à la Commission. Celle-ci considère plutôt simplement comme invalide la disposition contestée, aux fins de l'affaire dont elle est saisie. Comme cela n'équivaut pas à une déclaration formelle d'invalidité, réparation que seules les cours supérieures peuvent accorder, l'affirmation de la Commission à l'égard d'une question relative à la *Charte* ne constitue pas un précédent judiciaire impératif, mais elle se limite dans son application à l'affaire dont elle procède.

Une autre considération d'ordre pratique qu'il convient de mentionner ici, est la question de savoir si le procureur général de la province participera aux procédures devant un tribunal administratif. Cette participation est prévue dans le cas des cours de justice. Le juge Finlayson a remarqué que cette sorte de participation pourrait être irrégulière dans le cas de tribunaux établis par un gouvernement, mais en même temps la non-participation du procureur général impose injustement aux parties l'obligation de défendre un texte législatif. Cependant, le procureur général de l'Ontario s'est montré prêt à intervenir et à faire des observations dans les cas appropriés, ce

the Board on issues of federalism under the *Constitution Act, 1867*. To the extent that the Attorney General will intervene, the relative disadvantage of administrative tribunals versus courts is lessened.

It is apparent, then, that an expert tribunal of the calibre of the Board can bring its specialized expertise to bear in a very functional and productive way in the determination of *Charter* issues which make demands on such expertise. In the present case, the experience of the Board is highly relevant to the *Charter* challenge to its enabling statute, particularly at the s. 1 stage where policy concerns prevail. At the end of the day, the legal process will be better served where the Board makes an initial determination of the jurisdictional issue arising from a constitutional challenge. In such circumstances, the Board not only has the authority but a duty to ascertain the constitutional validity of s. 2(*b*) of the *Labour Relations Act*.

This view also makes sense within the larger context of Canadian constitutional jurisprudence. The capacity of labour boards to consider constitutional questions relating to their own jurisdiction has long been recognized. An early expression of this principle is found in *The Queen v. Ontario Labour Relations Board, Ex parte Dunn* (1963), 39 D.L.R. (2d) 346 (Ont. H.C.), a case which was cited by Estey J. in *Northern Telecom Canada Ltd. v. Communication Workers of Canada*, *supra*, at p. 756, in support of the jurisdictional competence of labour boards in constitutional matters:

McRuer C.J.H.C., in giving judgment, made reference at p. 307 to the limited but important role to be played by the administrative agency in the determination of the constitutional questions:

> The Board cannot judicially determine constitutional questions but it has power to entertain an objection to its jurisdiction on constitutional grounds and to have the grounds of the objection stated.

qu'il a d'ailleurs fait dans le passé devant la Commission à l'égard de questions de fédéralisme sous le régime de la *Loi constitutionnelle de 1867*. Dans la mesure où le procureur général interviendra, le désavantage relatif des tribunaux administratifs comparativement aux cours de justice se trouve réduit.

Il est donc évident qu'un tribunal spécialisé du calibre de la Commission peut appliquer son expertise de façon très fonctionnelle et productive à trancher les questions relatives à la *Charte* qui requièrent cette expertise. En l'espèce, l'expérience de la Commission est très pertinente dans une contestation de sa loi habilitante fondée sur la *Charte*, particulièrement à l'étape de l'article premier, où prédominent les considérations de principe. En définitive, le processus judiciaire sera mieux servi si la Commission rend une décision initiale sur la question de la compétence soulevée par une contestation d'ordre constitutionnel. Dans ces circonstances, la Commission a non seulement le pouvoir, mais aussi l'obligation, de s'assurer du caractère constitutionnel de l'al. 2*b*) de la *Loi sur les relations de travail*.

Ce point de vue s'insère harmonieusement dans le contexte plus général de la jurisprudence constitutionnelle canadienne. En effet, on a depuis longtemps reconnu la capacité des commissions des relations du travail de se prononcer sur les questions constitutionnelles ayant trait à leur propre compétence. L'une des premières expressions de ce principe se trouve à l'arrêt *The Queen v. Ontario Labour Relations Board, Ex parte Dunn* (1963), 39 D.L.R. (2d) 346 (H.C. Ont.), une décision que le juge Estey a citée dans l'arrêt *Northern Telecom Canada Ltée c. Syndicat des travailleurs en communication du Canada*, précité, à la p. 756, à l'appui de la compétence des commissions des relations du travail en matière constitutionnelle:

Dans ses motifs, le juge en chef McRuer de la Haute Cour mentionne à la p. 307 le rôle restreint, mais important, que cet organisme administratif est appelé à jouer dans la détermination de questions constitutionnelles:

> [TRADUCTION] Le Conseil ne peut se prononcer comme tribunal sur des questions constitutionnelles, mais il a le pouvoir d'entendre une opposition à sa compétence fondée sur des motifs constitutionnels et d'obtenir une décision sur ces motifs, sous forme d'exposé de cause.

TAB 15

COURT OF APPEAL FOR ONTARIO

CITATION: Starz (Re), 2015 ONCA 318
DATE: 20150508
DOCKET: C57133 and C57915

Gillese and Lauwers JJ.A. and Speyer J. (*ad hoc*)

IN THE MATTER OF: Glen Michael Starz

AN APPEAL UNDER PART XX.1 OF THE *CODE*

Glen Michael Starz, appearing in person

Jill R. Presser and Bernadette Saad, appearing as *amicus curiae*

Janice Blackburn, for the respondent, the Person in Charge of the Centre for Addiction and Mental Health

G. Choi, for the respondent, the Attorney General of Ontario

Heard: December 15 and 16, 2014

On appeal against the dispositions of the Ontario Review Board dated April 17, 2013, and August 27, 2013, with reasons reported at 2013 CarswellOnt 15549.

courts to state general principles of law, while leaving it to the government to decide the precise steps necessary to comply with the Constitution."

[104] I make these observations about the nature of declaratory relief to distinguish declarations from orders. There is no question that the Board has the power to make findings – such as that the applicant's *Charter* rights have been breached. There is also no question that the Board has the power to make orders in relation to the parties before it. (This power is discussed more fully below.) But, the question is not whether the Board can make findings or orders. The question is whether the Board can grant declaratory relief.

[105] Bearing in mind that a declaration has a broader import and transcends the immediate interests of the party who sought such relief, in my view, the Board does not have such a power. Once again, this conclusion flows from the analysis mandated by *Conway*. Before turning to that analysis, it is helpful to place the discussion in context.

[106] It is well-established that an administrative tribunal cannot make a general declaration of invalidity, although it may treat an impugned provision as invalid for the purposes of the matter before it. As the Supreme Court said in *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)*, [1991] 2 S.C.R. 5, at p. 17:

> [A] formal declaration of invalidity is not a remedy which is available to the Board. Instead, the Board simply treats any impugned provision as invalid for the purposes of the matter before it. Given that this is not

> tantamount to a formal declaration of invalidity, a remedy exercisable only by the superior courts, the ruling of the Board on a *Charter* issue does not constitute a binding legal precedent, but is limited in its applicability to the matter in which it arises.

[107] Peter W. Hogg explains in *Constitutional Law of Canada*, loose-leaf, 5th ed. (Supp.) (Toronto: Carswell, 2007), at pp. 40-52 to 40-53:

> [A] decision by a tribunal that a law is unconstitutional is no more than a decision that the law is inapplicable in the particular case. It is not a binding precedent. According to the [Supreme] Court, only "superior courts" have the power to issue binding declarations of invalidity that will invalidate a law with general effect.

[108] It is also clear that a court can give a declaratory remedy so long as it has jurisdiction over the issue at bar, the question before the court is real and not theoretical, and the person raising it has a real interest to raise it: *Canada (Prime Minister) v. Khadr*, 2010 SCC 3, [2010] 1 S.C.R. 44, at paras. 46-48.

[109] Bearing in mind that declaratory relief is materially different from both orders and general declarations of invalidity, I return to the question at hand: can the Board grant declaratory relief? Based on the *Conway* analysis, in my view it cannot.

[110] The Board is entitled to decide *Charter* questions that arise in the course of its proceedings: *Conway*, at para. 84. It follows that the Board is entitled to make findings that an NCR accused person's *Charter* rights have been infringed, and can order appropriate remedies.

TAB 16

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Independent Contractors and Business Association v. British Columbia (Transportation and Infrastructure)*, 2020 BCCA 243

Date: 20200828
Docket: CA46700

Between:

Independent Contractors and Business Association, Progressive Contractors Association, Christian Labour Association of Canada, Canada West Construction Union, British Columbia Chamber of Commerce, British Columbia Construction Association, Canadian Federation of Independent Business, Vancouver Regional Construction Association, Jacob Bros. Construction Inc., Eagle West Crane & Rigging Inc., LMS Reinforcing Steel Group Ltd., Morgan Construction and Environmental Ltd., Tybo Contracting Ltd., Dawn Rebelo, Thomas MacDonald, Forrest Berry, Brendon Froude, Richard Williams, and David Fuoco

Appellants
(Petitioners)

And

Ministry of Transportation and Infrastructure, the Attorney General of British Columbia (on behalf of all Ministries in the Province), and the Allied Infrastructure and Related Construction Council of B.C.

Respondents
(Respondents)

Corrected Judgment: The page reference in paragraph 36 has been amended where changes were made on September 3, 2020.

Before: The Honourable Madam Justice Newbury
The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Butler

On appeal from: An order of the Supreme Court of British Columbia, dated February 3, 2020 (*Independent Contractors and Business Association v. British Columbia (Transportation and Infrastructure)*, Vancouver Supreme Court Docket S189318).

Counsel for the Appellants, appearing via videoconference: P.A. Gall, Q.C.
J. Sebastiampillai

Counsel for the Respondents, Minister of Transportation and Infrastructure and the Attorney General of British Columbia, appearing via videoconference:	J.G. Morley K.D. Evans
Counsel for the Respondent, Allied Infrastructure and Related Construction Council of British Columbia, appearing via videoconference:	C. Gordon, Q.C.
Place and Date of Hearing:	Vancouver, British Columbia July 16 and 17, 2020
Place and Date of Judgment:	Vancouver, British Columbia August 28, 2020

Written Reasons by:
The Honourable Madam Justice Newbury

Concurred in by:
The Honourable Mr. Justice Willcock
The Honourable Mr. Justice Butler

Summary:

Group of unions, contractors and workers filed petition in SCBC seeking judicial review of a decision of the provincial Minister of Transportation imposing, as a contractual term in collective agreement, a requirement that all workers employed on an infrastructure project (replacement of Pattullo Bridge in this instance) be or become members of the Building Trades Unions — even if workers were members of another union. The Building Trades Unions are allegedly substantial contributors of funds and other benefits to the provincial New Democratic Party. One part of the petition (citing Roncarelli v. Duplessis) asserted that Minister had considered irrelevant or extraneous matters in imposing the contractual requirement or that her decision was otherwise invalid; second part of petition asserted that the requirement violated workers' rights of freedom of speech, association, and equality under Charter of Rights and Freedoms.

SCBC judge granted respondents' application to strike out Charter claims under Rule 9-5(1) on basis that the Labour Relations Board had exclusive jurisdiction over them; but declined to strike out first group of claims for orders in the nature of certiorari and prohibition with respect to Minister's decision per se.

Held: Appeal allowed only in respect of one minor claim; chambers judge's rulings re LRB's jurisdiction and re Minister's decision had been largely correct. Court of Appeal agreed that the "essence" of the Charter claims "arose out of" the collective agreement in the sense that it would be virtually impossible to decide them without examining its terms and determining its validity in light of Charter. In contrast, the administrative law claims could be expected to focus on the circumstances in which the Minister's decision leading to the collective agreement was taken. Discussion of meaning of "statutory power" in s. 2(2) of JRPA; Millen v. Hydro-Electric Board (Man); and jurisdiction of LRB to decide Charter issues.

Reasons for Judgment of the Honourable Madam Justice Newbury:

Introduction

[1] This appeal is taken from an order striking out portions of the appellants' pleadings under R. 9-5(1) of the *Supreme Court Civil Rules,* but it raises interesting issues nevertheless. It involves two groups of claims for judicial review, both related to a decision of the provincial Minister of Transportation and Infrastructure requiring that anyone who wishes to work on a large construction project of the provincial government must be, or become, a member of one of the Building Trades Unions (the "Requirement"). This group of unions contributes materially to the New

British Columbia would be very useful in this context. I would not expect that an in-depth examination of the *Transportation Act* would be necessary.

[56] Conversely, it is doubtful that the *Charter* challenge could be successfully pursued in respect of the Minister's *decision alone*. Although s. 2(2)(b) of the *JRPA* does refer to a "proposed ...exercise of a statutory power" (my emphasis), most judges would be reluctant to embark on an assessment of a purely abstract decision, especially where, as here, it appears to be one of policy. The Minister could well change the policy at any time before it is implemented, and questions about standing and remedy would arise. (See Lazar Sarna, *The Law of Declaratory Judgments* (4th ed., 2016) at pp. 40–1.) As stated in *Millen*, an attack on the constitutionality of the policy decision *per se* is unlikely to result in a meaningful remedy for the appellants without a challenge to the Agreement.

[57] Equally important, the Supreme Court has on many occasions stressed that *Charter* issues are to be decided not in a vacuum but in their full factual context. As Wilson J. observed in *Edmonton Journal v. Alberta (Atty. General)* [1989] 2 S.C.R. 1326:

> One virtue of the contextual approach... is that it recognizes that a particular right or freedom may have a different value depending on the context. It may be, for example, that freedom of expression has greater value in a political context than it does in the context of disclosure of the details of a matrimonial dispute. The contextual approach attempts to bring into sharp relief the aspect of the right or freedom which is truly at stake in the case as well as the relevant aspects of the dilemma posed by the particular facts and therefore more conducive to finding a fair compromise between the two competing values under s. 1. [At 1355–6.]

See also *Cuddy Chicks Ltd. v. Ontario (Labour Relations Board)* [1991] 2 S.C.R. 5 at 17; *R. v. Keegstra* [1990] 3 S.C.R. 697 at 737; *R. v. Laba* [1994] 3 S.C.R. 965 at 1000–1; and *Nova Scotia v. Martin, supra,* at para. 30.

[58] The appellants point to authorities such as *Dunsmuir* and *Vavilov,* in which the Supreme Court of Canada stressed the important role played by superior courts in ensuring that statutory decision-makers do not overreach their authority and that *Charter* values are applied in a balanced way. However, the Supreme Court in

Weber and cases following it have made it clear that the *Charter* is not reserved only to courts of law. (See paras. 60–6.) In *Doré v. Barreau du Québec* 2012 SCC 12, the Supreme Court reviewed a long line of cases leading to the conclusion that a "more robust conception of administrative law" should be embraced, in which administrative decision-makers "are *always* required to consider fundamental values, including *Charter* values". It is now clear that constitutional questions, including questions of *Charter* compliance, can be decided by administrative tribunals. Thus Gonthier J. for the Court stated in *Nova Scotia v. Martin*:

> If [a government official] is endowed with the power to consider questions of law relating to a provision, that power will normally extend to assessing the validity of that provision. This is because the consistency of a provision with the Constitution is a question of law arising under that provision. It is, indeed, the most fundamental question of law one could conceive, as it will determine whether the enactment is in fact valid law, and thus whether it ought to be interpreted and applied as such or disregarded.
>
> From this principle of constitutional supremacy also flows, as a practical corollary, the idea that Canadians should be entitled to assert the rights and freedoms that the Constitution guarantees them in the most accessible forum available, without the need for parallel proceedings before the courts.... This accessibility concern is particularly pressing given that many administrative tribunals have exclusive jurisdiction over disputes relating to their enabling legislation, so that forcing litigants to refer *Charter* issues to the courts would result in costly and time-consuming bifurcation of proceedings. [At 528–9.]

See also Hogg, *supra,* at 40-52 to 40-53; and *Law Society of British Columbia v. Trinity Western University* 2018 SCC 32 at paras. 113–4.

[59] At the same time, the power of administrative tribunals does not extend to the making of general declarations of invalidity that are binding on future decision-makers. Again as observed in *Nova Scotia v. Martin*, this principle ensures that tribunals do not "undermine the role of the courts as final arbiters of constitutionality in Canada." (At para. 31.) I also note that under s.115.1(e) of the *Code* and s. 43(2) of the *ATA,* the LRB has the discretion to refer questions of law, including constitutional questions, to the Supreme Court of British Columbia for determination, either at the request of a party or on its own motion. Further, the Supreme Court may review, on a standard of correctness, a decision of the LRB concerning a

question of law over which the LRB does not have exclusive jurisdiction: see s. 115.1(m) of the *Code* and s. 58(2) of the *ATA*.

[60] Last under this rubric, I note Mr. Gall's submission that in both *Lavigne v. Ontario Public Service Employees Union* [1991] 2 S.C.R. 211 and *R. v. Advance Cutting & Coring Ltd.* 2001 SCC 70, the Supreme Court of Canada dealt at length with the meaning of freedom of association in the context of relationships between union employees and their employers. As I understand it, he relies on the fact that the Court did not refer these matters to a labour relations board even though the employees were subject to collective agreements. Both cases arose, however, in a manner quite different from the case at bar. In *Lavigne*, the plaintiff was a community college teacher and the collective agreement in question was governed by Quebec's *Colleges Collective Bargaining Act* rather than its 'normal' labour relations legislation. The plaintiff brought an action in the Supreme Court of Ontario for declaratory relief based on an alleged breach of his *Charter* rights. The case was decided prior to *Weber* and the Supreme Court of Canada's reasons did not purport to deal with the issue of jurisdiction. In *R. v. Advance Cutting*, the appellants had been charged with offences under Quebec's *Act Respecting Labour Relations, Vocational Training and Man Power Management in the Construction Industry*. The statute required that anyone working on a construction project in the province required a competency certificate, and such certificates could be issued by certain union groups. The reasons of the majority reviewed the unique and troubled history of labour relations in the Quebec construction industry, including the "breakdown" of the province's labour relations legislation in 1968. (See paras. 120–33.) It appears that the industry was, at the time *Advance Cutting* was decided, a completely Quebec-centred system that bears little resemblance to the labour relations systems of other provinces.

[61] In any event, I do not find either case to be helpful with respect to the issues before the Court at this stage. They may become relevant to the LRB if and when it addresses the merits of the appellants' *Charter* claims.

TAB 17

Joseph Ryan Lloyd *Appellant*

v.

Her Majesty The Queen *Respondent*

and

Canadian Bar Association, African Canadian Legal Clinic, Pivot Legal Society, Union of British Columbia Indian Chiefs, HIV & AIDS Legal Clinic Ontario, Canadian HIV/AIDS Legal Network, British Columbia Centre for Excellence in HIV/AIDS, Prisoners with HIV/AIDS Support Action Network, Canadian Association of People Who Use Drugs, British Columbia Civil Liberties Association, Criminal Lawyers' Association (Ontario) and West Coast Women's Legal Education and Action Fund *Interveners*

Joseph Ryan Lloyd *Appelant*

c.

Sa Majesté la Reine *Intimée*

et

Association du Barreau canadien, Clinique juridique africaine canadienne, Pivot Legal Society, Union des chefs indiens de la Colombie-Britannique, HIV & AIDS Legal Clinic Ontario, Réseau juridique canadien VIH/sida, British Columbia Centre for Excellence in HIV/AIDS, Réseau d'action et de soutien des prisonniers et prisonnières vivant avec le VIH/sida, Association canadienne des personnes qui utilisent des drogues, Association des libertés civiles de la Colombie-Britannique, Criminal Lawyers' Association (Ontario) et West Coast Women's Legal Education and Action Fund *Intervenants*

INDEXED AS: R. *v.* LLOYD

2016 SCC 13

File No.: 35982.

2016: January 13; 2016: April 15.

Present: McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté and Brown JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Constitutional law — Charter of Rights — Cruel and unusual treatment or punishment — Sentencing — Mandatory minimum sentence — Controlled substances offence — Accused convicted of possessing controlled substances for purpose of trafficking and sentenced to one year of imprisonment — Whether one-year mandatory minimum imprisonment term pursuant to s. 5(3)(a)(i)(D) of Controlled Drugs and Substances Act results in cruel and unusual punishment and therefore infringes s. 12

RÉPERTORIÉ : R. *c.* LLOYD

2016 CSC 13

N° du greffe : 35982.

2016 : 13 janvier; 2016 : 15 avril.

Présents : La juge en chef McLachlin et les juges Abella, Cromwell, Moldaver, Karakatsanis, Wagner, Gascon, Côté et Brown.

EN APPEL DE LA COUR D'APPEL DE LA COLOMBIE-BRITANNIQUE

Droit constitutionnel — Charte des droits — Traitements ou peines cruels et inusités — Détermination de la peine — Peine minimale obligatoire — Infraction relative à des substances réglementées — Accusé reconnu coupable de possession de substances réglementées en vue d'en faire le trafic et condamné à un an d'emprisonnement — La peine minimale obligatoire d'un an d'emprisonnement que prévoit l'art. 5(3)a)(i)(D) de la Loi réglementant certaines drogues et autres substances équivaut-elle

of Canadian Charter of Rights and Freedoms — If so, whether infringement justifiable under s. 1 of Charter — Whether Court of Appeal erred in increasing sentence to 18 months — Controlled Drugs and Substances Act, S.C. 1996, c. 19, s. 5(3)(a)(i)(D).

Constitutional law — Charter of Rights — Fundamental justice — Sentencing — Whether proportionality in sentencing process a principle of fundamental justice under s. 7 of Canadian Charter of Rights and Freedoms — If so, whether one-year mandatory minimum sentence pursuant to s. 5(3)(a)(i)(D) of Controlled Drugs and Substances Act infringes s. 7 of Charter.

Constitutional law — Charter of Rights — Courts — Jurisdiction — Provincial court judge deciding mandatory minimum sentencing provision unconstitutional — Whether provincial court has power to determine constitutionality.

L was convicted of possession of drugs for the purpose of trafficking. Because he had a recent prior conviction for a similar offence, he was subject to a mandatory minimum sentence of one year of imprisonment, pursuant to s. 5(3)(a)(i)(D) of the *Controlled Drugs and Substances Act* ("*CDSA*"). Section 5(3)(a)(i)(D) provides a minimum sentence of one year of imprisonment for trafficking or possession for the purpose of trafficking in a Schedule I or II drug, where the offender has been convicted of any drug offence (except possession) within the previous 10 years. The provincial court judge declared the provision contrary to s. 12 of the *Charter* and not justified under s. 1. The Court of Appeal allowed the Crown's appeal, set aside the declaration of unconstitutionality and increased the sentence to 18 months.

Held (Wagner, Gascon and Brown JJ. dissenting in part): The appeal should be allowed.

Per McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis and Côté JJ.: The provincial court judge in this case had the power to decide the constitutionality of s. 5(3)(a)(i)(D) of the *CDSA*. While provincial court judges do not have the power to make formal declarations that a law is of no force or effect under s. 52(1) of

à une peine cruelle et inusitée de manière à contrevenir à l'art. 12 de la Charte canadienne des droits et libertés? — Dans l'affirmative, l'atteinte peut-elle se justifier par application de l'article premier de la Charte? — La Cour d'appel a-t-elle eu tort d'accroître la peine et de la porter à 18 mois? — Loi réglementant certaines drogues et autres substances, L.C. 1996, c. 19, art. 5(3)a)(i)(D).

Droit constitutionnel — Charte des droits — Justice fondamentale — Détermination de la peine — La proportionnalité dans le processus de détermination de la peine constitue-t-elle un principe de justice fondamentale au sens de l'art. 7 de la Charte canadienne des droits et libertés? — Dans l'affirmative, la peine minimale obligatoire d'un an d'emprisonnement que prévoit l'art. 5(3)a)(i)(D) de la Loi réglementant certaines drogues et autres substances contrevient-elle à l'art. 7 de la Charte?

Droit constitutionnel — Charte des droits — Tribunaux — Compétence — Décision d'un juge d'une cour provinciale selon laquelle une disposition prévoyant une peine minimale obligatoire est inconstitutionnelle — Une cour provinciale a-t-elle le pouvoir de statuer sur la constitutionnalité?

L a été déclaré coupable de possession de drogues en vue d'en faire le trafic. Reconnu coupable d'une infraction apparentée peu de temps auparavant, il était passible d'une peine minimale obligatoire d'un an d'emprisonnement suivant la div. 5(3)a)(i)(D) de la *Loi réglementant certaines drogues et autres substances* (« *LRCDAS* »). Cette disposition prévoit qu'une peine minimale d'un an d'emprisonnement est infligée pour trafic ou possession, en vue d'en faire le trafic, d'une drogue inscrite aux annexes I ou II au délinquant qui, au cours des 10 années précédentes, a été reconnu coupable de toute infraction en matière de drogue (sauf la possession). Le juge de la cour provinciale a déclaré que la disposition était contraire à l'art. 12 de la *Charte* et non susceptible de justification par application de l'article premier. La Cour d'appel a accueilli l'appel du ministère public, annulé la déclaration d'inconstitutionnalité et accru la peine en la portant à 18 mois d'emprisonnement.

Arrêt (les juges Wagner, Gascon et Brown sont dissidents en partie) : Le pourvoi est accueilli.

La juge en chef McLachlin et les juges Abella, Cromwell, Moldaver, Karakatsanis et Côté : Le juge de la cour provinciale avait en l'espèce le pouvoir de se prononcer sur la constitutionnalité de la div. 5(3)a)(i)(D) de la *LRCDAS*. Même si un juge d'une cour provinciale n'est pas habilité à faire une déclaration formelle selon laquelle

the *Constitution Act, 1982*, they do have the power to determine the constitutionality of mandatory minimum provisions when the issue arises in a case they are hearing. L challenged the mandatory minimum sentence of one year of imprisonment that applied to him. He was entitled to do so. The provincial court judge, in turn, was entitled to consider the constitutionality of that provision. He ultimately concluded that the mandatory minimum sentence was not grossly disproportionate as to L. The fact that the judge used the word "declare" does not convert his conclusion to a formal declaration that the provision is of no force or effect.

While L conceded that a one-year sentence of imprisonment would not be grossly disproportionate as applied to him, it could in other reasonably foreseeable cases. That was the problem in *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773. Again, in the present case, the mandatory minimum sentence provision covers a wide range of potential conduct. As a result, it catches not only the serious drug trafficking that is its proper aim, but conduct that is much less blameworthy. This renders it constitutionally vulnerable.

At one end of the range of conduct caught by the mandatory minimum sentence provision stands a professional drug dealer who engages in the business of dangerous drugs for profit, who is in possession of a large amount of drugs, and who has been convicted many times for similar offences. At the other end of the range stands the addict who is charged for sharing a small amount of drugs with a friend or spouse, and finds herself sentenced to a year in prison because of a single conviction for sharing marihuana in a social occasion nine years before. Most Canadians would be shocked to find that such a person could be sent to prison for one year.

Another foreseeable situation caught by the law is where a drug addict with a prior conviction for trafficking is convicted of a second offence. In both cases, he was only trafficking in order to support his own addiction. Between conviction and the sentencing he attends rehabilitation and conquers his addiction. He comes to court asking for a short sentence that will allow him to resume a healthy and productive life. Under the law, the judge has

une règle de droit est inopérante suivant le par. 52(1) de la *Loi constitutionnelle de 1982*, il a le pouvoir de statuer sur la constitutionnalité d'une peine minimale obligatoire lorsque la question est soulevée dans le cadre d'une instance dont il est saisi. L a contesté la peine minimale obligatoire d'un an d'emprisonnement dont il devait écoper. Il était en droit de le faire. Le juge de la cour provinciale pouvait, lui, se pencher sur la constitutionnalité de la disposition en cause. Il a finalement conclu que la peine minimale obligatoire n'était pas exagérément disproportionnée dans le cas de L. L'emploi du verbe « déclarer » par le juge ne fait pas de sa conclusion une déclaration formelle selon laquelle la disposition est inopérante.

Même si L a concédé que la peine minimale d'un an d'emprisonnement ne constituait pas une peine exagérément disproportionnée dans son cas, elle pouvait en constituer une dans ses applications raisonnablement prévisibles à d'autres personnes. Cette situation problématique se présentait aussi dans *R. c. Nur*, 2015 CSC 15, [2015] 1 R.C.S. 773. Une fois encore, dans la présente affaire, la disposition qui prévoit la peine minimale obligatoire s'applique à une vaste gamme de comportements potentiels. Par voie de conséquence, elle vise non seulement le trafic de drogue hautement répréhensible, ce qui correspond à son objectif légitime, mais aussi le comportement qui se révèle beaucoup moins répréhensible, ce qui la rend vulnérable sur le plan constitutionnel.

À une extrémité de la gamme, le comportement qui tombe sous le coup de la disposition sur la peine minimale obligatoire est celui du trafiquant de drogue professionnel qui fait le commerce de drogues dangereuses pour le profit, qui est en possession d'une grande quantité de drogues et qui a maintes fois été déclaré coupable d'infractions apparentées. À l'autre extrémité, il y a le toxicomane qui fait l'objet d'une accusation de trafic pour avoir partagé avec un ami ou sa conjointe une petite quantité de drogue et qui écope d'un an de prison parce qu'il a déjà été reconnu coupable de trafic, une seule fois, neuf ans auparavant, après avoir partagé de la marihuana lors d'une réunion sociale. La plupart des Canadiens seraient consternés d'apprendre qu'une telle personne pourrait écoper d'un an de prison.

Une autre situation dans laquelle la règle de droit est raisonnablement susceptible de s'appliquer est celle du toxicomane qui est reconnu coupable de trafic une deuxième fois. Comme pour la fois précédente, il ne s'est livré au trafic que pour satisfaire son propre besoin de consommation. Dans l'intervalle compris entre la déclaration de culpabilité et la détermination de la peine, il suit un programme de désintoxication et vainc sa dépendance.

no choice but to sentence him to a year in prison. Such a sentence would also be grossly disproportionate to what is fit in the circumstances and would shock the conscience of Canadians.

Section 10(5) of the *CDSA* provides an exception to the minimum one-year sentence if the offender has, prior to sentencing, successfully completed a drug treatment court program or another program approved under s. 720(2) of the *Criminal Code*. This exception is however too narrow to cure the constitutional infirmity. First, it is confined to particular programs, which a particular offender may or may not be able to access. Second, to be admissible to these programs, the offender must usually plead guilty and forfeit his right to a trial. One constitutional deprivation cannot cure another. Third, the requirement that the offender successfully complete the program may not be realistic for heavily addicted offenders whose conduct does not merit a year in jail. Finally, in most programs, the Crown has the discretion to disqualify an applicant.

The reality is this: mandatory minimum sentence provisions that apply to offences that can be committed in various ways, under a broad array of circumstances and by a wide range of people are constitutionally vulnerable. This is because such provisions will almost inevitably include an acceptable reasonable hypothetical for which the mandatory minimum will be found unconstitutional. If Parliament hopes to maintain mandatory minimum sentences for offences that cast a wide net, it should consider narrowing their reach so that they only catch offenders that merit that mandatory minimum sentences. In the alternative, Parliament could provide for judicial discretion to allow for a lesser sentence where the mandatory minimum would be grossly disproportionate and would constitute cruel and unusual punishment.

Insofar as s. 5(3)(a)(i)(D) of the *CDSA* requires a one-year mandatory minimum sentence of imprisonment, it violates the guarantee against cruel and unusual punishment in s. 12 of the *Charter*. This violation is not justified under s. 1. Parliament's objective of combatting the distribution of illicit drugs is important. This objective is rationally connected to the imposition of a one-year

Il demande qu'on le condamne à une peine moins longue afin qu'il puisse mener à nouveau une vie saine et productive. Légalement, le tribunal n'a d'autre choix que de le condamner à un an de prison. Une telle peine est également exagérément disproportionnée à ce qui est juste dans les circonstances et elle est de nature à choquer la conscience des Canadiens.

Le paragraphe 10(5) de la *LRCDAS* prévoit une exception à l'application de la peine minimale d'un an d'emprisonnement lorsque le délinquant, avant la détermination de sa peine, termine avec succès un programme judiciaire de traitement de la toxicomanie ou un autre programme agréé visé au par. 720(2) du *Code criminel*. Or, l'exception a une portée trop étroite pour remédier au vice constitutionnel. Premièrement, elle ne vaut que pour certains programmes auxquels le délinquant en cause peut avoir accès ou non. Deuxièmement, pour pouvoir participer à un tel programme, le délinquant doit habituellement inscrire un plaidoyer de culpabilité et renoncer à son droit à un procès. Une atteinte constitutionnelle ne saurait remédier à une autre. Troisièmement, l'exigence de terminer le programme avec succès peut ne pas être réaliste lorsque le délinquant souffre d'une grande dépendance et que ses actes ne justifient pas un séjour d'un an en prison. Enfin, en ce qui concerne la plupart des programmes, le ministère public est investi d'un pouvoir discrétionnaire qui lui permet d'empêcher la participation d'un délinquant.

Le fait est que la peine minimale obligatoire qui s'applique à l'égard d'une infraction susceptible d'être perpétrée de diverses manières, dans maintes circonstances différentes et par une grande variété de personnes se révèle vulnérable sur le plan constitutionnel. La raison en est que la disposition qui la prévoit englobera presque inévitablement une situation hypothétique raisonnable acceptable dans laquelle le minimum obligatoire sera jugé inconstitutionnel. Si le législateur tient à l'application de peines minimales obligatoires à des infractions qui ratissent large, il lui faut envisager de réduire leur champ d'application de manière qu'elles ne visent que les délinquants qui méritent de se les voir infliger. Le législateur pourrait par ailleurs investir le tribunal d'un pouvoir discrétionnaire lui permettant d'infliger une peine d'une durée moindre lorsque la peine minimale obligatoire est exagérément disproportionnée et équivaut à une peine cruelle et inusitée.

Dans la mesure où elle prévoit une peine minimale obligatoire d'un an d'emprisonnement, la div. 5(3)a)(i)(D) de la *LRCDAS* porte atteinte au droit à la protection contre les peines cruelles et inusitées que garantit l'art. 12 de la *Charte*. Cette atteinte n'est pas justifiée au regard de l'article premier. L'objectif du législateur de contrer la distribution de drogues illégales est important. Il a un lien

mandatory minimum sentence under s. 5(3)(a)(i)(D) of the *CDSA*. However, the provision does not minimally impair the s. 12 right.

Because the mandatory minimum sentence provision at issue violates s. 12 of the *Charter*, the question of whether it also violates s. 7 need not be addressed. In any event, the provision would not violate s. 7 of the *Charter* because proportionality in sentencing is not a principle of fundamental justice.

Finally, the provincial court judge's determination of the appropriate sentence is entitled to deference. The Court of Appeal in this case took the view that the provincial court judge applied the wrong sentencing range. A careful reading of the reasons of the provincial court judge does not bear this out. The provincial court judge noted that sentences of three to four months had been upheld in a few exceptional cases, but went on to identify the appropriate sentencing range as 12 to 18 months. Applying a number of mitigating factors, he sentenced L to 12 months. In any event, even if the provincial court judge had erred in stating the range, the Court of Appeal would not have been entitled to intervene. It did not establish that a 12-month sentence in this case was demonstrably unfit.

Per Wagner, Gascon and Brown JJ. (dissenting in part): The one-year mandatory minimum sentence in s. 5(3)(a)(i)(D) of the *CDSA* does not infringe s. 12 of the *Charter*. Given the extremely high threshold that must be met before a s. 12 infringement will be found, the Court has struck down mandatory minimums under s. 12 only in very rare cases. It has done so only twice since the *Charter*'s enactment, in *R. v. Smith*, [1987] 1 S.C.R. 1045, and more recently in *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773. This is simply not one of those rare cases. The majority's reasons would represent a departure from the Court's jurisprudence, which has consistently maintained that mandatory minimums are not *per se* unconstitutional.

Unlike in either *Smith* or *Nur*, the mandatory minimum here is limited. It applies only to trafficking offences (not when the drugs are for personal use). It applies only to specific narcotics (Schedule I and II drugs) in specific quantities (of certain Schedule II drugs). And it applies only to certain repeat offenders. Thus, the minimum here does not cover a wide range of conduct. It is,

rationnel avec l'infliction de la peine minimale obligatoire d'un an d'emprisonnement en application de la div. 5(3)a)(i)(D) de la *LRCDAS*. Cependant, la disposition ne porte pas atteinte le moins possible au droit garanti par l'art. 12.

Étant donné que la peine minimale obligatoire en cause contrevient à l'art. 12 de la *Charte*, point n'est besoin de se demander si elle porte aussi atteinte à l'art. 7. Quoi qu'il en soit, la disposition ne contreviendrait pas à l'art. 7 de la *Charte*, car la proportionnalité dans la détermination de la peine ne constitue pas un principe de justice fondamentale.

Enfin, le juge de la cour provinciale qui a déterminé la peine appropriée a droit à la déférence. Dans la présente affaire, la Cour d'appel a estimé que le juge de la cour provinciale n'avait pas appliqué la bonne fourchette de peines. Ce n'est pas ce qui ressort de la lecture attentive des motifs du juge de la cour provinciale. Ce dernier a signalé que des peines de trois à quatre mois avaient été confirmées dans quelques cas exceptionnels, mais il a ajouté que la peine appropriée en l'espèce se situait entre 12 et 18 mois. Compte tenu de certaines circonstances atténuantes, il a condamné L à 12 mois d'emprisonnement. Quoi qu'il en soit, même si le juge avait retenu une fourchette erronée, la Cour d'appel n'aurait pas été admise à intervenir. La Cour d'appel n'a pas fait la démonstration qu'une peine de 12 mois d'emprisonnement était manifestement injuste en l'espèce.

Les juges Wagner, Gascon et Brown (dissidents en partie) : La peine minimale obligatoire d'un an d'emprisonnement que prévoit la div. 5(3)a)(i)(D) de la *LRCDAS* ne contrevient pas à l'art. 12 de la *Charte*. Étant donné le seuil extrêmement élevé qu'il faut franchir pour conclure qu'il y a atteinte à l'art. 12, la Cour n'a que très rarement invalidé une peine minimale obligatoire sur le fondement de l'art. 12. Elle ne l'a fait que deux fois depuis l'adoption de la *Charte*, soit dans *R. c. Smith*, [1987] 1 R.C.S. 1045, et, plus récemment, dans *R. c. Nur*, 2015 CSC 15, [2015] 1 R.C.S. 773. La présente affaire n'est tout simplement pas de celles qui justifient une mesure aussi exceptionnelle. Souscrire à l'approche des juges majoritaires revient à se dissocier de la jurisprudence constante de la Cour selon laquelle les peines minimales obligatoires ne sont pas inconstitutionnelles en soi.

Contrairement à ce qui était le cas dans *Smith* ou *Nur*, la peine minimale obligatoire considérée en l'espèce a une portée circonscrite. Elle ne vaut que pour l'infraction de trafic (elle est inapplicable lorsque la drogue est destinée à l'usage personnel). Seuls sont visés certains stupéfiants (les drogues inscrites aux annexes I et II) et certaines quantités (de certaines drogues inscrites à l'annexe II). Et elle

rather, carefully tailored to catch only harmful and blameworthy conduct. The gross disproportionality test that has developed under s. 12 of the *Charter* is a difficult standard to meet. And it is not met in either of the sharing or rehabilitation scenarios described by the majority.

The sharing scenario described could fall outside the offence of trafficking and instead constitute mere joint possession. If the conduct would not result in a conviction for the offence at issue, then the hypothetical is not reasonable and should not be considered. The analysis must focus on the effect of the sentence once a conviction has properly been secured, rather than the effect of the sentence where the innocence of the accused remains debatable.

Assuming that sharing could ground a conviction for trafficking, however, this hypothetical scenario remains unfit for consideration under s. 12. In this hypothetical, the offender is convicted of trafficking for sharing drugs not once, but twice. Since there appear to be very few reported cases where offenders have been convicted of trafficking for sharing drugs, a scenario involving a two-time sharing trafficker with no other conviction appears far-fetched or marginally imaginable, and thus inappropriate for the s. 12 analysis. In any event, the blameworthiness of a repeat offender must be higher than that of a first-time offender.

Even if the sharing scenario were accepted as a reasonable hypothetical, the mandatory minimum would not impose grossly disproportionate punishment. While the sharing trafficker may be somewhat less morally blameworthy than the cold-blooded trafficker of hard drugs for profit, she is not so much less morally blameworthy that a one-year sentence would outrage standards of decency. Whether the offender traffics by sharing, to support her own addiction or purely for profit, she facilitates the distribution of dangerous substances into the community. The harm to the community — in the form of overdose, addiction and the crime that sometimes comes with supporting addiction — remains the same regardless of the offender's motives.

ne peut être infligée qu'à certains récidivistes. Elle n'est donc pas applicable à une vaste gamme de comportements. La disposition qui la prévoit est en fait soigneusement rédigée pour ne viser que le comportement préjudiciable et répréhensible. Il est difficile de satisfaire au critère de la disproportion exagérée établi pour les besoins de l'application de l'art. 12 de la *Charte*. Ce critère n'est respecté dans aucun des scénarios de partage ou de réadaptation évoqués par les juges majoritaires.

Le scénario du partage qui est avancé pourrait ne pas constituer un trafic, mais plutôt une simple possession commune. Lorsque le comportement ne peut entraîner une déclaration de culpabilité quant à l'infraction en cause, il ne s'agit pas d'une situation hypothétique raisonnable et il ne faut pas la considérer. L'analyse doit s'attacher à l'effet de la peine une fois la culpabilité régulièrement établie, non à l'effet de la peine lorsque la culpabilité ou l'innocence de l'accusé n'est pas déterminée de façon définitive.

À supposer que le partage puisse fonder une déclaration de culpabilité pour trafic, le scénario ne saurait cependant être pris en compte au regard de l'art. 12. Dans cette situation hypothétique, le délinquant est reconnu coupable de trafic après avoir partagé de la drogue non pas une mais deux fois. Comme très peu de décisions semblent avoir été publiées relativement à des affaires où le délinquant a été déclaré coupable de trafic après avoir partagé de la drogue, le scénario d'un délinquant reconnu coupable de trafic deux fois par suite d'un partage et qui n'a pas été déclaré coupable d'une autre infraction apparaît nettement invraisemblable ou difficilement imaginable et, de ce fait, inapproprié pour les besoins de l'analyse que commande l'art. 12. Quoi qu'il en soit, la culpabilité morale imputée au récidiviste doit être plus grande que celle imputée à l'auteur d'une première infraction.

À supposer même que le scénario du partage constitue une situation hypothétique raisonnable, il demeure que la disposition prévoyant la peine minimale obligatoire n'inflige pas une peine exagérément disproportionnée. Bien que le trafiquant partageur puisse être en quelque sorte moins moralement coupable que le trafiquant insensible qui se livre au commerce de drogues dures pour le profit, son degré de culpabilité morale n'est pas si inférieur qu'une peine d'emprisonnement d'un an soit incompatible avec la dignité humaine. Qu'il s'adonne au trafic de la drogue en la partageant, pour pouvoir satisfaire sa propre dépendance ou pour le seul profit, le délinquant facilite la distribution de substances dangereuses au sein de la collectivité. Le préjudice causé à la société — surdose, toxicomanie et crimes que commettent parfois les toxicomanes pour se procurer de la drogue — demeure, quelle que soit la motivation du délinquant.

As for the rehabilitation scenario, the application of the mandatory minimum there is not a grossly disproportionate punishment, for two reasons. First, the mandatory minimum may not even apply. If the offender attends and successfully completes an approved treatment program between conviction and sentencing, s. 10(5) of the *CDSA* would apply and the sentencing judge would not be required to impose the mandatory minimum sentence at all. Second, even if the minimum does apply, the scenario is remarkably similar to the circumstances of L himself, for whom the majority agrees that the one-year sentence is not cruel and unusual.

Thus, given the seriousness of the offence of drug trafficking and the deference owed to Parliament in setting mandatory minimum policies, this well-tailored one-year mandatory minimum does not impose grossly disproportionate punishment in either scenario. The mandatory minimum is therefore constitutional.

As the majority suggests, Parliament may wish to consider providing judges some discretion to avoid applying mandatory minimums in appropriate cases. But Parliament is not obliged to create exemptions to mandatory minimums as a matter of constitutional law. Parliament may legislate to limit judges' sentencing discretion. Limiting judicial discretion is one of the key purposes of mandatory minimum sentences, and this purpose may be inconsistent with providing judges a safety valve to avoid the application of the mandatory minimum in some cases. Whether Parliament should enact judicial safety valves to mandatory minimum sentences and if so, what form they should take, are questions of policy that are within the exclusive domain of Parliament. The only limits on Parliament's discretion are provided by the Constitution and in particular, the *Charter* right not to be subjected to cruel and unusual punishment. Section 5(3)(a)(i)(D) of the *CDSA* does not exceed this limit and does not amount to cruel and unusual punishment.

There is agreement with the majority's analysis on the jurisdiction of provincial court judges and on s. 7 of the *Charter*, as well as the majority's decision to restore the 12-month sentence.

En ce qui concerne le scénario de la réadaptation, la peine minimale obligatoire ne constitue pas une peine exagérément disproportionnée, et ce, pour deux raisons. D'abord, le minimum obligatoire pourrait ne pas même s'appliquer. Si le délinquant suit un programme de désintoxication et parvient à vaincre sa dépendance après avoir été reconnu coupable mais avant d'avoir été condamné à une peine, le par. 10(5) de la *LRCDAS* pourrait s'appliquer et le tribunal ne serait aucunement tenu d'infliger la peine minimale obligatoire. Ensuite, à supposer que celle-ci s'applique, la situation s'apparente beaucoup à celle de L, une situation pour laquelle les juges majoritaires estiment qu'un emprisonnement d'un an n'est ni cruel ni inusité.

Ainsi, au vu de la gravité de l'infraction de trafic de drogue et de la déférence qui s'impose vis-à-vis du législateur et de ses politiques générales en matière de peines minimales obligatoires, la disposition prévoyant la peine minimale obligatoire d'un an d'emprisonnement et dont la portée est bien circonscrite n'infligerait dans aucun des scénarios considérés une peine exagérément disproportionnée. La peine minimale obligatoire est donc constitutionnelle.

Selon les juges majoritaires, le législateur pourrait vouloir envisager la possibilité de conférer au tribunal un pouvoir discrétionnaire qui lui permettrait de se soustraire à l'obligation d'infliger la peine minimale lorsque les circonstances s'y prêtent. Toutefois, le législateur n'a pas l'obligation constitutionnelle de prévoir une exception à l'application d'une peine minimale obligatoire. Il peut restreindre le pouvoir discrétionnaire du tribunal en matière de détermination de la peine. Restreindre le pouvoir discrétionnaire du tribunal est l'un des objectifs principaux de l'établissement de peines minimales obligatoires, et cet objectif peut se révéler incompatible avec la création d'un mécanisme qui permettrait au tribunal d'écarter la peine minimale obligatoire dans certains cas. La question de savoir si le législateur devrait prévoir un mécanisme permettant d'écarter l'infliction d'une peine minimale obligatoire et, dans l'affirmative, quelle forme ce mécanisme devrait revêtir, relèvent de la politique générale et du pouvoir exclusif du Parlement. Seuls la Constitution et, plus particulièrement, le droit garanti par la *Charte* d'être protégé contre les peines cruelles et inusitées limitent l'exercice de ce pouvoir discrétionnaire. La division 5(3)a)(i)(D) de la *LRCDAS* respecte cette limite, et la peine qu'elle prévoit n'équivaut pas à une peine cruelle et inusitée.

L'analyse des juges majoritaires relative à la compétence d'un juge d'une cour provinciale et à l'art. 7 de la *Charte*, ainsi que leur décision de rétablir la peine de 12 mois d'emprisonnement, emportent l'adhésion des juges dissidents.

Cases Cited

By McLachlin C.J.

Applied: *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773; **referred to:** *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *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; *Re Shewchuk and Ricard* (1986), 28 D.L.R. (4th) 429; *R. v. Smith*, [1987] 1 S.C.R. 1045; *R. v. Goltz*, [1991] 3 S.C.R. 485; *R. v. Morrisey*, 2000 SCC 39, [2000] 2 S.C.R. 90; *R. v. Lyons*, [1987] 2 S.C.R. 309; *Miller v. The Queen*, [1977] 2 S.C.R. 680; *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96; *R. v. Greyeyes*, [1997] 2 S.C.R. 825; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; *R. v. Malmo-Levine*, 2003 SCC 74, [2003] 3 S.C.R. 571; *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433; *R. v. Guiller* (1985), 48 C.R. (3d) 226; *R. v. Oakes*, [1986] 1 S.C.R. 103; *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089.

By Wagner, Gascon and Brown JJ. (dissenting in part)

R. v. M. (C.A.), [1996] 1 S.C.R. 500; *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089; *Re B.C. Motor Vehicle Act*, [1985] 2 S.C.R. 486; *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773; *R. v. Smith*, [1987] 1 S.C.R. 1045; *R. v. Goltz*, [1991] 3 S.C.R. 485; *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206; *R. v. Guiller* (1985), 48 C.R. (3d) 226; *Steele v. Mountain Institution*, [1990] 2 S.C.R. 1385; *R. v. Luxton*, [1990] 2 S.C.R. 711; *R. v. Morrisey*, 2000 SCC 39, [2000] 2 S.C.R. 90; *R. v. Latimer*, 2001 SCC 1, [2001] 1 S.C.R. 3; *R. v. Ferguson*, 2008 SCC 6, [2008] 1 S.C.R. 96; *R. v. Tabujara*, 2010 BCSC 1568; *R. v. Yonis*, 2011 ABPC 20; *R. v. Johnson*, 2011 ONCJ 77, 227 C.R.R. (2d) 41; *R. v. Young*, 2010 NWTSC 18; *R. v. Desmond*, 2010 BCPC 127; *R. v. Bryan*, 2010 NWTSC 41; *R. v. Otchere-Badu*, 2010 ONSC 5271; *R. v. Meunier*, 2011 QCCQ 1588; *R. v. Tracey*, 2008 CanLII 68168; *R. v. Draskoczi*, 2008 NWTTC 12; *R. v. Kotsabasakis*, 2008 NBQB 266, 334 N.B.R. (2d) 396; *R. v. Rainville*, 2010 ABCA 288, 490 A.R. 150; *R. v. Delorme*, 2010 NWTSC 42; *R. v. Scheer* (1932), 26 Alta. L.R. 489; *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982; *Miller v. The Queen*, [1977] 2 S.C.R. 680; *R. v. Lyons*, [1987] 2 S.C.R. 309; *R. v. Gardiner* (1987), 35 C.C.C. (3d) 461; *R. v. Weiler* (1975), 23 C.C.C. (2d) 556; *R. v. O'Connor*, 1975 CarswellBC 842 (WL Can.); *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433.

Jurisprudence

Citée par la juge en chef McLachlin

Arrêt appliqué : *R. c. Nur*, 2015 CSC 15, [2015] 1 R.C.S. 773; **arrêts mentionnés :** *R. c. Big M Drug Mart Ltd.*, [1985] 1 R.C.S. 295; *Cuddy Chicks Ltd. c. Ontario (Commission des relations de travail)*, [1991] 2 R.C.S. 5; *Douglas/Kwantlen Faculty Assn. c. Douglas College*, [1990] 3 R.C.S. 570; *Re Shewchuk and Ricard* (1986), 28 D.L.R. (4th) 429; *R. c. Smith*, [1987] 1 R.C.S. 1045; *R. c. Goltz*, [1991] 3 R.C.S. 485; *R. c. Morrisey*, 2000 CSC 39, [2000] 2 R.C.S. 90; *R. c. Lyons*, [1987] 2 R.C.S. 309; *Miller c. La Reine*, [1977] 2 R.C.S. 680; *R. c. Ferguson*, 2008 CSC 6, [2008] 1 R.C.S. 96; *R. c. Greyeyes*, [1997] 2 R.C.S. 825; *Pushpanathan c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [1998] 1 R.C.S. 982; *R. c. Malmo-Levine*, 2003 CSC 74, [2003] 3 R.C.S. 571; *R. c. Ipeelee*, 2012 CSC 13, [2012] 1 R.C.S. 433; *R. c. Guiller* (1985), 48 C.R. (3d) 226; *R. c. Oakes*, [1986] 1 R.C.S. 103; *R. c. Lacasse*, 2015 CSC 64, [2015] 3 R.C.S. 1089.

Citée par les juges Wagner, Gascon et Brown (dissidents en partie)

R. c. M. (C.A.), [1996] 1 R.C.S. 500; *R. c. Lacasse*, 2015 CSC 64, [2015] 3 R.C.S. 1089; *Renvoi sur la Motor Vehicle Act (C.-B.)*, [1985] 2 R.C.S. 486; *R. c. Nur*, 2015 CSC 15, [2015] 1 R.C.S. 773; *R. c. Smith*, [1987] 1 R.C.S. 1045; *R. c. Goltz*, [1991] 3 R.C.S. 485; *R. c. Nasogaluak*, 2010 CSC 6, [2010] 1 R.C.S. 206; *R. c. Guiller* (1985), 48 C.R. (3d) 226; *Steele c. Établissement Mountain*, [1990] 2 R.C.S. 1385; *R. c. Luxton*, [1990] 2 R.C.S. 711; *R. c. Morrisey*, 2000 CSC 39, [2000] 2 R.C.S. 90; *R. c. Latimer*, 2001 CSC 1, [2001] 1 R.C.S. 3; *R. c. Ferguson*, 2008 CSC 6, [2008] 1 R.C.S. 96; *R. c. Tabujara*, 2010 BCSC 1568; *R. c. Yonis*, 2011 ABPC 20; *R. c. Johnson*, 2011 ONCJ 77, 227 C.R.R. (2d) 41; *R. c. Young*, 2010 NWTSC 18; *R. c. Desmond*, 2010 BCPC 127; *R. c. Bryan*, 2010 NWTSC 41; *R. c. Otchere-Badu*, 2010 ONSC 5271; *R. c. Meunier*, 2011 QCCQ 1588; *R. c. Tracey*, 2008 CanLII 68168; *R. c. Draskoczi*, 2008 NWTTC 12; *R. c. Kotsabasakis*, 2008 NBBR 266, 334 R.N.-B. (2e) 396; *R. c. Rainville*, 2010 ABCA 288, 490 A.R. 150; *R. c. Delorme*, 2010 NWTSC 42; *R. c. Scheer* (1932), 26 Alta. L.R. 489; *Pushpanathan c. Canada (Ministre de la Citoyenneté et de l'Immigration)*, [1998] 1 R.C.S. 982; *Miller c. La Reine*, [1977] 2 R.C.S. 680; *R. c. Lyons*, [1987] 2 R.C.S. 309; *R. c. Gardiner* (1987), 35 C.C.C. (3d) 461; *R. c. Weiler* (1975), 23 C.C.C. (2d) 556; *R. c. O'Connor*, 1975 CarswellBC 842 (WL Can.); *R. c. Ipeelee*, 2012 CSC 13, [2012] 1 R.C.S. 433.

Statutes and Regulations Cited

18 U.S.C. § 3553(f) (2012).
Canadian Charter of Rights and Freedoms, ss. 1, 7, 9, 12, 24(1).
Constitution Act, 1982, s. 52(1).
Controlled Drugs and Substances Act, S.C. 1996, c. 19, ss. 2(1) "designated substance offence", "traffic", Part I, 4 to 10, 5(1), (2), (3)(a), (a.1), 10(4), (5), Schs. I, II, VII.
Criminal Code, R.S.C. 1970, c. C-34, s. 214(5)(*e*).
Criminal Code, R.S.C. 1985, c. C-46, ss. 231(5)(e), 718.1, 718.2(e), 720(2).
Criminal Law Amendment Act, 1997 (S. Afr.), No. 105 of 1997, s. 51(3)(*a*).
Criminal Law (Sentencing) Act 1988 (S.A.), s. 17.
Firearms Act 1968 (U.K.), 1968, c. 27, s. 51A(2).
Penal Code [*Brottsbalken*] (Swed.), c. 29, s. 5.
Powers of Criminal Courts (Sentencing) Act 2000 (U.K.), 2000, c. 6, ss. 109(3), 110(2), 111(2).
Safe Streets and Communities Act, S.C. 2012, c. 1, s. 39(1).
Sentencing Act (N.T.), s. 78DI.
Sentencing Act 1991 (Vic.), s. 10(1).
Sentencing Act 2002 (N.Z.), ss. 86E, 102, 103.
Violent Crime Reduction Act 2006 (U.K.), 2006, c. 38, s. 29(4).

Authors Cited

Canada. Department of Justice. Research and Statistics Division. *Mandatory Sentences of Imprisonment in Common Law Jurisdictions: Some Representative Models*, report by Julian V. Roberts with the assistance of Rafal Morek and Mihael Cole, November 2005 (online: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/ccs-ajc/rr05_10/index.html).
Hogg, Peter W. *Constitutional Law of Canada*, 5th ed. Supp. Toronto: Carswell, 2007 (updated 2015, release 1).
Roach, Kent. *Constitutional Remedies in Canada*, 2nd ed. Toronto: Canada Law Book, 2015 (loose-leaf updated December 2015, release 26).
Ruby, Clayton C., Gerald J. Chan and Nader R. Hasan. *Sentencing*, 8th ed. Markham, Ont.: LexisNexis, 2012.

APPEAL from a judgment of the British Columbia Court of Appeal (Newbury, Kirkpatrick and Groberman JJ.A.), 2014 BCCA 224, 356 B.C.A.C. 275, 610 W.A.C. 275, 12 C.R. (7th) 190,

Lois et règlements cités

18 U.S.C. § 3553(f) (2012).
Charte canadienne des droits et libertés, art. 1, 7, 9, 12, 24(1).
Code criminel, L.R.C. 1985, c. C-46, art. 231(5)e), 718.1, 718.2e), 720(2).
Code criminel, S.R.C. 1970, c. C-34, art. 214(5)*e*).
Code pénal [*Brottsbalken*] (Suède), c. 29, art. 5.
Criminal Law Amendment Act, 1997 (Afr. du Sud), No. 105 of 1997, art. 51(3)(*a*).
Criminal Law (Sentencing) Act 1988 (S.A.), art. 17.
Firearms Act 1968 (R.-U.), 1968, c. 27, art. 51A(2).
Loi constitutionnelle de 1982, art. 52(1).
Loi réglementant certaines drogues et autres substances, L.C. 1996, c. 19, art. 2(1) « infraction désignée », « trafic », partie I, 4 à 10, 5(1), (2), (3)a), a.1), 10(4), (5), ann. I, II, VII.
Loi sur la sécurité des rues et des communautés, L.C. 2012, c. 1, art. 39(1).
Powers of Criminal Courts (Sentencing) Act 2000 (R.-U.), 2000, c. 6, art. 109(3), 110(2), 111(2).
Sentencing Act (N.T.), art. 78DI.
Sentencing Act 1991 (Vic.), art. 10(1).
Sentencing Act 2002 (N.-Z.), art. 86E, 102, 103.
Violent Crime Reduction Act 2006 (R.-U.), 2006, c. 38, art. 29(4).

Doctrine et autres documents cités

Canada. Ministère de la Justice. Division de la recherche et de la statistique. *Peines d'emprisonnement obligatoires dans les pays de common law : Quelques modèles représentatifs*, rapport par Julian V. Roberts avec le concours de Rafal Morek et Mihael Cole, novembre 2005 (en ligne : http://www.justice.gc.ca/fra/pr-rp/sjc-csj/ajc-ccs/rr05_10/index.html).
Hogg, Peter W. *Constitutional Law of Canada*, 5th ed. Supp., Toronto, Carswell, 2007 (updated 2015, release 1).
Roach, Kent. *Constitutional Remedies in Canada*, 2nd ed., Toronto, Canada Law Book, 2015 (loose-leaf updated December 2015, release 26).
Ruby, Clayton C., Gerald J. Chan and Nader R. Hasan. *Sentencing*, 8th ed., Markham (Ont.), LexisNexis, 2012.

POURVOI contre un arrêt de la Cour d'appel de la Colombie-Britannique (les juges Newbury, Kirkpatrick et Groberman), 2014 BCCA 224, 356 B.C.A.C. 275, 610 W.A.C. 275, 12 C.R. (7th) 190,

312 C.R.R. (2d) 66, [2014] B.C.J. No. 1212 (QL), 2014 CarswellBC 1688 (WL Can.), setting aside two decisions of Galati Prov. Ct. J., 2014 BCPC 11, [2014] B.C.J. No. 145 (QL), 2014 CarswellBC 423 (WL Can.), and 2014 BCPC 8, [2014] B.C.J. No. 274 (QL), 2014 CarswellBC 358 (WL Can.). Appeal allowed, Wagner, Gascon and Brown JJ. dissenting in part.

David N. Fai and *Jeffrey W. Beedell*, for the appellant.

W. Paul Riley, Q.C., and *Todd C. Gerhart*, for the respondent.

Eric V. Gottardi and *Mila Shah*, for the intervener the Canadian Bar Association.

Faisal Mirza and *Roger A. Love*, for the intervener the African Canadian Legal Clinic.

Maia Tsurumi and *Adrienne Smith*, for the interveners the Pivot Legal Society and the Union of British Columbia Indian Chiefs.

Khalid Janmohamed and *Ryan Peck*, for the interveners the HIV & AIDS Legal Clinic Ontario, the Canadian HIV/AIDS Legal Network, the British Columbia Centre for Excellence in HIV/AIDS, the Prisoners with HIV/AIDS Support Action Network and the Canadian Association of People Who Use Drugs.

Matthew A. Nathanson, for the intervener the British Columbia Civil Liberties Association.

Dirk Derstine and *Janani Shanmuganathan*, for the intervener the Criminal Lawyers' Association (Ontario).

Kasandra Cronin and *Kendra Milne*, for the intervener the West Coast Women's Legal Education and Action Fund.

312 C.R.R. (2d) 66, [2014] B.C.J. No. 1212 (QL), 2014 CarswellBC 1688 (WL Can.), qui a infirmé deux décisions du juge Galati, 2014 BCPC 11, [2014] B.C.J. No. 145 (QL), 2014 CarswellBC 423 (WL Can.), et 2014 BCPC 8, [2014] B.C.J. No. 274 (QL), 2014 CarswellBC 358 (WL Can.). Pourvoi accueilli, les juges Wagner, Gascon et Brown sont dissidents en partie.

David N. Fai et *Jeffrey W. Beedell*, pour l'appelant.

W. Paul Riley, c.r., et *Todd C. Gerhart*, pour l'intimée.

Eric V. Gottardi et *Mila Shah*, pour l'intervenante l'Association du Barreau canadien.

Faisal Mirza et *Roger A. Love*, pour l'intervenante la Clinique juridique africaine canadienne.

Maia Tsurumi et *Adrienne Smith*, pour les intervenantes Pivot Legal Society et l'Union des chefs indiens de la Colombie-Britannique.

Khalid Janmohamed et *Ryan Peck*, pour les intervenants HIV & AIDS Legal Clinic Ontario, le Réseau juridique canadien VIH/sida, British Columbia Centre for Excellence in HIV/AIDS, le Réseau d'action et de soutien des prisonniers et prisonnières vivant avec le VIH/sida et l'Association canadienne des personnes qui utilisent des drogues.

Matthew A. Nathanson, pour l'intervenante l'Association des libertés civiles de la Colombie-Britannique.

Dirk Derstine et *Janani Shanmuganathan*, pour l'intervenante Criminal Lawyers' Association (Ontario).

Kasandra Cronin et *Kendra Milne*, pour l'intervenant West Coast Women's Legal Education and Action Fund.

The judgment of McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis and Côté JJ. was delivered by

THE CHIEF JUSTICE —

I. Introduction

[1] Parliament has the power to proscribe conduct as criminal and determine the punishment for it, and judges have the duty to apply the laws Parliament adopts on punishment to offenders. But individuals are also entitled to receive, and judges have a duty to impose, sentences that are constitutional having regard to the circumstances of each case that comes before them. Sometimes a judge's duty to apply a mandatory minimum sentence provision conflicts with the judge's duty to impose a sentence that does not violate the guarantees of the *Canadian Charter of Rights and Freedoms*. In this appeal, the Court is once again confronted with the problem of how the imposition of a mandatory minimum sentence can be reconciled with the imperative that no person shall be punished in a manner than infringes the *Charter*.

[2] We are asked to decide the constitutionality of a one-year mandatory minimum sentence for a controlled substances offence. I conclude that this provision, while permitting constitutional sentences in a broad array of cases, will sometimes mandate sentences that violate the constitutional guarantee against cruel and unusual punishment. Insofar as the law requires a one-year sentence of imprisonment, it violates the guarantee against cruel and unusual punishment in s. 12 of the *Charter* and is not justified under s. 1.

[3] As this Court's decision in *R. v. Nur*, 2015 SCC 15, [2015] 1 S.C.R. 773, illustrates, the reality is that mandatory minimum sentences for offences that can be committed in many ways and under many different circumstances by a wide range of people are constitutionally vulnerable because they will almost

Version française du jugement de la juge en chef McLachlin et des juges Abella, Cromwell, Moldaver, Karakatsanis et Côté rendu par

LA JUGE EN CHEF —

I. Introduction

[1] Le Parlement possède le pouvoir de tenir un acte pour criminel et de l'interdire, ainsi que de déterminer la sanction à infliger pour sa perpétration, et les tribunaux ont l'obligation d'appliquer les dispositions adoptées par le Parlement en matière de peines à infliger aux délinquants. Or, dans toute affaire dont un tribunal est saisi, le délinquant a le droit de se voir infliger, et le tribunal a l'obligation de lui infliger, une peine qui est constitutionnelle au vu des faits de l'espèce. Il arrive que l'obligation du tribunal d'appliquer une disposition prévoyant une peine minimale obligatoire aille à l'encontre de son obligation d'infliger une peine qui ne porte pas atteinte aux garanties de la *Charte canadienne des droits et libertés*. Dans la présente affaire, la Cour se retrouve encore une fois aux prises avec la question de savoir comment l'infliction d'une peine minimale obligatoire peut se concilier avec la nécessité impérieuse que nul ne soit puni selon des modalités contraires à la *Charte*.

[2] Nous sommes appelés à nous prononcer sur la constitutionnalité de la peine minimale obligatoire d'un an d'emprisonnement qu'encourt l'auteur d'une infraction relative à une substance réglementée. J'estime que la disposition en cause, même si elle permet d'infliger des peines constitutionnelles dans une grande variété d'affaires, commande parfois une peine attentatoire à la garantie constitutionnelle contre les peines cruelles et inusitées. Dans la mesure où elle prescrit une peine d'emprisonnement d'un an, la disposition porte atteinte au droit à la protection contre les peines cruelles et inusitées que garantit l'art. 12 de la *Charte* et l'atteinte n'est pas justifiée au regard de l'article premier.

[3] Comme il appert de l'arrêt *R. c. Nur*, 2015 CSC 15, [2015] 1 R.C.S. 773, le fait est que la disposition qui rend passible d'une peine minimale obligatoire l'auteur d'une infraction qui peut être perpétrée de nombreuses manières et dans de nombreuses circonstances différentes, par une grande variété de

Board), [1991] 2 S.C.R. 5, at pp. 14-17; *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570, at p. 592; *Re Shewchuk and Ricard* (1986), 28 D.L.R. (4th) 429 (B.C.C.A.), at pp. 439-40; K. Roach, *Constitutional Remedies in Canada* (2nd ed. (loose-leaf)), at p. 6-25.

[16] Just as no one may be convicted of an offence under an invalid statute, so too may no one be sentenced under an invalid statute. Provincial court judges must have the power to determine the constitutional validity of mandatory minimum provisions when the issue arises in a case they are hearing. This power flows directly from their statutory power to decide the cases before them. The rule of law demands no less.

[17] In my view, the provincial court judge in this case did no more than this. Mr. Lloyd challenged the mandatory minimum that formed part of the sentencing regime that applied to him. As the Court of Appeal found, he was entitled to do so. The provincial court judge was entitled to consider the constitutionality of the mandatory minimum provision. He ultimately concluded that the mandatory minimum sentence was not grossly disproportionate as to Mr. Lloyd. The fact that he used the word "declare" does not convert his conclusion to a formal declaration that the law is of no force or effect under s. 52(1) of the *Constitution Act, 1982*.

[18] To be sure, it does not follow that a provincial court judge is obligated to consider the constitutionality of a mandatory minimum provision where it can have no impact on the sentence in the case at issue. Judicial economy dictates that judges should not squander time and resources on matters they need not decide. But a formalistic approach should be avoided. Thus, once the judge in this case determined that the mandatory minimum did not materially exceed the bottom of the sentencing

invalide dans des affaires criminelles. Nul ne peut être reconnu coupable d'infraction à une loi invalide. » Voir aussi *Cuddy Chicks Ltd. c. Ontario (Commission des relations de travail)*, [1991] 2 R.C.S. 5, p. 14-17; *Douglas/Kwantlen Faculty Assn. c. Douglas College*, [1990] 3 R.C.S. 570, p. 592; *Re Shewchuk and Ricard* (1986), 28 D.L.R. (4th) 429 (C.A. C.-B.), p. 439-440; K. Roach, *Constitutional Remedies in Canada* (2e éd. (feuilles mobiles)), p. 6-25.

[16] Nul ne pouvant être déclaré coupable d'une infraction sous le régime d'une loi invalide, nul ne peut non plus se voir infliger une peine sur le fondement d'une loi invalide. Un juge d'une cour provinciale doit pouvoir statuer sur la constitutionnalité d'une disposition prévoyant une peine minimale obligatoire lorsque la question est soulevée dans une affaire qu'il instruit. Ce pouvoir découle directement de celui, que lui confère la loi, de trancher les litiges dont il est saisi. La primauté du droit n'exige rien de moins.

[17] À mon avis, le juge de la cour provinciale ne fait rien de plus en l'espèce. M. Lloyd contestait la peine minimale obligatoire qui fait partie du régime de détermination de la peine auquel il est soumis. Comme le conclut la Cour d'appel, il était en droit de le faire. Le juge de la cour provinciale pouvait se pencher sur la constitutionnalité de la disposition prévoyant la peine minimale obligatoire. Il a finalement conclu que la peine minimale obligatoire n'est pas exagérément disproportionnée dans le cas de M. Lloyd. L'emploi du verbe [TRADUCTION] « déclarer » ne transforme pas sa conclusion en une déclaration formelle selon laquelle la règle de droit est inopérante suivant le par. 52(1) de la *Loi constitutionnelle de 1982*.

[18] Il ne s'ensuit certes pas que le juge de la cour provinciale est tenu de se pencher sur la constitutionnalité d'une disposition qui prévoit une peine minimale obligatoire lorsque celle-ci n'est pas susceptible d'influer sur la peine infligée dans le cas considéré. Le principe de l'économie des ressources judiciaires commande que les tribunaux s'abstiennent de consacrer temps et ressources à des questions qu'ils n'ont pas besoin de trancher. Il ne faut toutefois pas se montrer trop strict à cet

range applicable to Mr. Lloyd, he could have declined to consider its constitutionality. To put it in legal terms, the doctrine of mootness should be flexibly applied. If an issue arises as to the validity of the law, the provincial court judge has the power to determine it as part of the decision-making process in the case. To compel provincial court judges to conduct an analysis of whether the law could have any impact on an offender's sentence, as a condition precedent to considering the law's constitutional validity, would place artificial constraints on the trial and decision-making process.

[19] The effect of a finding by a provincial court judge that a law does not conform to the Constitution is to permit the judge to refuse to apply it in the case at bar. The finding does not render the law of no force or effect under s. 52(1) of the *Constitution Act, 1982*. It is open to provincial court judges in subsequent cases to decline to apply the law, for reasons already given or for their own; however, the law remains in full force or effect, absent a formal declaration of invalidity by a court of inherent jurisdiction.

[20] I conclude that the provincial court judge in this case had the power to consider the constitutional validity of the challenged sentencing provision in the course of making his decision on the case before him.

B. *Is the Mandatory Minimum Sentence Here Unconstitutional?*

[21] Section 5(3)(a)(i)(D) of the *CDSA* provides a minimum sentence of one year of imprisonment for trafficking or possession for the purpose of trafficking in a Schedule I or II drug, where the offender has been convicted of any drug offence (except possession) within the previous 10 years. The law

égard. Dès lors qu'il a conclu en l'espèce que la peine minimale obligatoire n'excédait pas sensiblement la peine correspondant à l'extrémité inférieure de la fourchette applicable à M. Lloyd, le juge pouvait refuser d'examiner sa constitutionnalité. En langue juridique, la doctrine du caractère théorique doit s'appliquer avec souplesse. Lorsque la constitutionnalité d'une règle de droit est contestée, le juge de la cour provinciale a le pouvoir de trancher dans l'exercice du pouvoir juridictionnel qu'il possède dans l'instance. L'obliger à se demander, avant qu'il ne puisse examiner la constitutionnalité de la règle de droit, si cette dernière pourrait avoir une incidence sur la peine infligée au délinquant aurait pour effet d'assujettir le déroulement du procès et l'exercice du pouvoir juridictionnel à des contraintes artificielles.

[19] Conclure qu'une règle de droit n'est pas conforme à la Constitution permet à un juge de la cour provinciale de refuser d'appliquer cette règle dans l'affaire dont il est saisi. La règle de droit n'est pas pour autant inopérante suivant le par. 52(1) de la *Loi constitutionnelle de 1982*. Il est loisible aux juges de la cour provinciale de refuser d'appliquer la règle de droit dans des affaires subséquentes pour les motifs déjà exposés ou pour d'autres motifs qui leur sont propres. La règle de droit demeure toutefois pleinement opérante en l'absence d'une déclaration formelle d'invalidité par une cour ayant une compétence inhérente.

[20] Je conclus que le juge de la cour provinciale pouvait, en exerçant son pouvoir juridictionnel dans l'instance dont il était saisi, se pencher sur la constitutionnalité de la disposition prévoyant la peine minimale obligatoire.

B. *La peine minimale obligatoire en cause est-elle inconstitutionnelle?*

[21] La division 5(3)a)(i)(D) de la *LRCDAS* dispose qu'une peine minimale d'un an d'emprisonnement est infligée pour trafic ou possession, en vue d'en faire le trafic, d'une drogue inscrite aux annexes I ou II au délinquant qui, au cours des 10 années précédentes, a été reconnu coupable de

TAB 18

Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx Rexall Drug Stores Ltd. *Appellants*

v.

Minister of Health and Long-Term Care, Lieutenant Governor-in-Council of Ontario and Attorney General of Ontario *Respondents*

- and -

Shoppers Drug Mart Inc., Shoppers Drug Mart (London) Limited and Sanis Health Inc. *Appellants*

v.

Minister of Health and Long-Term Care, Lieutenant Governor-in-Council of Ontario and Attorney General of Ontario *Respondents*

Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. et Pharmx Rexall Drug Stores Ltd. *Appelantes*

c.

Ministre de la Santé et des Soins de longue durée, Lieutenant-gouverneur en conseil de l'Ontario et procureur général de l'Ontario *Intimés*

- et -

Shoppers Drug Mart Inc., Shoppers Drug Mart (London) Limited et Sanis Health Inc. *Appelantes*

c.

Ministre de la Santé et des Soins de longue durée, Lieutenant-gouverneur en conseil de l'Ontario et procureur général de l'Ontario *Intimés*

INDEXED AS: KATZ GROUP CANADA INC. *v.* ONTARIO (HEALTH AND LONG-TERM CARE)

2013 SCC 64

File Nos.: 34647, 34649.

2013: May 14; 2013: November 22.

Present: McLachlin C.J. and LeBel, Abella, Rothstein, Cromwell, Moldaver and Wagner JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Food and drugs — Regulations — Validity — Province of Ontario enacting Regulations to effectively ban the sale of private label drugs by pharmacies — Purpose of Regulations to reduce drug prices — Whether Regulations are ultra vires on the ground that they are inconsistent with the statutory scheme and mandate — Drug Interchangeability and Dispensing Fee Act Regulation, R.R.O. 1990, Reg. 935, s. 9 — Ontario Drug Benefit Act Regulation, O. Reg. 201/96, s. 12.0.2.

RÉPERTORIÉ : KATZ GROUP CANADA INC. *c.* ONTARIO (SANTÉ ET SOINS DE LONGUE DURÉE)

2013 CSC 64

N^os^ du greffe : 34647, 34649.

2013 : 14 mai; 2013 : 22 novembre.

Présents : La juge en chef McLachlin et les juges LeBel, Abella, Rothstein, Cromwell, Moldaver et Wagner.

EN APPEL DE LA COUR D'APPEL DE L'ONTARIO

Aliments et drogues — Règlements — Validité — Adoption, par la province de l'Ontario, de règlements ayant pour effet d'interdire effectivement la vente, par les pharmacies, de médicaments sous marque de distributeur — Règlements ayant pour objectif de réduire les prix des médicaments — Les règlements sont-ils ultra vires au motif qu'ils sont incompatibles avec l'objet et le mandat de la loi? — Drug Interchangeability and Dispensing Fee Act Regulation, R.R.O. 1990, Règl. 935, art. 9 — Ontario Drug Benefit Act Regulation, O. Reg. 201/96, art. 12.0.2.

For decades, Ontario has been involved in an ongoing struggle to control rising drug costs. Generic drugs have been a key part of the strategy for dealing with this problem. Persistent market practices, however, have kept generic prices high. In Ontario, the result has been an episodic and totemic tug-of-war between regulators and those engaged in the manufacture, distribution and sale of generic drugs.

In 1985, two complementary and intersecting statutes were introduced together to address the problem of rising drug prices for consumers: the *Drug Interchangeability and Dispensing Fee Act* and the *Ontario Drug Benefit Act*. The *Drug Interchangeability and Dispensing Fee Act* empowers the Ministry to designate a cheaper generic drug as "interchangeable" with a more expensive brand-name drug. Pharmacists must dispense the cheaper interchangeable generic to customers unless the prescribing physician specifies "no substitution" or the customer agrees to pay the extra cost of the brand name. This statute also limits the dispensing fees that pharmacies can charge private customers.

The *Ontario Drug Benefit Act* governs the Ontario Drug Benefit Program whereby the province reimburses pharmacies when they dispense prescription drugs at no charge to "eligible persons" — primarily seniors and persons on social assistance. All drugs for which Ontario will provide reimbursement, along with the price that Ontario will pay for them, are listed in the Formulary. When a pharmacy dispenses a listed drug to an eligible person, the *Ontario Drug Benefit Act* requires Ontario to reimburse the pharmacy for an amount based on the Formulary price of the drug plus a prescribed mark-up and prescribed dispensing fee. This legislative scheme effectively creates two markets in Ontario for brand name and generic drugs. The private market consists of individuals buying drugs at their own expense or for reimbursement by private drug insurance plans. The "public market" is the government-funded Ontario Drug Benefit Program. Generic drugs reach consumers in Ontario's private and public markets through a supply chain that involves several participants regulated at the federal level, the provincial level, or both. They are: fabricators, who make the generic drugs; manufacturers, who sell generic drugs under their own name to wholesalers or directly to pharmacies; wholesalers, who buy drugs from manufacturers to distribute to pharmacies; and

Depuis des décennies, l'Ontario lutte constamment en vue de contrôler la hausse des prix des médicaments. Les médicaments génériques ont constitué un élément clé de la stratégie visant à contrer ce problème. Des pratiques commerciales persistantes ont toutefois maintenu à des niveaux élevés les prix des médicaments génériques. En Ontario, on a ainsi assisté à des affrontements épisodiques et totémiques entre les organismes de réglementation et les entreprises chargées de la fabrication, de la distribution et de la vente des médicaments génériques.

En 1985, deux lois qui se complètent et se recoupent ont été adoptées ensemble afin de remédier au problème de la hausse des prix des médicaments pour les consommateurs : la *Loi sur l'interchangeabilité des médicaments et les honoraires de préparation* et la *Loi sur le régime de médicaments de l'Ontario*. La *Loi sur l'interchangeabilité des médicaments et les honoraires de préparation* habilite le ministère à désigner un médicament générique moins coûteux comme étant « interchangeable » avec un médicament de marque plus coûteux. Les pharmaciens doivent délivrer aux clients le produit générique interchangeable moins coûteux à moins que le médecin qui prescrit n'indique « pas de remplacement » ou que le client accepte de payer le coût plus élevé du médicament de marque. La loi limite également les honoraires de préparation que les pharmacies peuvent demander à leurs clients privés.

La *Loi sur le régime de médicaments de l'Ontario* régit le Programme de médicaments de l'Ontario, par lequel la province rembourse les pharmacies qui délivrent sans frais des médicaments sur ordonnance à des « personnes admissibles » — essentiellement les personnes âgées et les prestataires de l'aide sociale. Le Formulaire des médicaments énumère tous les médicaments remboursables par l'Ontario et indique les prix que la province paye pour ces médicaments. Lorsqu'une pharmacie délivre à une personne admissible un médicament énuméré, la *Loi sur le régime de médicaments de l'Ontario* oblige la province à rembourser à cette pharmacie un montant calculé en fonction du prix du médicament prévu au Formulaire des médicaments, auquel s'ajoutent une majoration prescrite ainsi que les honoraires de préparation prescrits. Ce régime législatif a pour effet de créer en Ontario deux marchés pour les médicaments de marque et les médicaments génériques. Le marché privé est composé de particuliers qui achètent des médicaments à leurs frais ou se font rembourser par leur régime d'assurance-médicaments privé. Le « marché public » correspond au Programme de médicaments de l'Ontario financé par le gouvernement ontarien. Les médicaments génériques sont dispensés aux consommateurs ontariens sur le marché public et sur le

pharmacies, who buy drugs from wholesalers or manufacturers and dispense them to their customers.

Before 2006, the price at which manufacturers could apply to list generic drugs in the Formulary was capped by regulations under the two statutes. In order to be competitive, manufacturers would, however, give pharmacies a substantial rebate to induce them to buy their products. The price that manufacturers charged — and customers paid — was thereby artificially increased to the extent of the rebates. In 2006, in order to stop this inflationary effect on generic drug prices, the two statutes and the Regulations under them were amended to prohibit rebates. The expected savings did not occur and manufacturers continued to charge high prices for generic drugs. Instead of the rebates, manufacturers were now paying pharmacies $800 million annually in professional allowances. Amendments were therefore introduced in 2010 eliminating the "professional allowances" exception.

The Regulations to the two statutes were also amended to prevent pharmacies from controlling manufacturers who sell generic drugs under their own name but do not fabricate them. This was done by creating a category designated as "private label products", which includes products sold but not fabricated by a manufacturer which does not have an arm's length relationship with drug wholesalers or pharmacies. Under the Regulations, private label products cannot be listed in the Formulary or designated as interchangeable.

Sanis Health Inc., a subsidiary of Shoppers Drug Mart, was incorporated by Shoppers for the purpose of buying generic drugs from third party fabricators and selling them under the Sanis label in Shoppers Drug Mart stores. Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx Rexall Drug Stores Ltd. also operate pharmacies

marché privé au moyen d'une chaîne d'approvisionnement qui fait intervenir plusieurs participants assujettis à la réglementation fédérale et à la réglementation provinciale, ou à l'une ou l'autre. Il s'agit des participants suivants : les manufacturiers, qui fabriquent les médicaments génériques; les fabricants, qui vendent des médicaments génériques en leur propre nom à des grossistes ou directement aux pharmacies; les grossistes, qui achètent des médicaments aux fabricants en vue de leur distribution aux pharmacies; et les pharmacies, qui achètent les médicaments aux grossistes ou aux fabricants et les délivrent à leurs clients.

Avant 2006, le prix auquel les fabricants pouvaient demander que leurs médicaments génériques soient énumérés au Formulaire des médicaments était plafonné par les règlements d'application des deux lois. Pour être concurrentiels, les fabricants consentaient toutefois aux pharmacies des rabais substantiels pour les inciter à acheter leurs produits. Le prix que les fabricants demandaient — et que les clients payaient — était par conséquent artificiellement augmenté dans la même proportion que ces rabais. Pour stopper cette inflation des prix des médicaments génériques, les deux lois et leurs règlements d'application ont été modifiés en 2006 afin d'interdire les rabais. Les économies prévues ne se sont pas matérialisées et les fabricants ont continué à demander des prix élevés pour les médicaments génériques. Au lieu d'accorder des rabais, les fabricants payaient désormais aux pharmacies 800 millions de dollars par année en remises aux professionnels. Des modifications ont donc été introduites en 2010 pour supprimer l'exception relative aux « remises aux professionnels ».

Les règlements d'application des deux lois ont également été modifiés pour empêcher les pharmacies de contrôler les fabricants qui vendent des médicaments génériques en leur propre nom sans les fabriquer eux-mêmes. Le législateur a créé à cette fin une catégorie appelée « produits sous marque de distributeur » qui englobe les produits vendus mais non fabriqués par un fabricant qui a un lien de dépendance avec des grossistes ou des pharmacies. Aux termes des règlements, les produits sous marque de distributeur ne peuvent être énumérés au Formulaire des médicaments ni être désignés comme étant interchangeables.

Sanis Health Inc., une filiale de Shoppers Drug Mart, a été constituée en personne morale par Shoppers en vue d'acheter des médicaments génériques de manufacturiers tiers et de les vendre sous la marque Sanis dans les magasins Shoppers Drug Mart. Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. et Pharmx Rexall

in Ontario and, like Shoppers, have taken steps to set up their own "private label" manufacturer. In 2010, Sanis applied to list several generic drugs in the Formulary and have them designated as "interchangeable". Its application was rejected, however, because those generic drugs were "private label products". Shoppers and Katz challenged the Regulations that banned the sale of private label products as being *ultra vires* on the grounds that they were inconsistent with the purpose and mandate of the statutes. The challenge succeeded in the Divisional Court. The Court of Appeal reversed the decision.

Drug Stores Ltd. exploitent elles aussi des pharmacies en Ontario et, à l'instar de Shoppers, ont entrepris des démarches en vue d'établir leur propre fabricant de médicaments génériques « sous marque de distributeur ». En 2010, Sanis a demandé que plusieurs médicaments génériques soient énumérés au Formulaire des médicaments et qu'ils soient désignés comme « interchangeables ». Sa demande a toutefois été rejetée parce que ces médicaments génériques étaient des « produits sous marque de distributeur ». Shoppers et Katz ont contesté les règlements interdisant la vente de produits sous marque de distributeur, les qualifiant d'*ultra vires* au motif qu'ils étaient incompatibles avec l'objet et le mandat de la loi. Elles ont obtenu gain de cause devant la Cour divisionnaire. La Cour d'appel a infirmé cette décision.

Held: The appeal should be dismissed.

A successful challenge to the *vires* of Regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate. Regulations benefit from a presumption of validity. This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations rather than on regulatory bodies to justify them; and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, where possible, the regulation is construed in a manner which renders it *intra vires*. Both the challenged regulation and the enabling statute should be interpreted using a broad and generous approach consistent with this Court's approach to statutory interpretation generally. This inquiry does not involve assessing the policy merits of the Regulations to determine whether they are necessary, wise or effective in practice. Nor is it an inquiry into the underlying political, economic, social or partisan considerations.

Arrêt : Le pourvoi est rejeté.

Pour contester avec succès la validité d'un règlement, il faut démontrer qu'il est incompatible avec l'objectif de sa loi habilitante ou avec le cadre du mandat prévu par la Loi. Les règlements jouissent d'une présomption de validité. Cette présomption comporte deux aspects : elle impose à celui qui conteste le règlement le fardeau de démontrer que celui-ci est invalide, plutôt que d'obliger l'organisme de réglementation à en justifier la validité; ensuite, la présomption favorise une méthode d'interprétation qui concilie le règlement avec sa loi habilitante de sorte que, dans la mesure du possible, le règlement puisse être interprété d'une manière qui le rend *intra vires*. Il convient de donner au règlement contesté et à sa loi habilitante une interprétation téléologique large compatible avec l'approche générale adoptée par la Cour en matière d'interprétation législative. Cette analyse ne comporte pas l'examen du bien-fondé du règlement pour déterminer s'il est nécessaire, sage et efficace dans la pratique. L'analyse ne s'attache pas aux considérations sous-jacentes d'ordre politique, économique ou social ni à la recherche, par les gouvernements, de leur propre intérêt.

In this case, the original legislative intent animating the two statutes was to control the cost of prescription drugs in Ontario without compromising safety. As the legislative history shows, attempts were made to promote transparent pricing and eliminate price inflation along the drug supply chain, all in pursuit of the ultimate objective of lowering drug costs. The purpose of the 2010 Regulations banning private label products was to prevent another possible mechanism for circumventing the ban on the rebates that had kept drug prices inflated. If pharmacies were permitted to create their own affiliated manufacturers whom they controlled, they would be

En l'espèce, l'intention du législateur à l'origine des deux lois était de contrôler le coût des médicaments délivrés sur ordonnance en Ontario sans en compromettre l'innocuité. Comme le démontre l'historique législatif, on a tenté de promouvoir des méthodes de fixation des prix transparentes et de contrer la flambée des prix le long de la chaîne d'approvisionnement des médicaments, le tout en vue d'atteindre l'objectif ultime de réduire le coût des médicaments. Les règlements de 2010 interdisant les produits sous marque de distributeur visaient à empêcher un autre mécanisme susceptible de contourner l'interdiction des rabais qui maintenaient les prix des médicaments

directly involved in setting the Formulary prices and have strong incentives to keep those prices high.

The 2010 private label Regulations contribute to the legislative pursuit of transparent drug pricing. They fit into this strategy by ensuring that pharmacies make money exclusively from providing professional health care services, instead of sharing in the revenues of drug manufacturers by setting up their own private label subsidiaries. The Regulations were therefore consistent with the statutory purpose of reducing drug costs.

Cases Cited

Referred to: *Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266; *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485; *Glykis v. Hydro-Québec*, 2004 SCC 60, [2004] 3 S.C.R. 285; *Jafari v. Canada (Minister of Employment and Immigration)*, [1995] 2 F.C. 595; *Ontario Federation of Anglers & Hunters v. Ontario (Ministry of Natural Resources)* (2002), 211 D.L.R. (4th) 741; *Thorne's Hardware Ltd. v. The Queen*, [1983] 1 S.C.R. 106; *CKOY Ltd. v. The Queen*, [1979] 1 S.C.R. 2; *Alaska Trainship Corp. v. Pacific Pilotage Authority*, [1981] 1 S.C.R. 261; *Re Doctors Hospital and Minister of Health* (1976), 12 O.R. (2d) 164; *Shell Canada Products Ltd. v. Vancouver (City)*, [1994] 1 S.C.R. 231; *Municipal Corporation of City of Toronto v. Virgo*, [1896] A.C. 88; *Forget v. Quebec (Attorney General)*, [1988] 2 S.C.R. 90.

Statutes and Regulations Cited

Drug Interchangeability and Dispensing Fee Act, R.S.O. 1990, c. P.23, ss. 12.1, 14(1), (8).

Food and Drug Regulations, C.R.C., c. 870.

Legislation Act, 2006, S.O. 2006, c. 21, Sch. F, ss. 64, 82.

O. Reg. 201/96, ss. 1, 1(6) [rep. & sub. O. Reg. 220/10, s. 1(1)], 12.0.2(1), (2) "private label product" [ad. O. Reg. 220/10, s. 3].

Ontario Drug Benefit Act, R.S.O. 1990, c. O.10, ss. 0.1, 1(1), 1.2(2)(a), 1.3, 11.5, 18(1), (6).

R.R.O. 1990, Reg. 935, ss. 2, 9(1), (2) "private label product" [ad. O. Reg. 221/10, s. 5].

Transparent Drug System for Patients Act, 2006, S.O. 2006, c. 14.

élevés. Si l'on permettait aux pharmacies de créer leurs propres fabricants affiliés et de les contrôler, elles participeraient directement à la fixation des prix affichés au Formulaire des médicaments, ce qui les inciterait fortement à maintenir des prix élevés.

Les règlements de 2010 relatifs aux produits sous marque de distributeur contribuent à l'atteinte de l'objectif législatif de transparence du prix des médicaments. Ils s'inscrivent dans cette stratégie en assurant que les pharmacies tirent leurs revenus exclusivement de la prestation de services professionnels de santé plutôt que de la part des revenus des fabricants qu'elles touchent en mettant sur pied des filiales qui offrent des médicaments sous leur propre marque. Les règlements étaient par conséquent conformes à l'objectif législatif consistant à réduire les prix des médicaments.

Jurisprudence

Arrêts mentionnés : *Waddell c. Governor in Council* (1983), 8 Admin. L.R. 266; *United Taxi Drivers' Fellowship of Southern Alberta c. Calgary (Ville)*, 2004 CSC 19, [2004] 1 R.C.S. 485; *Glykis c. Hydro-Québec*, 2004 CSC 60, [2004] 3 R.C.S. 285; *Jafari c. Canada (Ministre de l'Emploi et de l'Immigration)*, [1995] 2 C.F. 595; *Ontario Federation of Anglers & Hunters c. Ontario (Ministry of Natural Resources)* (2002), 211 D.L.R. (4th) 741; *Thorne's Hardware Ltd. c. La Reine*, [1983] 1 R.C.S. 106; *CKOY Ltd. c. La Reine*, [1979] 1 R.C.S. 2; *Alaska Trainship Corp. c. Administration de pilotage du Pacifique*, [1981] 1 R.C.S. 261; *Re Doctors Hospital and Minister of Health* (1976), 12 O.R. (2d) 164; *Produits Shell Canada Ltée c. Vancouver (Ville)*, [1994] 1 R.C.S. 231; *Municipal Corporation of City of Toronto c. Virgo*, [1896] A.C. 88; *Forget c. Québec (Procureur général)*, [1988] 2 R.C.S. 90.

Lois et règlements cités

Loi de 2006 sur la législation, L.O. 2006, ch. 21, ann. F, art. 64, 82.

Loi de 2006 sur un régime de médicaments transparent pour les patients, L.O. 2006, ch. 14.

Loi sur l'interchangeabilité des médicaments et les honoraires de préparation, L.R.O. 1990, ch. P.23, art. 12.1, 14(1), (8).

Loi sur le régime de médicaments de l'Ontario, L.R.O. 1990, ch. O.10, art. 0.1, 1(1), 1.2(2)a), 1.3, 11.5, 18(1), (6).

O. Reg. 201/96, art. 1, 1(6) [abr. & rempl. O. Reg. 220/10, art. 1(1)], 12.0.2(1), (2) « *private label product* » [aj. O. Reg. 220/10, art. 3].

R.R.O. 1990, règl. 935, art. 2, 9(1), (2) « *private label product* » [aj. O. Reg. 221/10, art. 5].

Règlement sur les aliments et drogues, C.R.C., ch. 870.

Authors Cited

Brown, Donald J. M., and John M. Evans, with the assistance of Christine E. Deacon. *Judicial Review of Administrative Action in Canada*, vol. 3. Toronto: Canvasback, 1998 (loose-leaf updated August 2012).

Canada. Competition Bureau. *Benefiting from Generic Drug Competition in Canada: The Way Forward*. Ottawa: The Bureau, 2008 (online: http://www.competitionbureau.gc.ca/eic/site/cb-bc.nsf/eng/03026.html).

Canadian Institute for Health Information. *National Health Expenditure Trends, 1975 to 2012*. Ottawa: The Institute, 2012 (online: https://secure.cihi.ca/free_products/NHEXTrendsReport2012EN.pdf).

Keyes, John Mark. *Executive Legislation*, 2nd ed. Markham, Ont.: LexisNexis, 2010.

Ontario. Legislative Assembly. *Hansard — Official Report of Debates*, No. 41, 1st Sess., 33rd Parl., November 7, 1985, p. 1446.

Ontario. Legislative Assembly. *Official Report of Debates (Hansard)*, Nos. 13, 19 and 23, 2nd Sess., 39th Parl., April 12, 21 and 28, 2010.

Organisation for Economic Co-operation and Development. *Health at a Glance 2009: OECD Indicators*. Paris: OECD, 2009 (online: http://www.oecd-ilibrary.org/social-issues-migration-health/health-at-a-glance-2009_health_glance-2009-en).

Régimbald, Guy. *Canadian Administrative Law*. Markham, Ont.: LexisNexis, 2008.

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 5th ed. Markham, Ont.: LexisNexis, 2008.

APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Epstein and Karakatsanis JJ.A.), 2011 ONCA 830, 109 O.R. (3d) 279, 286 O.A.C. 68, 345 D.L.R. (4th) 277, 37 Admin. L.R. (5th) 101, [2011] O.J. No. 5894 (QL), 2011 CarswellOnt 14816, setting aside a decision of Whalen, Molloy and Swinton JJ., 2011 ONSC 615, [2011] O.J. No. 480 (QL), 2011 CarswellOnt 720. Appeal dismissed.

Terrence J. O'Sullivan and *M. Paul Michell*, for the appellants Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. and Pharmx Rexall Drug Stores Ltd.

Mahmud Jamal, *Craig T. Lockwood*, *Eric Morgan* and *W. David Rankin*, for the appellants Shoppers Drug Mart Inc., Shoppers Drug Mart (London) Limited and Sanis Health Inc.

Doctrine et autres documents cités

Brown, Donald J. M., and John M. Evans, with the assistance of Christine E. Deacon. *Judicial Review of Administrative Action in Canada*, vol. 3. Toronto : Canvasback, 1998 (loose-leaf updated August 2012).

Canada. Bureau de la concurrence. *Pour une concurrence avantageuse des médicaments génériques au Canada : Préparons l'avenir*. Ottawa : Le Bureau, 2008 (en ligne : http://www.bureaudelaconcurrence.gc.ca/eic/site/cb-bc.nsf/fra/03026.html).

Institut canadien d'information sur la santé. *Tendances des dépenses nationales de santé, 1975 à 2012*. Ottawa : ICIS, 2012 (en ligne : https://secure.cihi.ca/free_products/NHEXTrendsReport2012FR.pdf).

Keyes, John Mark. *Executive Legislation*, 2nd ed. Markham, Ont. : LexisNexis, 2010.

Ontario. Assemblée législative. *Hansard — Official Report of Debates*, No. 41, 1st Sess., 33rd Parl., November 7, 1985, p. 1446.

Ontario. Assemblée législative. *Journal des débats (Hansard)*, nos 13, 19 et 23, 2e sess., 39e lég., 12, 21 et 28 avril 2010.

Organisation de coopération et de développement économiques. *Panorama de la santé 2009 : Les indicateurs de l'OCDE*. Paris : OCDE, 2009 (en ligne : http://www.oecd-ilibrary.org/social-issues-migration-health/panorama-de-la-sante-2009_health_glance-2009-fr).

Régimbald, Guy. *Canadian Administrative Law*. Markham, Ont. : LexisNexis, 2008.

Sullivan, Ruth. *Sullivan on the Construction of Statutes*, 5th ed. Markham, Ont. : LexisNexis, 2008.

POURVOI contre un arrêt de la Cour d'appel de l'Ontario (les juges MacPherson, Epstein et Karakatsanis), 2011 ONCA 830, 109 O.R. (3d) 279, 286 O.A.C. 68, 345 D.L.R. (4th) 277, 37 Admin. L.R. (5th) 101, [2011] O.J. No. 5894 (QL), 2011 CarswellOnt 14816, qui a infirmé une décision des juges Whalen, Molloy et Swinton, 2011 ONSC 615, [2011] O.J. No. 480 (QL), 2011 CarswellOnt 720. Pourvoi rejeté.

Terrence J. O'Sullivan et *M. Paul Michell*, pour les appelantes Katz Group Canada Inc., Pharma Plus Drug Marts Ltd. et Pharmx Rexall Drug Stores Ltd.

Mahmud Jamal, *Craig T. Lockwood*, *Eric Morgan* et *W. David Rankin*, pour les appelantes Shoppers Drug Mart Inc., Shoppers Drug Mart (London) Limited et Sanis Health Inc.

Lise G. Favreau, Kim Twohig and *Kristin Smith*, for the respondents.

The judgment of the Court was delivered by

[1] ABELLA J. — Canada spends more on prescription drugs per capita than almost all members of the Organisation for Economic Co-operation and Development.[1] Prescription drugs are the second largest area of health care spending.[2] Drug costs accounted for approximately 9.5% of government health care expenses in 1985. By 2010, that number had risen to 15.9%.[3]

[2] A key part of the strategy for controlling drug costs has been to replace brand-name drugs with generic drugs, in the expectation that generic drugs would be significantly cheaper. Those expectations were, however, challenged by persistent market practices that kept generic prices high. In Ontario, the result has been an episodic tug-of-war between regulators and those engaged in the manufacture, distribution and sale of generic drugs. This appeal arises out of one of those regulatory episodes.

Background

[3] The sale and pricing of generic drugs is provincially regulated. In Ontario, two complementary and intersecting statutes were introduced together in 1985 to address the problem of rising drug prices: the *Drug Interchangeability and*

1 *Health at a Glance 2009: OECD Indicators* (2009) (online), at p. 167.

2 Competition Bureau of Canada, *Benefiting from Generic Drug Competition in Canada: The Way Forward* (2008) (online), at p. 7.

3 Canadian Institute for Health Information, *National Health Expenditure Trends, 1975 to 2012* (2012), at p. 21.

Lise G. Favreau, Kim Twohig et *Kristin Smith*, pour les intimés.

Version française du jugement de la Cour rendu par

[1] LA JUGE ABELLA — Le Canada dépense davantage par habitant pour les médicaments délivrés sur ordonnance que presque tous les autres pays membres de l'Organisation de coopération et de développement économiques[1]. Les produits pharmaceutiques vendus sur ordonnance sont, en importance, la deuxième composante du coût des soins de santé[2]. En 1985, le coût des médicaments représentait environ 9,5 p. 100 du total des dépenses de santé du gouvernement. En 2010, cette proportion avait grimpé à 15,9 p. 100[3].

[2] Un élément clé de la stratégie de contrôle du coût des médicaments a consisté à remplacer les médicaments de marque par des médicaments génériques dans l'espoir que ces derniers soient beaucoup moins coûteux. Ces espoirs se sont toutefois estompés en raison de pratiques commerciales persistantes qui ont maintenu les prix des médicaments génériques à des niveaux élevés. En Ontario, on a ainsi assisté à des affrontements épisodiques entre les organismes de réglementation et les entreprises chargées de la fabrication, de la distribution et de la vente des médicaments génériques. Le présent pourvoi découle de l'un de ces épisodes conflictuels en matière de réglementation.

Contexte

[3] La vente et la fixation des prix des médicaments génériques sont réglementées par les provinces. En Ontario, deux lois qui se complètent et se recoupent ont été adoptées ensemble en 1985 afin de remédier au problème de la hausse des prix

1 *Panorama de la santé 2009 : Les indicateurs de l'OCDE* (2009) (en ligne), p. 167.

2 Bureau de la concurrence du Canada. *Pour une concurrence avantageuse des médicaments génériques au Canada : Préparons l'avenir* (2008) (en ligne), p. 7.

3 Institut canadien d'information sur la santé, *Tendances des dépenses nationales de santé, 1975 à 2012* (2012), p. 23.

Analysis

[24] A successful challenge to the *vires* of regulations requires that they be shown to be inconsistent with the objective of the enabling statute or the scope of the statutory mandate (Guy Régimbald, *Canadian Administrative Law* (2008), at p. 132). This was succinctly explained by Lysyk J.:

> In determining whether impugned subordinate legislation has been enacted in conformity with the terms of the parent statutory provision, it is essential to ascertain the scope of the mandate conferred by Parliament, having regard to the purpose(s) or objects(s) of the enactment as a whole. The test of conformity with the Act is not satisfied merely by showing that the delegate stayed within the literal (and often broad) terminology of the enabling provision when making subordinate legislation. The power-conferring language must be taken to be qualified by the overriding requirement that the subordinate legislation accord with the purposes and objects of the parent enactment read as a whole.

(*Waddell v. Governor in Council* (1983), 8 Admin. L.R. 266, at p. 292)

[25] Regulations benefit from a presumption of validity (Ruth Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at p. 458). This presumption has two aspects: it places the burden on challengers to demonstrate the invalidity of regulations, rather than on regulatory bodies to justify them (John Mark Keyes, *Executive Legislation* (2nd ed. 2010), at pp. 544-50); and it favours an interpretative approach that reconciles the regulation with its enabling statute so that, *where possible*, the regulation is construed in a manner which renders it *intra vires* (Donald J. M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, vol. 3 (loose-leaf), at 15:3200 and 15:3230).

[26] Both the challenged regulation and the enabling statute should be interpreted using a "broad and purposive approach . . . consistent with this Court's approach to statutory interpretation generally" (*United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, 2004 SCC 19, [2004] 1 S.C.R. 485, at para. 8; see also Brown and Evans, at 13:1310; Keyes, at pp. 95-97; *Glykis v.*

Analyse

[24] Pour contester avec succès la validité d'un règlement, il faut démontrer qu'il est incompatible avec l'objectif de sa loi habilitante ou encore qu'il déborde le cadre du mandat prévu par la Loi (Guy Régimbald, *Canadian Administrative Law* (2008), p. 132). Ainsi que le juge Lysyk l'a expliqué de manière succincte :

> [TRADUCTION] Pour déterminer si le texte législatif subordonné contesté est conforme aux exigences de la loi habilitante, il est essentiel de cerner la portée du mandat conféré par le législateur en ce qui a trait à l'intention ou à l'objet de la loi dans son ensemble. Le simple fait de démontrer que le délégataire a respecté littéralement le libellé (souvent vague) de la loi habilitante lorsqu'il a pris le texte législatif subordonné n'est pas suffisant pour satisfaire au critère de la conformité à la loi. Le libellé de la disposition habilitante doit être interprété comme comportant l'exigence primordiale selon laquelle le texte législatif subordonné doit respecter l'intention et l'objet de la loi habilitante prise dans son ensemble.

(*Waddell c. Governor in Council* (1983), 8 Admin. L.R. 266, p. 292)

[25] Les règlements jouissent d'une présomption de validité (Ruth Sullivan, *Sullivan on the Construction of Statutes* (5e éd. 2008), p. 458). Cette présomption comporte deux aspects : elle impose à celui qui conteste le règlement le fardeau de démontrer que celui-ci est invalide, plutôt que d'obliger l'organisme réglementaire à en justifier la validité (John Mark Keyes, *Executive Legislation* (2e éd. 2010), p. 544-550); ensuite, la présomption favorise une méthode d'interprétation qui concilie le règlement avec sa loi habilitante de sorte que, *dans la mesure du possible*, le règlement puisse être interprété d'une manière qui le rend *intra vires* (Donald J. M. Brown et John M. Evans, *Judicial Review of Administrative Action in Canada*, vol. 3 (feuilles mobiles), 15:3200 et 15:3230).

[26] Il convient de donner au règlement contesté et à sa loi habilitante une « interprétation téléologique large [. . .] compatible avec l'approche générale adoptée par la Cour en matière d'interprétation législative » (*United Taxi Drivers' Fellowship of Southern Alberta c. Calgary (Ville)*, 2004 CSC 19, [2004] 1 R.C.S. 485, par. 8; voir également Brown et Evans, 13:1310; Keyes, p. 95-97; *Glykis c.*

TAB 19

Profit Definition

By WILL KENTON
Reviewed by BRIAN BARNIER on July 21, 2020

What Is Profit?

Profit describes the financial benefit realized when revenue generated from a business activity exceeds the expenses, costs, and taxes involved in sustaining the activity in question. Any profits earned funnel back to business owners, who choose to either pocket the cash or reinvest it back into the business. Profit is calculated as total revenue less total expenses.

Profit

What Does Profit Tell You?

Profit is the money a business pulls in after accounting for all expenses. Whether it's a lemonade stand or a publicly-traded multinational company, the primary goal of any business is to earn money, therefore a business performance is based on profitability, in its various forms.

Some analysts are interested in top-line profitability, whereas others are interested in profitability before taxes and other expenses. Still others are only concerned with profitability after all expenses have been paid.

The three major types of profit are gross profit, operating profit, and net profit--all of which can be found on the income statement. Each profit type gives analysts more information about a company's performance, especially when it's compared to other competitors and time periods.

Gross, Operating, and Net Profit

The first level of profitability is gross profit, which is sales minus the cost of goods sold. Sales are the first line item on the income statement, and the cost of goods sold (COGS) is generally listed just below it. For example, if Company A has $100,000 in sales and a COGS of $60,000, it means the gross profit is $40,000, or $100,000 minus $60,000. Divide gross profit by sales for the gross profit margin, which is 40%, or $40,000 divided by $100,000.

The second level of profitability is operating profit, which is calculated by deducting operating expenses from gross profit. Gross profit looks at profitability after direct expenses, and operating profit looks at profitability after operating expenses. These are things like selling, general, and administrative costs (SG&A). If Company A has $20,000 in operating expenses, the operating profit is $40,000 minus $20,000, equaling $20,000. Divide operating profit by sales for the operating profit margin, which is 20%.

The third level of profitably is net profit, which is the income left over after all expenses, including taxes and interest, have been paid. If interest is $5,000 and taxes are another $5,000, net profit is calculated by deducting both of these from operating profit. In the example of Company A, the answer is $20,000 minus $10,000, which equals $10,000. Divide net profit by sales for the net profit margin, which is 10%.

Related Terms

TAB 20

THE LAW OF TRUSTS

Eileen E. Gillese

ESSENTIALS OF CANADIAN LAW

THE LAW OF TRUSTS

THIRD EDITION

ESSENTIALS OF
CANADIAN LAW

THE LAW OF TRUSTS

THIRD EDITION

EILEEN E. GILLESE
Court of Appeal for Ontario

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SUMMARY TABLE OF CONTENTS

belonging to another (the beneficiary). The legal effect of this intensity is that the trustee will be held to the highest fiduciary standards.

A fiduciary's obligation is rooted in the duty of loyalty. This duty translates into an obligation to act strictly in the best interests of the other.[9] The duty to act strictly in the best interests of the other has, in turn, been understood to mean that a fiduciary may not permit his or her personal interests to conflict with the responsibilities of the fiduciary office; may not make unauthorized profits; may not delegate fiduciary responsibilities; must keep proper accounts; and must act honestly, with due diligence, and with the utmost candour.

The concept of when a fiduciary relationship may arise has expanded greatly in recent years. Thus, it is important to recognize not only the established categories of fiduciaries but also the non-traditional relationships that courts are treating as fiduciary in nature. The categories of fiduciary relationships are not closed. What is required in all cases is an undertaking by a person, either express or implied, to act in accordance with the duty of loyalty reposed in him or her.[10] In determining whether such an undertaking has been given, the courts will consider such matters as professional norms, industry or other common practices, and whether the alleged fiduciary induced the other party into relying on the fiduciary's duty of loyalty.[11]

Importantly, fiduciary duties do not arise in a vacuum but are linked to the legal interests at stake and the relationship at issue. Thus, "the nature and scope of the fiduciary duty must be assessed in the legal framework governing the relationship out of which the fiduciary duty arises," and the type of obligation imposed may vary depending on the relationship.[12] Because fiduciary duties are so demanding, these duties will only be imposed on those who have expressly or impliedly undertaken them.[13]

One difference between the trustee-beneficiary relationship and other types of fiduciary relationships is that a trust relationship cannot exist without trust property. In contrast, many fiduciary relationships exist without property.

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9 See *Lac Minerals Ltd v International Corona Resources Ltd*, [1989] 2 SCR 574 at 646–47.

10 *Galambos*, above note 8 at para 75.

11 *Ibid.*

12 *Sun Indalex Finance, LLC v United Steelworkers*, 2013 SCC 6 at paras 185–86. See also *Sharbern Holding Inc v Vancouver Airport Centre Ltd*, 2011 SCC 23 at para 141, and *KLB v British Columbia*, 2003 SCC 51 at para 41.

13 See *Galambos*, above note 8 at para 71.

2) Agency

An agency relationship arises when one person, called an agent, has express or implied authority to act on behalf of another person, called the principal. The obligations of an agent to its principal are similar to the obligations of a trustee to its beneficiary. The similar obligations are the result of both being fiduciary relationships. One should be aware of the fine distinctions that separate a relationship from being either an agency or a trust, because the distinction results in serious legal consequences.

The first distinction between the two concepts is that the agency relationship is personal, as between principal and agent, while the trust relationship is proprietary in nature. Thus, the agent-principal relationship is generally treated as debtor-creditor, while the beneficiary is, in substance, treated as the owner of the property in the trustee-beneficiary relationship.

Second, agents generally do not have title to property, while the trustee must have title to the trust property.

Third, an agent acts on behalf of, and subject to the control of, the principal. In contrast, a trustee is not subject to direction or control by the beneficiaries, beyond the obligation to deal with the trust property in accordance with trust duties.[14] This distinction holds even where all the beneficiaries are *sui juris* and unanimous in their desire to replace the current trustee with a trustee of their choosing; no beneficiary can interfere with the exercise of the trustee's fiduciary powers in the administration of the trust. The beneficiaries may, in certain circumstances, band together and end the trust,[15] or sue to compel the due performance of the trust, but that is the extent to which they can control the trustee.

Finally, agency arises by agreement between the parties. No one can force another to become a trustee against his or her will; or, as the saying has it, "You cannot thrust a trust." However, the trust may be created without agreement between the trustee and the beneficiaries. In addition, once a trust is constituted, it may not be revoked by the settlor unless there is an express power of revocation, whereas the principal can normally end the agency relationship at will. An agency relationship normally terminates by the death or at the wish of either party, while a trust is not terminated by the death or wish of the trustee, beneficiaries, or settlor.

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14 *Re Brockbank*, [1948] Ch 206.

15 *Saunders v Vautier* (1841), 4 Beav 115, 49 ER 282, aff'd (1841), 1 Cr & Ph 240, 41 ER 482 (Ch). This right has been abolished by legislation in Alberta and Manitoba, as discussed in Chapter 5.

The consequences of finding an agency relationship rather than a trust can be critical. The most important consequence arises when the agent is insolvent: unless the agent has agreed to keep the subject property separate from her own, the principal is entitled only to an accounting by the agent and cannot claim any special right to specific property or its proceeds. As a result, the principal will rank as a general creditor. In contrast, a trust beneficiary has a proprietary right to the trust assets, or the proceeds from the trust assets and the profits thereon, a right that ranks above those of all creditors.

3) Contracts

A contract is a legally binding agreement, or bargain, between two people. Consideration must flow between the parties, and an intention to create legal relations must be found to exist. Trusts and contracts may exist simultaneously. For instance, contractual rights may be the subject matter of a trust; a contract may create a trust; or a trust may arise by operation of law to support a contract. Trusts and contracts are, however, fundamentally different.

In the first place, a contract is based on agreement or on an exchange of promises, with each party accepting obligations; consideration (or a seal in lieu thereof) is essential to the formation of a contract. In contrast, the trust may be created without the agreement of any of the parties and with an absence of consideration. Second, property must be transferred to the trustee, whereas a contract need not involve the transfer of property.

Finally, the common law privity of contract rule prevents any person who is not a party to the contract from suing to enforce it. Equity, however, enables the trust beneficiary to sue to enforce the trust, regardless of whether the beneficiary is a party to the trust agreement.

4) Debt

A debt exists when one person is under a personal obligation to pay money to another. Unlike a trustee, a debtor is not a fiduciary. A creditor has no interest, legal or equitable, in the property of the debtor. There is simply a personal obligation on the debtor to repay the debt when it is due. The trust beneficiary, on the other hand, has a beneficial proprietary interest in the trust property.

A debt is created by agreement, and the parties may compromise, alter, or extinguish the debt by further agreement. In contrast, there need be no agreement to create a trust. Further, there can be no bargaining

TAB 21

2

THE LEGISLATIVE ASSEMBLY OF MANITOBA
8:00 o'clock, Wednesday, August 12, 1970

Opening Prayer by Mr. Speaker.

MR. SPEAKER: Presenting Petitions; Reading and Receiving Petitions; Presenting Reports by Standing and Special Committees; Notices of Motion; Introduction of Bills; Orders of the Day.

The Honourable House Leader.

HON. SIDNEY GREEN, Q.C. (Minister of Mines and Natural Resources)(Inkster): Mr. Speaker, I move, seconded by the Honourable Minister for Cultural Affairs, that Mr. Speaker do now leave the Chair and the House resolve itself into a Committee of the Whole to consider the following bill, No. 56, The Automobile Insurance Act.

MR. SPEAKER presented the motion and after a voice vote declared the motion carried, and the House resolved itself into Committee of the Whole, with the Honourable Member for Elmwood in the Chair.

COMMITTEE OF THE WHOLE HOUSE

MR. CHAIRMAN: We're dealing with the proposed Section (r) as amended. The Honourable Member for Souris-Killarney.

MR. EARL McKELLAR (Souris-Killarney): Mr. Chairman, speaking before the adjournment, I'm greatly concerned about this, and I want to ask the Minister now, are you going to have separate licenses for people selling license plates and government automobile insurance? If you're not, I'm going to make an amendment. This is about all I have to say, because I know that many - I mentioned before, the licenses we buy now are licenses that permit you to sell, fire, miscellaneous coverage and hail; and if miscellaneous coverage is going to mean a license is required for the sale of license plates and government automobile insurance, I would like to know now, otherwise I'll make an amendment to this particular motion.

HON. HOWARD R. PAWLEY (Minister of Municipal Affairs)(Selkirk): Mr. Chairman, I thought, but I guess I done a poor job of it in explaining this clause just before the adjournment at 5:30. It may be that the wording should be clarified in respect to this clause, but the intention is that the term of reference should deal with the feasibility of the sale or resale of agents' licenses and this reference is to the type of license that was referred to in the First Minister's address last week. Licenses that would be issued in order that agents could issue the basic insurance program could handle it on the fee basis, as indicated in the Minister's address. Now, I think what the Member for Souris-Killarney is concerned about is that when we say agents' licenses that we are thinking in terms of the general insurance license. That is not the intention and I would be prepared to give thought here at this moment with my colleagues to changing that wording to make it more palatable.

MR. JAMES H. BILTON (Swan River): Mr. Chairman, may I be permitted to ask the Minister a question?

MR. CHAIRMAN: The Honourable Member for Swan River.

MR. BILTON: Under these new regulations, in Swan River we have a widow that has been in the past selling license plates. Does she lose her job, an appointment made for that locality in the selling of insurance and also license plates? Is she eliminated?

MR. CHAIRMAN: The Honourable First Minister.

HON. ED SCHREYER (Premier) (Rossmere): Mr. Chairman, may I say to the Honourable Member for Swan River that there may be such circumstances but I would also remind him about the circumstances, for example, which surrounded the change in motor vehicle license plate issuing arrangement in places like Roblin and Neepawa which paralleled somewhat the circumstance which he alludes to; nevertheless some changes were made. This is something which in the normal course one makes an effort to avoid but there can be no way of guaranteeing now that there may not have to be some such changes.

MR. BILTON: . . . the First Minister if this good lady loses this job she's a welfare case.

MR. SCHREYER: Well, Mr. Chairman, may I point out to my honourable friend that in the case of the motor vehicle license plate issuing agency in Roblin, Manitoba, for example, that the authority was taken away from one person back in 1960 and given to someone else; and in fact the person who had been the license plate issuing person deceased in a matter of months

(MR. CHERNIACK cont'd) . . . . . would, because the very regulation that we dealt with and just passed, that's regulation (r), involves a very quick action of dealing with the setting up of the advisory committee and its terms of reference, it would simply cripple it and that surely is not the intention of the Liberal Party, if indeed, and I don't question that the Honourable Member for Ste. Rose meant what he said, and that was to make it possible to work within the bill, if indeed it passes.

MR. G. JOHNSTON: Mr. Chairman, 29(1) the first sentence says: "The Lieutenant Governor in Council may make regulations establishing, amending, revoking such plans, etc." Our amendment says "provided, however, that any regulations passed under the clause shall not take effect unless and until said regulations are tabled and considered in the Legislature."

MR. SCHREYER: Well, Mr. Chairman, really the point that is under consideration and perhaps requires further clarification is that if it is the concern of the Honourable Member for Portage la Prairie that regulations under this bill, that have in any way to do with the universal compulsory auto insurance plan and its operation, that they will somehow go into effect before June 30th, I can not only assure him now, I can tell him now that right in Statute there will be a provision that those sections of the bill and of the entire universal compulsory auto insurance plan itself will not go into effect until after June 30th, therefore no regulations pertaining thereto can go into effect.

If that is the wish of the Honourable Member from Portage la Prairie, then there is no disagreement, but certainly the amendment as it's worded is not acceptable because it would have the effect of simply making it impossible to establish the advisory board and other matters that do not have to do with the operation of a universal compulsory auto insurance plan. I sense it's frustrating, Mr. Chairman, because if I understand the honourable member correctly, there is no substantive point of disagreement; but the amendment doesn't have that effect and can be dealt with as effectively, if not more, by the proclamation section and specifying the date therein.

MR. CHAIRMAN: The Honourable Member for Birtle-Russell.

MR. HARRY E. GRAHAM (Birtle-Russell): Mr. Chairman, on a point of order. I believe there might be a little bit of confusion on the amendment of the Leader of the Liberal Party, and I would suggest that it could possibly be cleared up if the word "operative" was placed in front of the regulations and this would then clarify the intent of the Leader of the Liberal party. This is just a suggestion.

MR. CHAIRMAN put the question on the proposed motion and after a voice vote declared the motion lost.

MR. G. JOHNSTON: Ayes and Nays, Mr. Chairman.

MR. CHAIRMAN: Ayes and Nays? Call in the members. On the proposed motion of the Honourable House Leader of the Liberal Party.

A COUNTED VOTE was taken, the result being as follows: Yeas 27; Nays 28.

MR. CHAIRMAN: I declare the motion lost. 29 (1)--passed; 29(2). . . The Member for St. Boniface.

PERSONAL STATEMENT

MR. LAURENT L. DESJARDINS (St. Boniface): I would like to make a short statement on a question of personal privilege. For eleven years I have discharged my responsibility in this House to the best of my ability and as honestly as possible. I have never ducked an issue, never asked for mercy for myself, and fought my own battles. Once again at this time members of my family are being subjected to filthy calls and threats. To put an end to this, I wish to inform the House that I will continue to accept my responsibility until shortly after the end of the session, at which time it is my intention as resign as the Member for St. Boniface. Yes, it is tough.

MR. CHAIRMAN: Order! The Member for Swan River.

MR. BILTON: Mr. Chairman, on a point of order. I think it is regrettable that we have to have that message from the Honourable Member for St. Boniface. I don't think there is any member of this House would wish that his family would have been disturbed. I think it's a most regrettable incident and on behalf of our party, I think it's very unfortunate. (Hear, Hear)

MR. CHAIRMAN: The Honourable First Minister.

MR. SCHREYER: Mr. Chairman, it is very rare, if ever it has happened that a point of personal privilege and personal statement of that kind has ever been read in a parliament. I can only imagine the circumstances which have led up to it. I feel a sense of deep personal regret that this has come about. However, I'm confident that the Honourable Member who has made the statement, has made it on the basis of his own considered judgment and out of a feeling of personal conviction. I have yet, I hold out the hope that the Honourable Member may see fit to reconsider, but I am sure that in this, as in all other things, he will ultimately make the decision for himself.

MR. CHAIRMAN: The Honourable Member for Ste. Rose.

MR. GILDAS MOLGAT (Ste. Rose): Mr. Chairman, as one who sat in caucus with the Member for St. Boniface for many years, I have to admit that during the time we sat as colleagues in caucus, we didn't always agree, that's the way of life in politics, and I have not always agreed with the Honourable Member in the past two sessions of this House. That hasn't changed my personal relationship towards the Member for St. Boniface. I've always respected the right of any individual to act according to his own views of what should be done at the time. I think it's very regrettable that some people who are not in this House at times don't understand that the arguments and the debates that go on here, while they may be very serious to us and they are felt sincerely by the members who speak here, they don't usually reach to the individuals, they are really between views, and policies. It's unfortunate that some people then outside don't understand this and proceed to make phone calls and I suppose all of us at times have been subject to this.

I would hope that the statement that's been made tonight would deter any persons from doing this, will recognize that the members who are sent here really don't benefit personally by being here, that the 57 people who are here, could very well for their own advantage be elsewhere. We may make mistakes, we may not always do exactly as we should; we may make errors in judgment, but I think that we do them in the light of what we believe as individuals and it would be unfortunate if members did not feel they could continue to do that, because of statements that might be made outside or phone calls that might be received and the sort of problems that can arise. I would hope, I say this again, not that I necessarily agree with the stand that the Member for St. Boniface has taken, but I respect his right to take the stands he takes, I would hope that he would not take a course of action based on some phone calls from misguided people but do what in the long run is the best thing for his constituents and for the province.

BILL 56 (Cont'd)

MR. CHAIRMAN: Proceeding with the bill. Section 29 (1)--passed; Section 29(2)--passed; Section 29 (3) as amended -- passed. Section 30 . . . The Honourable Member for River Heights.

MR. SIDNEY SPIVAK Q.C. (River Heights): Mr. Chairman, I move, seconded by the Honourable Member for Lakeside that Bill 56 be amended by adding thereto immediately after subsection (3) of Section 29, the following subsections 29 (4) rates for automobile insurance supplied by the corporation shall be approved by the Public Utilities Board; 29 (5) on any application for an increase or decrease in rates, or for any variation of such rates, the Public Utilities Board on such application, shall in fixing a rate or rates, take into consideration, among other relevant factors, (a) the amount required to provide sufficient monies to cover operating, maintenance and claimant expense, the interest and expenses on debt incurred for the purposes of the corporation by the government; (c) interest on debt incurred by the corporation; (d) reserves for replacement, renewal and obsolescence or works of the corporation; (e) such other reserves as are necessary for the maintenance, operation and replacement or works of the corporation, (f) and such other payments as are required to be made out of the revenue.

MR. CHAIRMAN presented the motion. The Honourable Member for River Heights.

MR. SPIVAK: Mr. Chairman, the amendment in the main follows the wording in The Telephone Act where approval of rates by the Public Utility Board, and considerations to be observed by the Board are included, and I refer you to the Telephone Act, Sections 39(1) and 39(2).

Mr. Chairman, it's not my intention to speak at any length on this, simply to make one observation. I have in front of me the hearings on the Manitoba Hydro rates before the Public

TAB 22

2

Third Session - Thirty-Eighth Legislature

of the

Legislative Assembly of Manitoba

DEBATES
and
PROCEEDINGS

Official Report
(Hansard)

Published under the
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The Honourable George Hickes
Speaker

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MANITOBA LEGISLATIVE ASSEMBLY
Thirty-Eighth Legislature

Member	Constituency	Political Affiliation
AGLUGUB, Cris	The Maples	N.D.P.
ALLAN, Nancy, Hon.	St. Vital	N.D.P.
ALTEMEYER, Rob	Wolseley	N.D.P.
ASHTON, Steve, Hon.	Thompson	N.D.P.
BJORNSON, Peter, Hon.	Gimli	N.D.P.
BRICK, Marilyn	St. Norbert	N.D.P.
CALDWELL, Drew	Brandon East	N.D.P.
CHOMIAK, Dave, Hon.	Kildonan	N.D.P.
CULLEN, Cliff	Turtle Mountain	P.C.
CUMMINGS, Glen	Ste. Rose	P.C.
DERKACH, Leonard	Russell	P.C.
DEWAR, Gregory	Selkirk	N.D.P.
DOER, Gary, Hon.	Concordia	N.D.P.
DRIEDGER, Myrna	Charleswood	P.C.
DYCK, Peter	Pembina	P.C.
EICHLER, Ralph	Lakeside	P.C.
FAURSCHOU, David	Portage la Prairie	P.C.
GERRARD, Jon, Hon.	River Heights	Lib.
GOERTZEN, Kelvin	Steinbach	P.C.
HAWRANIK, Gerald	Lac du Bonnet	P.C.
HICKES, George, Hon.	Point Douglas	N.D.P.
IRVIN-ROSS, Kerri	Fort Garry	N.D.P.
JENNISSEN, Gerard	Flin Flon	N.D.P.
JHA, Bidhu	Radisson	N.D.P.
KORZENIOWSKI, Bonnie	St. James	N.D.P.
LAMOUREUX, Kevin	Inkster	Lib.
LATHLIN, Oscar, Hon.	The Pas	N.D.P.
LEMIEUX, Ron, Hon.	La Verendrye	N.D.P.
LOEWEN, John	Fort Whyte	P.C.
MACKINTOSH, Gord, Hon.	St. Johns	N.D.P.
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MALOWAY, Jim	Elmwood	N.D.P.
MARTINDALE, Doug	Burrows	N.D.P.
McGIFFORD, Diane, Hon.	Lord Roberts	N.D.P.
MELNICK, Christine, Hon.	Riel	N.D.P.
MITCHELSON, Bonnie	River East	P.C.
MURRAY, Stuart	Kirkfield Park	P.C.
NEVAKSHONOFF, Tom	Interlake	N.D.P.
OSWALD, Theresa, Hon.	Seine River	N.D.P.
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SMITH, Scott, Hon.	Brandon West	N.D.P.
STEFANSON, Heather	Tuxedo	P.C.
STRUTHERS, Stan, Hon.	Dauphin-Roblin	N.D.P.
SWAN, Andrew	Minto	N.D.P.
TAILLIEU, Mavis	Morris	P.C.
WOWCHUK, Rosann, Hon.	Swan River	N.D.P.

LEGISLATIVE ASSEMBLY OF MANITOBA

Thursday, June 2, 2005

The House met at 1:30 p.m.

ROUTINE PROCEEDINGS

PETITIONS

Ambulance Service

Mr. Ron Schuler (Springfield): I wish to present the following petition to the Legislative Assembly of Manitoba.

These are the reasons for this petition:

In May 2004, 46-year-old Peter Krahn suffered a heart attack while exercising in East St. Paul and was pronounced dead just under an hour later after being transported to the Concordia Hospital in Winnipeg. Reports show that it took nearly 18 minutes for an ambulance to arrive for Mr. Krahn.

The Interlake Regional Health Authority claims that 21 minutes is an acceptable emergency response time, whereas the City of Winnipeg uses a benchmark of 4 minutes.

Ambulance coverage for East St. Paul is provided from Selkirk, which is almost 25 kilometres away.

The municipalities of East St. Paul and West St. Paul combined have over 12 000 residents.

We petition the Legislative Assembly of Manitoba as follows:

To request the provincial government to consider providing East St. Paul with local ambulance service which would service both East and West St. Paul.

To request the provincial government to consider improving the way that ambulance service is supplied to all Manitobans by utilizing technologies such as GPS in conjunction with a Medical Transportation Co-ordination Centre (MTCC) which will ensure that patients receive the nearest ambulance in the least amount of time.

To request the provincial government to consider ensuring that appropriate funding is provided to maintain superior response times and sustainable services.

Signed by Monique Rempel, Bernie Rempel, Helen Rempel and many, many others.

Mr. Speaker: In accordance with our Rule 132(6), when petitions are read they are deemed to be received by the House.

Fort Garry Hotel

Mr. Denis Rocan (Carman): I wish to present the following petition to the Legislative Assembly of Manitoba.

The background of this petition is as follows:

In 1987 the City of Winnipeg seized the Fort Garry Hotel from its owner, Harvard Investments Limited, a family-owned Manitoba corporation, in what has been characterized as a miscarriage of justice.

Due to deliberate actions of the City of Winnipeg, errors by the Municipal Board of Manitoba and a lack of clarity in provincial legislation, Harvard was denied the due process and natural justice that are fundamental to the property tax assessment and appeal process in Manitoba.

As a result, the company was unfairly burdened with a grossly excessive assessment and tax bill that in turn precipitated a tax sale and mortgage foreclosure, effectively bankrupted the company and caused Harvard's shareholders to be dispossessed of their business and property.

The background to this petition was outlined more fully in a grievance presented to this Assembly by the honourable Member for Carman (Mr. Rocan) on May 18, 2005.

We petition the Legislative Assembly of Manitoba as follows:

To request the Minister of Intergovernmental Affairs and Trade (Mr. Smith) to consider

Mr. Speaker: The question before the House is Bill 8, The Manitoba Council on Aging Act.

Is it the pleasure of the House to adopt the motion? Agreed? *[Agreed]*

Bill 39–The Investment Trust Unitholders' Protection Act

Mr. Speaker: Now I will call Bill 39, The Investment Trust Unitholders' Protection Act, standing in the name of the honourable Member for Fort Whyte. What is the will of the House? Is it– okay, the honourable Member for Fort Whyte.

Mr. John Loewen (Fort Whyte): Mr. Speaker, I do want to put a few words on the record regarding this bill, and I do think it is important that the legislation get updated to reflect the fact that there has been a relatively new form of financing introduced in the last few years. Obviously, the legislation is a little late. I think it could have come much earlier than this, but the issue about financing companies through income trust is obviously growing and needs to be looked at in terms of our responsibility as legislators. I am just pleased to see that this bill will go to committee so that we can get some more information from the world of finance regarding this bill. Thanks.

Mr. David Faurschou (Portage la Prairie): I rise in support of Bill 39, in regard to the updating, through definition, the new vehicle of investment and to protect those individuals that will see monies from this type of trust fund. I also believe that it is timely to see this bill through to committee and I look forward to hearing from the public at that time. Thank you very much.

Mr. Speaker: Is the House ready for the question?

Some Honourable Members: Question.

Mr. Speaker: The question before the House is Bill 39, The Investment Trust Unitholders' Protection Act.

Is it the pleasure of the House to adopt the motion? Agreed? *[Agreed]*

Bill 41–The Drivers and Vehicles Act and The Highway Traffic Amendment Act

Mr. Speaker: Bill 41, The Drivers and Vehicles Act and The Highway Traffic Amendment Act, standing in the name of the honourable Member for Pembina (Mr. Dyck).

What is the will of the House? Stand? What is the will of the House, standing in the name of the honourable Member for Pembina?

Some Honourable Members: No.

Mr. Speaker: It has been denied.

Mr. Larry Maguire (Arthur-Virden): Mr. Speaker, it is my privilege here to be able to put a few words into the record in regard to Bill 41, The Drivers and Vehicles Act and The Highway Traffic Amendment Act. The government has brought this bill forward with the intention of moving The Drivers and Vehicles Amendment Act over to the Manitoba Public Insurance Corporation and moving the licensing processes for those areas into the jurisdiction of The Manitoba Public Insurance Corporation Act.

Mr. Speaker, I believe that, while there are some concerns, there are a number of new statutes that govern the administration of the programs and services that Manitoba Public Insurance will offer dealing with driver licensing, vehicle registration, driver and vehicle information registries, driver improvement and control, the medical records, drug and alcohol programs, vehicle dealers, sales persons and recyclers, driver training schools and instructors and motor vehicle inspection stations and qualified mechanics, just to name the ones that have talked to us when we had the discussion with the minister on this particular bill.

Of course, there are standards that are settings and the public policy principles which establish the legal framework for within which the driver licensing and vehicle registration programs operate that will remain under the direct responsibility of the government through the Department of Transportation and Government Services. There are some principles that are categorized in that area, as well, Mr. Speaker, but there are two schedules referred to, Schedule A, The Drivers and Vehicles Amendment Act, as well as Schedule B, The Highway Traffic Amendment Act. This bill allows the government to deal with issues of fines and levies in those areas, charges for services, and there are a number of those areas that I have concerns with as we move across in regard to some of the accountability issues.

* (15:40)

But I think one of the areas that I know we need to monitor as well, Mr. Speaker, is that this government indicates that it has been able to hold the numbers of bureaucracy of civil servants and that sort of thing in line with other provinces, and what it has done in the past. I just want to say that I want it on the record that in regard to the reporting of these particular numbers in the future, I would like it noted that there are hundreds of personnel that are presently working for Transportation and Government Services that this bill will allow to move over into the Manitoba Public Insurance Corporation.

We need to make sure that the accounting of those individuals, some 300, perhaps maybe more, are not taken off of the numbers that the government has, particularly the number that are reports, when it is reporting the number of civil servants. I mean, they are going to a lot of work, I know, to move this over, if that is one of the reasons why they are doing it. Of course, I hope I am being unnecessarily cautious in this bill, but I think that it is definitely a concern.

So, with that, I will move this bill on to committee as well, Mr. Speaker.

Mr. Kevin Lamoureux (Inkster): Mr. Speaker, on the surface you look at Bill 41 and it is a fairly thick bill. Having said that, its objectives, I think, are actually fairly straightforward.

Moving the drivers vehicles administration branch into MPI would seem to be a logical thing to do. One could question in terms of why is it we are doing it at this point in time. But, ultimately, I think that we have to recognize that it is better to do it now and see what we can do in terms of making things a little bit more efficient and possibly be able to provide even better quality service to Manitobans whether they require either the renewing of a driver's licence to making inquiries into MPI and the issues that MPI has to deal with. So, all in all, in principle, it is a bill that we can be supportive of in terms of going to the committee stage.

I think that there are other things that government could be looking at, Mr. Speaker. I had an opportunity to visit, for example, IBM, where they made a presentation. This is down in stateside where they made a presentation on the types of things that you can do over the Internet through government services. One of the discussions that we had was the possibility, for example, of driver's licences. There are some concerns, in particular, in regard to securities and pictures and so forth. But again, the idea of incorporating technology as we look at driver's licences from the past to what we have today, and what type of services that we could be providing into the future and how we might be able to provide those services, I think need to be looked at as we anticipate that further change in time will be necessary.

Generally speaking, with this particular bill, what we are seeing, in good part, in most part, is something that will effect a positive change for Manitobans where we will see hopefully a more efficient system that will provide better quality service for the people that are actually footing the bill, that being all Manitobans. Thank you, Mr. Speaker.

Mr. Speaker: Is the House ready for the question?

Some Honourable Members: Question.

Mr. Speaker: The question before the House is Bill 41, The Drivers and Vehicles Act and The Highway Traffic Amendment Act.

Is it the pleasure of the House to adopt the motion? *[Agreed]*

SECOND READINGS

Bill 50–The Statutes Correction and Minor Amendments Act, 2005

Mr. Speaker: Second reading, Bill 50, The Statutes Correction and Minor Amendments Act, 2005.

Hon. Gord Mackintosh (Minister of Justice and Attorney General): I move, seconded by the Minister of Education, Training and Youth (Mr. Bjornson), by leave, that Bill 50, The Statutes Correction and Minor Amendments Act, 2005; Loi corrective de 2005, be now read a second time and be referred to a committee of this House.

Mr. Speaker: It has been moved by the honourable Attorney General, seconded by the honourable Minister of Education (Mr. Bjornson), that Bill 50, The Statutes Correction and Minor Amendments Act, 2005, be now read a second time and be referred

to committee of this House, and it was done by leave.

Mr. Mackintosh: Mr. Speaker, this bill, of course, comes before the House near the conclusion of every session, primarily for the purpose of correcting minor drafting, typographical, translation errors in statutes as well as some more substantive but minor matters.

With regard to the minor amendments, there are a few minor amendments being made to The Family Farm Protection Act that would repeal the requirement for the Manitoba Farm Mediation Board to provide an annual report on its activities to the Assembly. That, Mr. Speaker, is because the Department of Agriculture, Food and Rural Initiatives has indicated that its annual report already does deal with reporting on the activities of such boards and commissions.

Second, The Museums and Miscellaneous Grants Act is being repealed. This act imposed specific requirements on community groups that wish to receive funding to operate museums. Many groups found it difficult to comply with some requirements imposed by this act. The repeal of this act will allow funding of these museums to take place using the normal grant making process.

The Petty Trespasses Act, Mr. Speaker, is being amended to increase the maximum fine under the act from $25 to $5,000. The current fine is outdated, in fact, has not been changed for 95 years I am told and does not provide any real deterrent to those who trespass on property.

The Pharmaceutical Act is being amended to reflect the fact that midwives and registered nurses with an extended practice designation now have the ability to prescribe drugs. The definition "prescription" is being amended to specifically refer to midwives and registered nurses with an extended practice designation. This will make it clear that a pharmacist can dispense drugs on the prescription of a midwife or a registered nurse (extended practice).

Those are my remarks, Mr. Speaker. Thank you.

Mr. Speaker: Any speakers?

Mr. Kevin Lamoureux (Inkster): Mr. Speaker, I do want to express some concern in regard to Bill 50. As the minister indicates, that generally speaking a bill of this nature is always brought in at the end of the session, and one expects a bill of this nature to be minimal in terms of the types of impact it has if, in fact, it passes. Correcting, putting the right No. 1 in the right spot, doing some minor spelling changes and so forth, one expects is going to happen time for time, and there is a need to bring in something of this nature.

Having said that, Mr. Speaker, I am not convinced that all the changes in this piece of legislation are, in fact, of a minor nature. I would look to the government and question the government why it is that it has not brought forward other pieces of legislation to deal with some of the things that it is proposing to do in this particular piece of legislation.

All I need to do is just make reference, Mr. Speaker, to what it is the Government House Leader was talking about. Tradition inside this Chamber has afforded us the opportunity after second reading to pose a question or two of a minister, and I was thinking of asking for that leave to pose those questions, but he answered the questions, so I did not have to actually pose them.

In one of the answers that he gave, and I will cite The Pharmaceutical Act: here is a bill that does have a fairly significant impact in terms of health care. We got this bill in the last day. I think it was actually tabled today, so this is the first opportunity I have had to do a quick glance. So I am solely relying on the remarks that the Government House Leader has put on the record.

Based on the remarks that he has put on the record today, I would suggest to you that Point 30, The Pharmaceutical Act, should have in fact been a separate bill in itself. I do not think it is a housecleaning bill.

The Petty Trespasses Act. Well, Mr. Speaker, I have seen government legislation that has come in where they have increased fines. The minister himself says, "Well, all we are doing here is we are increasing fines." So there is another piece of an amendment that the government is bringing forward, and, in some cases, it would have appeared that it could have been brought in as separate legislation.

* (15:50)

The minister made reference to the museums and miscellaneous grants. Mr. Speaker, whether it is in

TAB 23

2

MANITOBA

THE MANITOBA HYDRO ACT

C.C.S.M. c. H190

LOI SUR L'HYDRO-MANITOBA

c. H190 de la *C.P.L.M.*

As of 27 Oct 2021, this is the most current version available. It is current for the period set out in the footer below.

Le texte figurant ci-dessous constitue la codification la plus récente en date du 27 oct. 2021. Son contenu était à jour pendant la période indiquée en bas de page.

LEGISLATIVE HISTORY

The Manitoba Hydro Act, C.C.S.M. c. H190

Enacted by	Proclamation status (for provisions in force by proclamation)
RSM 1987, c. H190	whole Act: in force on 1 Feb 1988 (Man. Gaz.: 6 Feb 1988)
Amended by	
RSM 1987 Corr.	
SM 1987-88, c. 55, s. 38 (RSM 1987 Supp., c. 13, s. 2)	
SM 1988-89, c. 23, s. 34	s. 34(1) to (3) and (10): in force on 1 Jul 1989 (Man. Gaz.: 17 Jun 1989) s. 34(4) to (9): in force on 17 Jan 1989 (Man. Gaz.: 28 Jan 1989)
SM 1989-90, c. 24, s. 85	
SM 1992, c. 8	
SM 1993, c. 29, s. 187	in force on 4 Oct 1996 (Man. Gaz.: 5 Oct 1996)
SM 1994, c. 3, s. 12	
SM 1996, c. 59, s. 98	
SM 1997, c. 55	
SM 2001, c. 3	
SM 2001, c. 23	in force on 1 Nov 2001 (Man. Gaz.: 8 Sep 2001)
SM 2001, c. 39, s. 31	in force on 1 May 2002 (Man. Gaz.: 18 May 2002)
SM 2002, c. 41	
SM 2002, c. 45, s. 9	in force on 26 Feb 2003 (Man. Gaz.: 15 Mar 2003)
SM 2004, c. 42, s. 104	
SM 2009, c. 17, Part 1	in force on 1 Apr 2012 (Man. Gaz.: 7 Apr 2012)
SM 2011, c. 35, s. 21	
SM 2012, c. 26, s. 15	
SM 2013, c. 39, Sch. A, s. 62	in force on 1 May 2014 (Man. Gaz.: 3 May 2014)
SM 2013, c. 54, s. 44	
SM 2015, c. 17, s. 110	not yet proclaimed
SM 2017, c. 18, s. 46	in force on 25 Jan 2018 (proc: 17 Jan 2018)
SM 2017, c. 19, s. 32	
SM 2018, c. 29, s. 24	
SM 2019, c. 7, s. 28	not yet proclaimed
SM 2019, c. 11, s. 13	
SM 2020, c. 3	
SM 2021, c. 11, s. 96	not yet proclaimed
SM 2021, c. 37, Sch. C	not yet proclaimed
SM 2021, c. 45, s. 17	

HISTORIQUE

Loi sur l'Hydro-Manitoba, c. H190 de la C.P.L.M.

Édictée par	**État des dispositions qui entrent en vigueur par proclamation**
L.R.M. 1987, c. H190	l'ensemble de la Loi : en vigueur le 1er févr. 1988 (Gaz. du Man. : 6 févr. 1988)
Modifiée par	
L.R.M. 1987 corr.	
L.M. 1987-88, c. 55, art. 38 (L.R.M. 1987 Suppl., c. 13, art. 2)	
L.M. 1988-89, c. 23, art. 34	par. 34(1) à (3) et (10) : en vigueur le 1er juill. 1989 (Gaz. du Man. : 17 juin 1989)
	par. 34(4) à (9) : en vigueur le 17 janv. 1989 (Gaz. du Man. : 28 janv. 1989)
L.M. 1989-90, c. 24, art. 85	
L.M. 1992, c. 8	
L.M. 1993, c. 29, art. 187	en vigueur le 4 oct. 1996 (Gaz. du Man. : 5 oct. 1996)
L.M. 1994, c. 3, art. 12	
L.M. 1996, c. 59, art. 98	
L.M. 1997, c. 55	
L.M. 2001, c. 3	
L.M. 2001, c. 23	en vigueur le 1er nov. 2001 (Gaz. du Man. : 8 sept. 2001)
L.M. 2001, c. 39, art. 31	en vigueur le 1er mai 2002 (Gaz. du Man. : 18 mai 2002)
L.M. 2002, c. 41	
L.M. 2002, c. 45, art. 9	en vigueur le 26 févr. 2003 (Gaz. du Man. : 15 mars 2003)
L.M. 2004, c. 42, art. 104	
L.M. 2009, c. 17, partie 1	en vigueur le 1er avr. 2012 (Gaz. du Man. : 7 avr. 2012)
L.M. 2011, c. 35, art. 21	
L.M. 2012, c. 26, art. 15	
L.M. 2013, c. 39, ann. A, art. 62	en vigueur le 1er mai 2014 (Gaz. du Man. : 3 mai 2014)
L.M. 2013, c. 54, art. 44	
L.M. 2015, c. 17, art. 110	non proclamé
L.M. 2017, c. 18, art. 46	en vigueur le 25 janv. 2018 (proclamation : 17 janv. 2018)
L.M. 2017, c. 19, art. 32	
L.M. 2018, c. 29, art. 24	
L.M. 2019, c. 7, art. 28	non proclamé
L.M. 2019, c. 11, art. 13	
L.M. 2020, c. 3	
L.M. 2021, c. 11, art. 96	non proclamé
L.M. 2021, c. 37, ann. C	non proclamée
L.M. 2021, c. 45, art. 17	

CHAPTER H190

THE MANITOBA HYDRO ACT

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LOI SUR L'HYDRO-MANITOBA

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Funds to be held in trust
42(2) Additional moneys paid to the Minister of Finance for investment under subsection (1) shall form part of the Consolidated Fund; and interest earnings thereon shall be credited to the account of the corporation in the Consolidated Fund or shall be paid over to the corporation by the Minister of Finance.

Right of corporation to use of funds and securities
42(3) The moneys referred to in subsection (2), and any investment therefrom held for the corporation, may be used as required by the board for the purposes of the corporation.

S.M. 1996, c. 59, s. 98.

Sommes détenues en fiducie
42(2) Les sommes excédentaires versées au ministre des Finances pour investissement en vertu du paragraphe (1) sont détenues dans le Trésor. Les intérêts que produisent ces investissements sont soit versés au compte de la Régie au Trésor, soit versés à la Régie par le ministre des Finances.

Droit pour la Régie d'utiliser les fonds et les titres
42(3) Les sommes visées au paragraphe (2) et tout investissement fait à partir de ces sommes et détenu pour la Régie peuvent être utilisés comme l'exige le conseil pour les objets de la Régie.

L.M. 1996, c. 59, art. 98.

TAXATION, CHARGES AND DISTRIBUTIONS

43(1) [Repealed] S.M. 1989-90, c. 24, s. 85.

Grant in lieu of cost of municipal and school services
43(2) The corporation, as an operating expense, shall make annually to any municipality in which land or personal property of the corporation are situated, or in which the corporation carries on business, such grant towards the cost of municipal and school services as the Lieutenant Governor in Council may approve.

Grants by subsidiaries
43(2.1) A subsidiary, as an operating expense, shall make annually to any municipality in which land or personal property of the subsidiary is situated, or in which the subsidiary carries on business, such grant towards the cost of municipal and school services as the Lieutenant Governor in Council may approve.

Exemption from municipal taxation
43(2.2) For greater certainty, and without limiting any exemption from municipal taxation under *The Municipal Assessment Act*, the corporation and its subsidiaries are exempt from all taxes levied by a municipality on the following property:

TAXATION, CHARGES ET VERSEMENTS

43(1) [Abrogé] L.M. 1989-90, c. 24, art. 85.

Subvention se substituant aux taxes municipales
43(2) La Régie doit verser chaque année aux municipalités dans lesquelles sont situés ses biens-fonds ou ses biens personnels ou aux municipalités dans lesquelles se déroulent ses activités des subventions relatives aux coûts des services municipaux et scolaires. Ces subventions sont considérées comme des dépenses de fonctionnement de la Régie et le montant est celui qu'approuve le lieutenant-gouverneur en conseil.

Subventions versées par les filiales
43(2.1) Chaque filiale verse annuellement aux municipalités dans lesquelles sont situés ses biens-fonds ou ses biens personnels ou dans lesquelles se déroulent ses activités, au titre des frais d'exploitation, les subventions relatives au coût des services municipaux et scolaires qu'approuve le lieutenant-gouverneur en conseil.

Exemption de la taxe municipale
43(2.2) Sans préjudice de toute exemption de la taxe municipale accordée sous le régime de la *Loi sur l'évaluation municipale*, la Régie et ses filiales sont exemptées des taxes perçues par une municipalité à l'égard des biens suivants :

(a) conduits, poles, pipes, wires, transmission lines, plant, equipment and any similar property owned by the corporation or any of its subsidiaries or occupied or used by any of them in the generation, transformation, transmission or distribution of power; and

(b) any land on or under which such property is situated.

a) les conduits, les poteaux, les tuyaux, les fils, les lignes de transport, les installations, le matériel et d'autres biens semblables que possède, qu'occupe ou qu'utilise la Régie ou une de ses filiales en vue de la production, de la transformation, du transport ou de la distribution d'énergie;

b) les biens-fonds sur ou sous lesquels ces biens se trouvent.

Limitation

43(2.3) Subsection (2.2) does not exempt the corporation or any of its subsidiaries from local improvement taxes levied against land used for an electric substation or an office building.

Restriction

43(2.3) Le paragraphe (2.2) n'a pas pour effet d'exempter la Régie ou une de ses filiales des taxes d'amélioration locale perçues à l'égard d'un bien-fonds utilisé pour une sous-station électrique ou pour un immeuble à bureaux.

Funds of government and corporation not to be mixed

43(3) Except as specifically provided in this Act, the funds of the corporation shall not be employed for the purposes of the government or any agency of the government as that expression is defined in *The Civil Service Act*, other than the corporation, and the funds of the government shall not be employed for the purposes of the corporation except as advances to the corporation by the government by way of loan or as a result of a guarantee by the government of indebtedness of, or assumed by, the corporation or liability for the repayment of which is an obligation of the corporation.

Séparation des fonds

43(3) Sauf disposition expresse de la présente loi, les fonds de la Régie ne peuvent être employés aux fins du gouvernement ni aux fins d'un organisme gouvernemental au sens de la *Loi sur la fonction publique*. Les fonds du gouvernement ne peuvent être employés aux fins de la Régie à moins qu'il ne s'agisse d'avances que le gouvernement consent à la Régie par voie de prêt ou en accordant sa garantie à l'égard de dettes contractées par la Régie, de dettes qu'elle assume ou de celles dont elle est responsable du remboursement.

Application of subsection (3)

43(4) Subsection (3) does not

(a) exempt the corporation from paying any tax that may be payable to the government under an Act of the Legislature; or

(b) apply to moneys that may be payable by the corporation

(i) under *The Water Power Act* in respect of water power leases, licences, or permits; or

(ii) as rentals or fees in respect of leases, licences, or permits, of transmission line rights-of-way; or

Application du paragraphe (3)

43(4) Le paragraphe (3) :

a) n'exempte pas la Régie des impôts et taxes payables au gouvernement aux termes d'une loi de la Législature;

b) ne s'applique pas aux sommes qui peuvent être dues par la Régie :

(i) en vertu de la *Loi sur l'énergie hydraulique* pour ce qui concerne les baux, licences ou permis relatifs à l'énergie hydraulique,

(iii) in respect of moneys advanced by the government to the corporation, or assumed by it or liability for the repayment of which is an obligation of the corporation, or guaranteed by the government, and interest thereon and any charge made in respect thereof; or

(iv) as a payment under subsection (5); or

(c) apply to moneys payable by the government or any agency of the government for power supplied to the government or the agency, as the case may be, by the corporation.

Distributions from retained earnings
43(5) The corporation shall pay a portion of its retained earnings to the government for its general purposes as follows:

(a) as soon as practicable after this subsection comes into force, an amount equal to the lesser of

(i) $150,000,000., and

(ii) 75% of the corporation's net income for the fiscal year that ended on March 31, 2002;

(b) in accordance with subsection (6), 75% of the corporation's net income for the year ending on March 31, 2003, or any lesser amount determined by the Lieutenant Governor in Council; and

(c) in accordance with subsection (6), 75% of the corporation's net income for the year ending on March 31, 2004, or any lesser amount determined by the Lieutenant Governor in Council.

But the total of the amounts paid under this subsection shall not exceed $288,000,000.

Timing of distributions
43(6) Amounts payable under clauses (5)(b) and (c) shall be estimated and remitted to the government before the end of the fiscal year to which they relate. As

(ii) à titre de loyer ou de droits en ce qui concerne les baux, les licences ou les permis concernant les droits de passage pour les lignes de transport,

(iii) en ce qui concerne les sommes que le gouvernement a avancées à la Régie, qui lui ont été dévolues, qu'elle doit rembourser ou qui sont garanties par le gouvernement ainsi que les intérêts et les frais y afférent,

(iv) à titre de versement visé au paragraphe (5);

c) ne s'applique pas aux sommes que doivent verser le gouvernement ou un organisme du gouvernement pour l'énergie qui leur a été fournie, le cas échéant, par la Régie.

Versement d'une partie des bénéfices non répartis
43(5) La Régie verse au gouvernement les montants suivants sur ses bénéfices non répartis, pour les besoins généraux de celui-ci :

a) dès que possible après l'entrée en vigueur du présent paragraphe, un montant correspondant au moins élevé des montants suivants :

(i) 150 000 000 $,

(ii) 75 % de son profit net pour l'exercice qui s'est terminé le 31 mars 2002;

b) en conformité avec le paragraphe (6), 75 % de son profit net pour l'exercice se terminant le 31 mars 2003 ou le montant moins élevé que fixe le lieutenant-gouverneur en conseil;

c) en conformité avec le paragraphe (6), 75 % de son profit net pour l'exercice se terminant le 31 mars 2004 ou le montant moins élevé que fixe le lieutenant-gouverneur en conseil.

Le total des montants versés en application du présent paragraphe ne peut excéder 288 000 000 $.

Moment du versement
43(6) Les montants qui doivent être versés en application des alinéas (5)b) et c) sont estimés et remis au gouvernement avant la fin de l'exercice auquel ils se