

*Indexed as:*

**Reference re: Upper Churchill Water Rights  
Reversion Act (Nfld.)**

**IN THE MATTER OF Section 6 of Part I of The Judicature Act,  
Chapter 187 of The Revised Statutes of Newfoundland, 1970 as  
amended  
AND IN THE MATTER OF Section 15 of The Upper Churchill Water  
Rights Reversion Act, the Act No. 40 of 1980  
AND IN THE MATTER OF a Reference by the Lieutenant-Governor in  
Council to the Court of Appeal for its hearing, consideration  
and opinion on the constitutional validity of the  
Upper Churchill Water Rights Reversion Act, 1980.**

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1981 No. 36

Newfoundland Supreme Court - Court of Appeal

**Mifflin C.J.N., Morgan and Gushue, JJ.A.**

Heard: October 23, 1981

Judgment: March 5, 1982

*Constitutional law -- Validity of provincial legislation -- Upper Churchill Water Rights Reversion Act intra vires provincial legislature as legislation in relation to property and civil rights within the province -- Upper Churchill Water Rights Reversion Act, S.N. 1980, c. 40, ss. 3, 4, 5(1), 7(1), 8, 9, 10, 12 -- B.N.A. Act, 1867, ss. 91(2), 92(5), (10), (13), (16).*

This was a reference to determine the constitutional validity of the Upper Churchill Water Rights Reversion Act generally, and of ss. 4, 5(1), 7(1) and 8 specifically. The province had authorized by statute the leasing of certain water and water power rights to a federally incorporated company, CFL Co., and leases were executed accordingly. A hydro-electric generating facility was constructed. In 1969, CFL Co. contracted to sell its output to the province of Quebec for a period of 65 years, with the exception of . specified amounts which were reserved for use within Newfoundland. The transmission lines of CFL Co. connected with those of Quebec Hydro. The legislation under consideration purported to repeal the statute authorizing the leasing agreement and to expropriate CFL Co.'s hydro-electric facilities. Validity was challenged on the grounds of:

(1) interference with extra-provincial civil rights; (2) regulation of inter-provincial trade and commerce; and (3) sterilization of a Dominion company, namely CFL Co.

HELD: The legislation was intra vires the province. The submission that the Act interfered with extra-provincial civil rights referred to the interests of Quebec Hydro and certain creditors. There was a clear distinction between legislation which purported to have a direct legal effect on extra-territorial rights, and legislation validly enacted which incidentally affected such rights. In the second case, the collateral impact would have no effect on the validity of a statute, the subject matter of which was in the legislative sphere of the province. The Act presently under consideration was expressly limited to the reversion to the province of ownership and control of water rights and the acquisition of certain fixed assets, all within the territorial limits of the province. While it was true that other interests would be affected, these effects were collateral only, and did not render the statute invalid. The second argument was based on the proposition that the Reversion Act was intended to control inter-provincial trade in power, to regulate price and to set aside the existing regulatory vehicle, namely the contract between CFL Co. and Quebec Hydro. There was nothing in the legislation directed at inter-provincial trade. No existing federal regulatory authority embraced the situation, nor did the Act challenge the power of Parliament should the federal authority choose to act. The simple fact that the province would replace CFL Co. as owner and operator did not mean that it would control extra-provincial trade in power. Prices would have to be agreed upon as between buyer and seller, and the product would remain under the jurisdiction of Parliament with regard to its regulation. The intervenors also submitted that the legislation sterilized CFL Co., a Dominion company. The Act deprived CFL Co. of its interest in, and management of, a natural resource within the province, but did not purport to regulate or restrict the company in any of its essential corporate capacities. It was trite law to say that a province had the absolute right to expropriate private lands or property rights for a public purpose. A Dominion company, as such, had no constitutional guarantee of being able to carry on any particular business under provincial regulatory control and be exempt from provincial requirements, and there was no special immunity from expropriation through legislation. The alleged inadequacy of compensation had no effect on the situation. In conclusion, the Act as a whole was in pith and substance legislation in relation to property and civil rights within the province, and was intra vires. It in no way impinged on any of the classes of subjects reserved to Parliament by s. 91 of the B.N.A. Act, 1867. Similarly, the particular sections mentioned in this reference were intra vires. Section 4 validly repealed the former legislation. Sections 5 and 7 provided for reversion of interests. Section 8 expropriated the hydroelectric works. The Court was also asked to interpret the legal effect of these provisions insofar as they were found to be intra vires. Answers to these questions were not necessary to determination of the constitutional validity of the Act, and could not be satisfactorily formulated in a reference of this kind. The Court therefore declined to consider these matters.

Leonard A. Martin, Q.C., Edward M. Hearn and David B. Orsborn, for the Attorney General of Newfoundland. Francis J. Ryan, Q.C., Lucien Bouchard, Henri Brun, Michel Decary and Paul Arthur Gendreau for the Attorney-General of Quebec. George D. Finlayson, Q.C. and Thomas G. Heintzman, Q.C., for Hydro-Quebec. John Sopinka, Q.C. and Maureen P. Greene for Churchill Falls Labrador Corporation. Clyde Wells, Q.C., for the Royal Trust Company. Robert Wells, Q.C. and Randell Earle for General Trust Company.

Opinion of the Court delivered by **Morgan J.A.**

MORGAN J.A.:-- By Order in Council dated February 10, 1981, the Lieutenant-Governor in Council, pursuant to Sec. 6 of The Judicature Act, R.S.N. 1970, cap. 187, as amended, referred to this Court the following nine questions for its hearing, consideration and opinion:

- "1. Is section 4 of the Reversion Act ultra vires the Legislature in whole or in part, and if so, in what particular or particulars and to what extent?
2. Insofar as section 4 of the Reversion Act is intra vires the Legislature to what extent

does it:

- (a) repeal The Churchill Falls Labrador Corporation (Lease) Act, 1961;
- (b) repeal the Statutory Lease as defined in section 2(d) of the Reversion Act;
- (c) determine the Statutory Lease as defined in section 2(d) of the Reversion Act as contemplated by clause 6(a) of Part II of the Statutory Lease;
- (d) cause the determination of the leases, described in paragraph 9 of the Statement of Facts attached hereto as Appendix II ('the said Leases'), of Crown Lands authorized and issued pursuant to clause 7 of Part III of the Statutory Lease by virtue of the provisions of clause 7(2) of Part III of the Statutory Lease and the termination clauses contained in the said Leases or either or both of such clauses;
- (e) cause to be vested in Her Majesty in right of Newfoundland the improvements made by the lessee on the Crown Lands described in the said Leases and leased pursuant to clause 7 of Part III of the Statutory Lease by virtue of clause 6(a) of Part II of the Statutory Lease or by virtue of the nature of the said Leases themselves or either or both of them.

3. Is section 5(1) of the Reversion Act ultra vires the Legislature in whole or in part, and if so, in what particular or particulars and to what extent?
4. Insofar as section 5(1) of the Reversion Act is intra vires the Legislature to what extent does it:

"(a) determine the Statutory Lease as defined in section 2(d) of the Reversion Act;

- (b) cause the determination of the said Leases of Crown Lands authorized and issued pursuant to clause 7 of Part III of the Statutory Lease by virtue of the provisions of clause 7(2) of Part III of the Statutory Lease and the termination clauses contained in the said Leases or either or both of such clauses;
- (c) cause to be vested in Her Majesty in right of Newfoundland the improvements made by the lessee on the Crown Lands described in the said Leases and leased pursuant to clause 7 of Part III of the Statutory Lease by virtue of clause 6(a) of Part II of the Statutory Lease or by virtue of the nature of the said Leases themselves or either or both of them.

5. Is section 7(1) of the Reversion Act ultra vires the Legislature in whole or in part, and if so, in what particular or particulars and to what extent?
6. Insofar as section 7(1) of the Reversion Act is intra vires the Legislature to what extent does it:

- (a) determine the said Leases of Crown Lands authorized and issued pursuant to clause 7 of Part III of the Statutory Lease;
- (b) cause to be vested in Her Majesty in right of Newfoundland the improvements made by the lessee on the Crown Lands described in the said Leases and leased pursuant to clause 7 of Part III of the Statutory Lease by virtue of clause 6(a) of Part II of the Statutory Lease or by virtue of the nature of the said Leases themselves or either or both of them.

7. Is section 8 of the Reversion Act ultra vires the Legislature in whole or in part and if so, in what particular or particulars and to what extent?
8. Insofar as section 8 of the Reversion Act is intra vires the Legislature to what extent does it:
  - (a) vest in Her Majesty in right of Newfoundland the hydro-electric works (as defined in section 2(c) of the Reversion Act) attached to the lands held under the said Leases authorized and issued pursuant to clause 7 of Part III of the Statutory Leases?
9. Is the Reversion Act ultra vires the Legislature in whole or in part and, if so, in what particular or particulars and to what extent?"

The following statement of facts was attached to and formed part of the Order in Council:

- "1. Prior to the 13th day of March A.D., 1961, Her Majesty the Queen in Right of Newfoundland, was the owner of all rights to the use of the waters including the water power rights of the Churchill River (then known as the Hamilton River but changed to its present name by Act No. 46 of 1965) in that portion of the Province of Newfoundland known and described as Labrador.
2. On the 13th day of March A.D., 1961, the Legislature enacted The Churchill Falls (Labrador) Corporation Limited (Lease) Act, the Act No. 51 of 1961 which Act has been amended by the following Acts of the Legislature:
  - (a) Act No. 2 of 1963;
  - (b) Act No. 43 of 1964;
  - (c) Act No. 84 of 1966-67;
  - (d) Act No. 101 of 1968;
  - (e) Act No. 77 of 1969;
  - (f) Act No. 62 of 1970;

all of which are hereinafter collectively referred to as 'the said Acts'.

3. Section 2(a) of the said Act authorized the execution and delivery by the Lieutenant Governor-in-Council to Churchill Falls (Labrador) Corporation Limited ('CFLCo') of a Lease in terms of the draft Lease set forth in the Schedule to the said Act.
4. Section 3 of the said Act provided that the Lease, upon its execution and delivery, would have the force and effect of law for all purposes as if expressly enacted in the said Act.
5. On or about the 16th day of May A.D., 1961, the Lease was executed and delivered pursuant to the said Act under the terms of which Lease CFLCo acquired (inter alia) full right and liberty to use exclusively certain waters and water power rights of the Upper Churchill River and its watershed for the purpose of generating hydro-electric power and energy all subject to and in accordance with the terms contained in the Lease which Lease is registered in the Registry of Deeds for the Province of Newfoundland (the 'Registry') in Volume 533 at Folios 151-171, a copy of which is attached hereto and marked "A".
6. The Lease was amended by Act No. 2 of the Statutes of Newfoundland, 1963, and by the following Acts of the Legislature was authorized to be amended by agreements to be entered into between the Lieutenant Governor-in-Council and CFLCo:

- (a) Act No. 43 of 1964;
- (b) Act No. 84 of 1966-67;
- (c) Act No. 101 of 1968;
- (d) Act No. 77 of 1969;
- (e) Act No. 62 of 1970;

all of which Statutes provided that the agreements amending the Lease, upon execution and delivery, would have the force and effect of law for all purposes as if expressly enacted in the several Acts authorizing their execution.

7. Agreements amending the Lease authorized to be executed and delivered under the provisions of the Statutes of Newfoundland referred to in paragraph 6 hereof were executed and delivered as follows:
  - (a) as of the 1st day of January A.D., 1964, by Act No. 43 of 1964 and registered in the Registry on the 22nd day of September A.D., 1964, in Volume 703 at Folios 19-21, a copy of which is attached hereto and marked "B";
  - (b) as of the 14th day of July A.D., 1966, by Act No. 84 of 1966-67 and registered in the Registry on "the 1st day of September A.D., 1967, in Volume 892 at Folios 184-196, a copy of which is attached hereto and marked "C";
  - (c) on the 30th day of September A.D., 1968, by Act No. 101 of 1968 and registered in the Registry on the 16th day of October A.D., 1968, in Volume 979 at Folios 130-132, a copy of which is attached hereto and marked "D";
  - (d) on the 12th day of May, 1969, by Act No. 77 of 1969, and registered in the Registry on the 13th day of May A.D., 1969, in Volume 1022 at Folios 368-374, a copy of which is attached hereto and marked "E";
  - (e) as of the 1st day of January A.D., 1970, by Act No. 62 of 1970 and registered in the Registry on the 28th day of September A.D., 1970, in Volume 1132 at Folios 362-364, a copy of which is attached hereto and marked "F".
8. The Lease and Amendments thereto referred to in paragraphs 3 to 7 hereof are hereinafter referred to as 'the Statutory Lease'.
9. Pursuant to and in accordance with the provisions of clause 7 of Part III of the Statutory Lease, the Lieutenant Governor-in-Council executed and delivered to CFLCo the following Leases:
  - (a) the Lease affecting all those pieces or parcels of land therein described and delineated made as of the 1st day of August A.D., 1968, and registered in the Registry in Volume 977 at Folios 355-368 and known as the 'Power Site Lease', a copy of which is attached hereto and marked "G".
  - (b) the Lease affecting all those pieces or parcels of land therein described and delineated made as of the 1st day of August A.D., 1968, and registered in the Registry in Volume 977 at Folios 369-388 and known as the 'Control Structures Lease', a copy of which is attached hereto and marked "H".
  - (c) the Lease affecting all those pieces or parcels of land therein described and delineated made as of the 1st day of August A.D., 1968, and registered in the Registry in Volume 977 at Folios 389-404 and known as 'the Roads Lease', a copy of which is attached hereto and marked "I".
  - (d) the Lease affecting all those pieces or parcels of land therein described and delineated made as of the 1st day of August A.D., 1968, and registered in the Registry in Volume 977 at Folios 405-418 and known as 'the Transmission Lines

- Lease', a copy of which is attached hereto and marked "J".
- (e) the Lease affecting all that piece or parcel of land therein described and delineated made as of the 1st day of August A.D., 1968, and registered in the Registry in Volume 977 at Folios 419-429 and known as 'the Airport Lease', a copy of which is attached hereto and marked "K".
- (f) the Lease affecting all those pieces or parcels of land therein described and delineated made as of the 1st day of August A.D., 1968, and registered in the Registry in Volume 977 at Folios 430-443 and known as 'the Airport Approaches Lease', a copy of which is attached hereto and marked "L".
10. During the late 1960's and early 1970's CFLCo constructed on the Leased Lands (and wholly within the Province of Newfoundland) a hydroelectric generating plant, transmission lines, and associated facilities, and used and continues to use the waters referred to in the Statutory Lease for the purpose of generating hydro electric power and energy.
11. The hydro-electric generating plant constructed by CFLCo has a rated capacity of approximately 5,225 MW of power and is capable of generating approximately 34.5 billion kilowatt hours of energy annually.
12. By a contract in writing (the 'Power Contract') dated as of the 12th day of May A.D., 1969, CFLCo contracted to sell to the Quebec Hydro-Electric Commission for a period of approximately sixty five (65) years all of its output of power and energy with the exception of 225 MW reserved for Twin Falls Power Corporation Limited for use in the Province of Newfoundland and a further 300 MW for use in the Province of Newfoundland upon appropriate notice given by CFLCo to the Quebec Hydro-Electric Commission. A copy of the said Power Contract is attached hereto and marked "M".
13. The main transmission lines of CFLCo connect with the transmission lines of the Quebec Hydro-Electric Commission at the delivery point at the height of land about opposite Mile 148.8 on the Quebec North Shore and Labrador Railway which is the presumed watershed between the St. Lawrence River and the Churchill River which delivery point is more particularly described in Article VII of the Power Contract.
14. Other transmission lines from CFLCo's hydroelectric generating plant at Churchill Falls connect the plant with Western Labrador and Happy Valley, Goose Bay.
15. Such power and energy generated by CFLCo's hydro electric generating plant at Churchill Falls as is not sold to the Quebec Hydro-Electric Commission is sold or consumed within the Province of Newfoundland in the following areas:
- Western Labrador approximately 300 MW Happy Valley-Goose Bay  
approximately 25 MW Churchill Falls approximately 14 MW
16. CFLCo is a body corporate incorporated under the laws of Canada having its registered head office at the City of St. John's in the Province of Newfoundland. A consolidated copy of the relevant documentation relating to CFLCo's corporate status is attached hereto and marked "N".
17. From and after the date of its incorporation until the 24th day of June A.D., 1974, Her Majesty the Queen in Right of Newfoundland owned not more than 10% of the issued common shares of CFLCo.
18. From and after the date of its incorporation until the 24th day of June A.D., 1974, the majority of the issued common shares of CFLCo were owned by Brinco Limited, a company incorporated under the laws of the Province of Newfoundland.
19. On the 24th day of June A.D., 1974, Her Majesty the Queen in Right of Newfoundland acquired by purchase further issued common shares of CFLCo sufficient to bring Her total shareholdings to 65.8% of CFLCo's issued common shares.
20. All of the shares owned by Her Majesty the Queen in right of Newfoundland were

transferred to Newfoundland and Labrador Hydro and the issued common shares of CFLCo are currently held as follows:

Newfoundland and Labrador Hydro	65.8%
Quebec Hydro-Electric Commission	34.2%

21. Apart from cash, accounts receivable, securities, bank deposits, investments, shares in Twin Falls Power Corporation Limited, equipment and other tangible personal property, CFLCo's major assets consist of the hydro electric generating plant, transmission lines and associated facilities constructed on the Leased Lands, and its interest in the Leased Lands.
22. CFLCo's business is the generation and sale of power and energy generated at its hydro electric generating plant constructed on the Leased Lands. Incidental to such business it owns and administers the Town of Churchill Falls.
23. In order to finance the construction of its hydro electric generating plant and transmission lines on the Leased Lands, CFLCo borrowed money from (inter alia) sources outside of the Province of Newfoundland and secured such loans by the execution of the following documents:
  - (a) A deed of Trust and Mortgage (the 'General Mortgage Trust Deed') dated as of the 1st day of September A.D., 1968, and registered in the Registry in Volume 992 at Folios 195-340, a copy of which is attached hereto and marked "O".
  - (b) A Supplemental Deed of Trust and Mortgage dated the 15th day of May A.D., 1969, and registered in the Registry in Volume 1025 at Folios 240-258, amending The General Mortgage Trust Deed dated as of the 1st day of September A.D., 1968, (a copy of which Supplemental Deed of Trust and Mortgage is attached hereto and marked "P").
  - (c) An Agreement (the 'Financial Agreement') dated the 12th day of May A.D., 1969, and registered in the Registry in Volume 1022 at Folios 374-379, executed pursuant to the Churchill Falls (Labrador) Corporation Limited (Financing) Act, the Act No. 76 of 1969 and given the force and effect of law for all purposes as if expressly enacted in that Act, a copy of which Financial Agreement is attached hereto and marked "Q".
  - (d) Bond Purchase Agreements each dated the 15th day of May A.D., 1969, in favour of each of the Purchasers of the First Mortgage Bonds issued under the Deed of Trust and Mortgage of September 1st, 1968, a conformed copy of which is attached hereto and marked "R".
  - (e) A Trust Deed of Hypothec Mortgage and Pledge (the 'First Mortgage Trust Deed') dated the 15th day of May A.D., 1969, and registered in the Registry in Volume 1025 at Folios 1-239 and also registered on the 20th day of May A.D., 1969, at the Montreal Registry Office in the Province of Quebec under Number 2138791, a copy of which is attached hereto and marked "S".
24. There is now due and owing by CFLCo under the terms of the documents referred to in paragraph 23 hereof and the Bonds issued thereunder the following approximate amounts:
  - (a) In respect of the General Mortgage Trust Deed and General Mortgage Bonds issued thereunder the sum of approximately \$98,000,000.00;
  - (b) In respect of the First Mortgage Trust Deed and the First Mortgage Bonds Series

- (c) A issued thereunder the sum of approximately \$458,620,000.00 US;  
In respect of the First Mortgage Trust Deed and the First Mortgage Bonds Series B issued thereunder the sum of approximately \$45,894,000.00;

25. The Legislature has determined it to be in the best interests of the Province that the rights to the use of the waters and the water power rights described in the Statutory Lease revert to Her Majesty in Right of Newfoundland and has, on the 17th day of December A.D., 1980, enacted The Upper Churchill Water Rights Reversion Act, the Act No. 40 of the Statutes of Newfoundland, 1980."

The Notice of Motion for an Order inscribing the Reference and for directions was served on the Attorney-General of Canada, the Attorney-General of each Province of Canada, Churchill Falls (Labrador) Corporation Limited, Quebec Hydro Electric Commission, the Royal Trust Company, General Trust Company and Twin Falls Power Corporation Limited. Factums were filed on behalf of the Attorney General of Newfoundland, the Attorney General of Quebec, Churchill Falls (Labrador) Corporation Limited (CFLCo), Quebec Hydro Commission (Hydro Quebec), the Royal Trust Company and General Trust Company, and they were represented by counsel at the hearing.

In considering the questions submitted for our consideration we are requested to assume that The Upper Churchill Water Rights Reversion Act (the "Reversion Act") has been proclaimed in force.

The purpose of the Act as stated in Sec. 3 "is to provide for the reversion to the province of unencumbered ownership and control in relation to certain water within the province".

It enacts as follows:

"4(1) The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961, including the Statutory Lease, is repealed.

(2) For greater certainty and the avoidance of doubt, all rights, privileges, liberties and interests that cease to be vested in, conferred on or accrued to any person by virtue of subsection (1) shall revert in and be held by Her Majesty free and clear of any claim, encumbrance or other right of any person as if that Act and Statutory Lease had had no effect in law.

(3) Notwithstanding subsections (1) and (2) or any other section of this Act, all rights, privileges, liberties and interests vested in, conferred on or accruing to Twinco under the Statutory Lease and any sublease or licence, as amended, executed pursuant thereto do not cease to vest, confer or accrue and do not revert in Her Majesty but continue on and after the commencement of this Act in all respects as though this Act had not been passed, except that in all respects and for all purposes CFLCo is replaced as lessor or licensor to Twinco by Her Majesty.

(4) For the purpose of subsection (3) "Twinco" means Twinco as defined in paragraph (b) of subsection (1) of clause 7 of Part IV of the Statutory Lease."

"5(1) Without limiting the effect of section 4 and to the extent only, if at all, that any right, privilege, liberty or interest vested in, conferred on or accrued to any person by the Statutory Lease and any assignment, sublease, licence or permit, and amendments thereto, executed pursuant to the Statutory Lease does not revert in Her Majesty by virtue of section 4, the Statutory Lease and any assignment, sublease, licence or permit and amendments thereto, are



rescinded and cancelled and shall be deemed to be void for all purposes.

(2) All rights, privileges, liberties and interests that cease to be vested, conferred or accrued by virtue of subsection (1) shall revert in Her Majesty free and clear of any claim, encumbrance or other right of any person."

"7(1) To the extent only, if at all, that any right, privilege, liberty or interest in a lease or licence issued under clause 7 of Part III of the Statutory Lease does not cease to be vested, conferred or accrued by virtue of the determination of the Statutory Lease, the lease or licence is rescinded and cancelled and shall be deemed to be void for all purposes.

(2) All rights, privileges, liberties and interests that cease to be vested, conferred or accrued by virtue of subsection (1) shall revert in Her Majesty free and clear of any claim, encumbrance or other right of any person."

"8. For greater certainty and to the extent only that it would not otherwise occur, upon the determination, rescission or cancellation of the Crown leases and licences issued under clause 7 of Part III of the Statutory Lease, the hydro-electric works held under such leases or licences shall vest in and be held by Her Majesty free and clear of any claim, encumbrance or other right of any person."

Section 9 provides for the payment of all indebtedness secured by way of mortgage, lien, debenture or other encumbrance on the property in question. Sec. 10 makes provision for compensation to shareholders of CFLCo for any reduction in the value of their shares occasioned by the coming into force of the Act. Sec. 12 limits the payment of compensation to the extent provided by the Act and bars any right of action in respect of any loss or damage resulting from the enactment.

Needless to say, we are not concerned with any matter of political controversy which may have given rise to the statute, nor whether the legislation is commercially fair and reasonable. Our duty is confined solely to the determination of the constitutional validity of the legislation in question.

The distribution of legislative powers between the Dominion Parliament and Provincial Legislatures is provided for by Sections 91 to 95 of the British North America Act; the relevant sections, for our purposes, being Sec. 91 headed "Powers of the Parliament" and Sec. 92 headed "Exclusive Powers of Provincial Legislatures".

Sec. 91 is as follows:

91 It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,-"

Then follows an enumeration of twenty-nine classes of subjects which include,

"2. The Regulation of Trade and Commerce."

The section concludes as follows:

"And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces."

Sec. 92 is as follows:

92 In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next herein-after enumerated; that is to say,-"

Then follows an enumeration of sixteen classes of subjects, including:

"5 The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon."

"10 Local Works and Undertakings other than such as are of the following Classes:-

- a. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:
- b. Lines of Steam Ships between the Province and any British or Foreign Country:
- c. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces."

"13 Property and Civil Rights in the Province."

"16 Generally all Matters of a merely local or private Nature in the Province."

Counsel for the Attorney-General of Newfoundland contends that the Reversion Act is a repealing statute and, as such, is within the legislative competence of the Provincial Legislature. Alternatively, he argues that the Act relates to property and civil rights within the Province which fall within the exclusive jurisdiction of the Provincial Legislature. His argument is summarized in his factum as follows:

"Simply put, the position of the Province in this respect is that, having enacted the Lease Act and the Statutory Lease which is itself legislation, the Province is competent to repeal both. In asserting its right as legislature to repeal its own legislation the Province will rely upon Section 4 of The Reversion Act exclusively to attain the objects of the Act, and contend that Sections 5, 7 and 8 are superfluous and severable as the Crown Leases of the Leased Lands and the improvements thereon terminate, not legislatively by reason of Section 4 of The Reversion Act, but contractually by reason of their own terms.

Should the court decline to accept the Province's assertion with respect to the right of the Legislature to repeal its own legislation and the consequences following from such repeal, then the alternative position of the Province is that the "matter" with which The Reversion Act deals is public lands belonging to the Province, a local work or undertaking, property and civil rights within the Province or a matter of merely local concern in the Province and that accordingly the Legislature is competent to enact The Reversion Act as legislation coming within the classes of subjects assigned to it by

sub-sections 5, 10, 13, or 16 of Section 92 of The B.N.A..."

In our view, the Act in question does more than modify or repeal existing legislation. It also purports to expropriate the fixed assets of CFLCo used in the generation of electric power while expressly precluding that company from asserting any claim either for additional compensation for the loss of its property or damages for breach of any of its leases. We must decide, then, whether the legislation is in respect of any of the classes of subjects enumerated in Sec. 92, and assigned exclusively to the provinces and, if so, whether the subject matter of the Act also falls within one of the classes of subjects in Sec. 91, as a result of which the legislative authority of the Province is thereby overborne.

On the face of the legislation, it appears that the Legislature is dealing with the acquisition of the unencumbered ownership of the waters of Churchill Falls situate within the territorial limits of the Province of Newfoundland as well as the fixed assets of (CFLCo used in the generation of hydro-electric power at Churchill Falls. There is nothing in the language of the statute which necessarily gives to the enactment an extra-territorial effect.

There is no necessity to refer at any length to the long line of authorities on the constitutional validity of provincial legislation under the British North America Act dealing with property within a province and the expropriation of such property for public purpose. That the Legislature has the right to take property, or affect some or all of the rights of ownership in property within its territorial limits, is unquestioned. The principle to be applied is clearly stated by the Supreme Court of Canada in *Walter et al v. Attorney-General of Alberta* [1969] S.C.R. 383. That case dealt with the validity of The Communal Property Act of Alberta dealing with the ownership of land within that province. The purpose of the Act was to control the use of land as "communal properties" by "colonies", religious or otherwise. At p. 389, Martland, J. stated:

"It would seem to me to be clear that a provincial legislature can enact laws governing the ownership of land within the province and that legislation enacted in relation to that subject must fall within S.92(13), and must be valid unless it can be said to be in relation to a class of subject specifically enumerated in S.91 of the British North America Act or otherwise within exclusive Federal jurisdiction."

The Court held in that case that the fact that the legislation was prompted by the large scale holding of communal land by colonies of Hutterites, whose religious tenets lead to the economic view that land should be held communally, did not make the Act legislation in relation to religion. (See also *Societe Asbestos Limitee v. Societe Nationale de l'Amiante*, [1981] C.A. 43 (Que.).)

There can thus be no question here that the Reversion Act on its face is validly enacted legislation of the Newfoundland Legislature.

The grounds on which the intervenors challenge the validity of the Act, though couched in different language, may be categorized under three distinct headings - namely, (1) Interference with Extra-provincial Civil Rights; (2) Regulation of Inter-provincial Trade and Commerce; and, (3) Sterilization of a Dominion Company. We shall deal with each of these issues separately.

#### Extra-provincial Civil Rights

The intervenors maintain that when a statute has the effect of interfering with extra-provincial civil rights and undertakings, it goes beyond property and civil rights in a province or any provincial or local matter or undertaking and thus beyond the powers of a provincial legislature. The Reversion Act, they contend, is directed at extra-provincial contractual rights and matters that are far from local or private. They refer to the rights of Hydro Quebec under the Power Contract and those of the various creditors under the financing documents referred to in paragraph 23 of the statement of facts attached to and forming part of the Reference. In support of its argument that the challenged Act is "colourable legislation" that purports to deal with property and civil rights within the province, but in reality is legislation aimed at extinguishing the Power Contract, Hydro Quebec, as an appendix to its factum, filed an affidavit of Andre E. Gadbois setting forth details of the negotiations surrounding the Churchill Falls power development leading up to the execution of

the Power Contract for the purchase by Hydro Quebec of all the energy produced by the Churchill Falls power plant less a specified number of kilowatts. Attached to the affidavit are copies of correspondence relating to requests by the Newfoundland Government for the return of 800 megawatts of power to Newfoundland, copies of speeches made by the Premier and other Government officials both in and outside the House of Assembly, copies of pleadings in an action by the Government of Newfoundland against CFLCo seeking the right to 800 megawatts of power generated by CFLCo from the waters of the Upper Churchill watershed, transcripts of interviews given by the Premier and certain cabinet ministers to the media, copy of a pamphlet published by the Newfoundland Government and sent to the bond holders under the First Mortgage Bonds and to Hydro Quebec when the Reversion Act was being introduced into the House of Assembly, and other proceedings in the House of Assembly, all indicating the Government's policy with respect to the Power Contract.

The extrinsic materials filed were subject to reserve by the Court as to their relevancy and as to their weight. The language of the statute itself must of course be the primary consideration and in most situations it is unnecessary and, indeed, improper to go beyond the terms of the impugned statute to determine its validity. In certain cases, however, courts have thought it proper to consider the operation and effect of the legislation as providing a key to its purpose, especially where the allegation is that the legislation in question has been cast in a colourable form. The admissibility and use of extrinsic materials in determining the constitutional validity of an enactment has been dealt with by the Supreme Court of Canada in a great number of cases, the more recent being *Re Anti-Inflation Act* [1976] 2 S.C.R. 373, *Central Canada Potash Co. Ltd. v. The Government of Saskatchewan* [1979] 1 S.C.R. 42 and *Reference re the Residential Tenancies Act* (1981), 123 D.L.R. 554.

In *Re Anti-Inflation Act* (supra) Laskin, C.J.C., after referring to a statement by Lord Maugham in *Reference re Alberta Legislation*, sub nom *Attorney General of Alberta v. Attorney General of Canada* [1939] A.C. 117 at p. 130, and a statement by Taschereau, J., as he then was, in *Lower Mainland Dairy Products Board v. Turner's Dairy Ltd.* [1941] S.C.R. 573 at p. 583, stated at p. 389:

"The references by Lord Maugham to the admissibility of extrinsic evidence "in a proper case" and by Taschereau J. to admissibility of such evidence "in certain cases" support my view that no general principle of admissibility or inadmissibility can or ought to be propounded by this Court, and that the questions of resort to extrinsic evidence and what kind of extrinsic evidence may be admitted must depend on the constitutional issues on which it is sought to adduce such evidence.

This view is strengthened by the fact that this Court and the Privy Council have recognized that in some kinds of cases the effect of legislation has no bearing on its constitutional validity. Hence, extrinsic evidence as to its effect has no weight. Thus, in *Attorney-General of Saskatchewan v. Attorney-General of Canada*, the Privy Council, adopting a proposition of Rand, J. in this Court in that case (see [1947] S.C.R. 394, at p. 413) said that "consequential effects are not the same thing as legislative subject matter. It is the 'true nature and character of the Legislation' - not its ultimate economic results - that matters", and cited *Russell v. The Queen*, at pp. 839-40 in support."

In that Reference, the extrinsic material sought to be introduced was directed to the question whether the social and economic circumstances were such as to provide support for the Anti-Inflation Act as a proper exercise of Parliament's power to legislate for the peace, order and good government of Canada. For that limited purpose, the extrinsic material was held to be relevant and could properly be considered. We find nothing in that judgment to warrant a conclusion that the general rule relating to the inadmissibility of extrinsic material to establish the real purpose and intent of an enactment has been relaxed.

In our view, the extrinsic materials sought to be introduced in the present case can have no weight in determining the true purpose and intent of the Act. However, in so far as they provide background against which the legislation was enacted, they may properly be considered.

Generally speaking, for the purpose of constitutional characterization of an Act, materials reflecting what was present to the mind of the legislature in enacting the legislation may properly be considered. As stated by Dickson, J. in Reference re the Residential Tenancies Act (supra) at p. 562:

"The mischief at which the Act was directed, the background against which the legislation was enacted and institutional framework in which the Act is to operate are all logically relevant."

The factual background of the Reversion Act is a matter of public general knowledge and is recited in a memorandum published by the Government of Newfoundland dated November 21, 1980 entitled "The Energy Priority of Newfoundland and Labrador", a copy of which was filed with the Court. It states in part:

"The legal basis upon which CFLCo developed the Churchill Falls generating site is contained in a 1961 Lease between CFLCo and the Government of Newfoundland and Labrador (the "Government"). The Lease specifically provides that the consumers of electricity of Newfoundland be given priority to the output of the plant. Since 1976, the Province has been attempting to access 800 MW of power from Churchill Falls under this provision of the Lease but has encountered legal obstacles. Hydro-Quebec claims, despite this provision of the Lease, the right to virtually all of the power from Churchill Falls in accordance with a 65 year Power Contract it entered into with CFLCo in 1969.

The Government deems it necessary and essential that it be permitted to exercise its legal rights under the Lease. The Government has concluded that agreement with Hydro-Quebec is unachievable and that court actions which have been underway since 1976 are unpredictably lengthy and inadequate for the purpose of meeting urgent requirements to access Churchill Falls power on a timely basis. As a consequence, the Government is left with no option but to initiate alternative legal proceedings to bring about an early resolution of the matter.

On November 21, 1980, the Government therefore introduced legislation into the Provincial House of Assembly to provide for repeal of The Churchill Falls (Labrador) Corporation Limited (Lease) Act, 1961 and for the reversion to the Province of the rights and liberties leased or granted to CFLCo under the Lease. The legislation provides that it will come into force on a day to be fixed by proclamation but not prior to the exhaustion of all rights of appeal in the courts by affected parties.

The legislation includes clearly defined protection for bondholders and other secured creditors of CFLCo. It provides for the payment in full of all secured debt including principal, premium, if any, and accrued interest due in accordance with the terms of the existing debt instruments. In addition, since the legislation will not be effective until proclamation, it will not presently result in any default under any existing debt instrument of CFLCo.

The Government is proceeding with this action in the knowledge that the financial community should be fully informed of the reasons for such action. This memorandum outlines these reasons in the context of arrangements made by CFLCo for development of the Churchill Falls resource and in accordance with the energy priority of Newfoundland and Labrador: fairness and equity in the utilization of the Churchill Falls resource.

and later:

"The foregoing financial estimates have been included here to illustrate the harsh inequity created by the Power Contract since 1972. This inequity will clearly magnify to unconscionable proportions and amounts over the remaining 61 years of the Power Contract. It is this very Power Contract which Hydro-Quebec is using to deny Newfoundland's right to access 800 MW of Churchill Falls power at this time. The increasing inequity of the Power Contract adds impetus to the Government's determination to reach a resolution to its right of access. Such access would only begin to reduce the inequity and to move towards a fair and equitable utilization of the Churchill Falls resource."

We cite this memorandum, not as evidence of the facts therein recited, but as an indication of the materials the Government of Newfoundland had before them when promoting the statute now in question.

As supportive of their argument that a provincial legislature has no constitutional authority to legislate in relation to civil rights outside the province, the intervenors cited *Royal Bank of Canada v. The King* [1913] A.C. 283, *Ottawa Valley Power Co. v. Attorney-General of Ontario* [1936] 4 D.L.R. 613, *Beauharnois Light Heat and Power Co. v. Hydro Electric Commission* [1937] 3 D.L.R. 458, and *Credit Foncier v. Ross* [1937] 3 D.L.R. 365. These cases are of little assistance here.

In the *Royal Bank* case, an Alberta statute which expropriated the proceeds of a bond issue that had been deposited in the Royal Bank, whose head office was in Quebec, was held to be ultra vires by the Privy Council on the grounds that the bondholders had a right to recover back the money they had lent and that this right existed in Quebec.

In the *Ross* case, the Alberta Appeal Division held invalid a statute purporting to eliminate interest payable on certain classes of debts. The court held the Act to be ultra vires as an unwarranted delegation of legislative authority to the Lieutenant-Governor and as affecting debts payable outside the province to creditors residing outside the province.

In the *Ottawa Valley Power Co.* case, Sec. 2 of the Power Commission Act 1935 (Ont.) c.53, invalidating certain contracts for the transmission of electric power from one province to another was held ultra vires the Provincial Legislature of Ontario as a derogation from civil rights outside the province. Similar legislation was invalidated by the Ontario Court of Appeal in the *Beauharnois Light, Heat and Power Co.* case.

An example of valid legislation in relation to a provincial matter which incidentally affected rights outside the province is found in *Ladore v. Bennett* [1939] A.C. 468. In that case the Privy Council upheld an Ontario statute amalgamating four adjoining municipalities that were experiencing financial difficulties as being legislation in respect of a class of subject assigned exclusively to the provinces under Sec. 92 - namely, municipal institutions, even though it affected rights outside the province. It was held that the legislation affected such rights collaterally, as a necessary incident to exercise of the lawful powers of the Provincial Legislature.

There is a clear distinction between legislation that purports to have a direct legal effect on extra-territorial rights and legislation enacted under the valid exercise of legislative powers of a province under Sec. 92 that incidentally or collaterally affects extra-territorial rights. In the first case the legislation will be struck down where the extra-territorial legal effect is fundamental to the existence of the Act as a whole. In the second case the incidental or collateral impact on extra-territorial rights will have no effect on the validity of the Act, the subject matter of which is within the legislative competence of the province.

The legislation here in question is expressly confined and limited to the reversion to the Province of unencumbered ownership and control of the waters of the Upper Churchill River and the acquisition of certain fixed assets of CFLCo used in the generation of power; all within the territorial limits of the Province. The purpose of the legislation is to provide the Province with electric power. It is not disputed that the Power Contract will be affected by this enactment, as will Hydro Quebec's rights under that contract. That, of itself, does not render the statute invalid. "Consequential effects are not the same thing as legislative subject matter". In the present case, as in the *Ladore* case, supra, the effect on rights outside the territorial limits of

the Province are collateral to and are necessarily incidental to the unquestioned rights of the Legislature of the Province to legislate in respect of the ownership, control and management of a natural resource situate wholly within its territorial limits.

#### Regulation of Interprovincial Trade and Commerce

The submission of the intervenors is that the aim and purpose of the Reversion Act is to control interprovincial trade in power, to dictate or regulate the price of power in interprovincial trade and to set aside the existing regulatory vehicle for such interprovincial trade namely the Power Contract made between CFLCo and Hydro Quebec. Reliance is placed by the intervenors on, *Lawson v. Interior Tree Fruit & Vegetable Committee* [1931] S.C.R. 357; *Reference re the Farm Products Marketing Act* [1957] S.C.R. 198; *Canadian Industrial Gas and Oil Ltd. v. Government of Saskatchewan* [1978] 2 S.C.R. 545; *Central Canada Potash v. Government of Saskatchewan* [1979] 1 S.C.R. 73; *A.G. Manitoba v. Manitoba Egg and Poultry Association* [1971] 19 D.L.R. (3d) 169 (S.C.C.); *Burns-Food v. Attorney General Manitoba et al* [1975] 1 S.C.R. 494.

Legislation that aims at regulation of trade in matters of interprovincial concern is undoubtedly beyond the competence of a provincial legislature. The issue here, however, is not whether the Act in question might affect the interprovincial trade of CFLCo and Hydro Quebec, but whether it is an Act in relation to the regulation of interprovincial trade and commerce. In determining the aim of the statute, more is needed than the fact that the Act will have an impact on a company's interprovincial trade. As stated by Martland, J. in *Carnation Company v. Quebec Agricultural Marketing Board* [1968] 67 D.L.R. (2d) 1 (S.C.C.) at p. 14:

"I am not prepared to agree that, in determining that aim, the fact that these orders may have some impact upon the appellant's interprovincial trade necessarily means that they constitute a regulation of trade and commerce within s.91(2) and thus renders them invalid. The fact of such impact is a matter which may be relevant in determining their true aim and purpose, but it is not conclusive."

and, at p. 15:

"I agree with the view of Abbott, J., in the Ontario Reference, that each transaction and each regulation must be examined in relation to its own facts. In the present case, the orders under question were not, in my opinion, directed at the regulation of interprovincial trade. They did not purport directly to control or to restrict such trade. There was no evidence that, in fact, they did control or restrict it. The most that can be said of them is that they had some effect upon the cost of doing business in Quebec of a company engaged in interprovincial trade, and that, by itself, is not sufficient to make them invalid."

There is nothing in the Reversion Act which aims at interprovincial trade. There is no existing federal regulatory authority that embraces the situation here, nor does the Act challenge the regulatory power of Parliament if Parliament should choose to act. Neither does the Act purport to exercise any regulatory control over the price of electricity to be exported. Under the Act the Province of Newfoundland acquires the unencumbered ownership of a natural resource within the territorial limits of the Province as well as the generating plant and transmission lines of CFLCo situate within the Province. It is irrelevant that the power generated from that natural resource is almost all exported. Merely because the Province will replace CFLCo as owners and operators does not mean that the Province will control the extra-provincial trade of power. Prices will have to be agreed on by seller and purchaser and the product will remain under the jurisdiction of Parliament with regard to its regulation.

#### Dominion Company

The intervenors also challenge the validity of the Act on the ground that it sterilizes a Dominion company. They argue that, in so far as the provisions of the Act affect a Dominion company, they are ultra vires according to the principles adopted by the Privy Council in *John Deere Plow Co. v. Wharton* [1915] A.C. 330,

Great West Saddlery Co. v. The King [1921] 2 A.C. 91 and Attorney General for Manitoba v. Attorney General for Canada [1929] A.C. 260.

In John Deere Plow Co. (supra), the legislation was held ultra vires because the legislative powers of the provinces are restricted to the extent that "the status and powers of a Dominion company as such cannot be destroyed". In Great West Saddlery Co. (supra), it was held that legislation will be invalid if a Dominion company is "sterilized in all its functions and activities". It will also be invalid if, as held in A.G. for Manitoba v. A.G. for Canada (supra), it is such "as to impair the status and essential capacities of the company in a substantial degree".

Most of the authorities relied on by the intervenors deal with legislation prohibiting a Dominion company from carrying on business or selling its shares or otherwise restricting the corporate powers of the company.

In Lymburn et al v. Mayland et al [1932] A.C. 318, the Privy Council held that The Security Frauds Prevention Act, 1930, of Alberta, which in effect precluded a public company from selling its shares unless it did so through a registered person, or was itself registered, was within the scope of the powers of the provincial legislature under Sec. 92 of the British North America Act 1867. It was held not to be legislation in relation to Dominion companies, as it did not wholly preclude them from selling their shares unless they were registered but merely subjected them to competent provisions applying to all persons trading in securities.

Lord Atkin, who delivered the judgment of the Board stated at p. 324:

"A Dominion company constituted with powers to carry on a particular business is subject to the competent legislation of the Province as to that business and may find its special activities completely paralysed, as by legislation against drink traffic or by the laws as to holding land. If it is formed to trade in securities there appears no reason why it should not be subject to the competent laws of the Province as to the business of all persons who trade in securities."

In B.C. Power Corporation Limited v. Attorney-General of British Columbia (1965) 47 D.L.R. (2d) 633, also relied on by the intervenors, Lett, C.J.S.C. invalidated legislation purporting to expropriate all the shares of B.C. Electric Company, a subsidiary of British Columbia Power Corporation Limited, a federally incorporated company. He held that the legislation impaired the status or essential powers of a federal company in that the company was deprived of substantially all its assets.

In the Asbestos case (supra) Bisson, J.A., writing for the Court of Appeal of Quebec, refused to adopt the reasoning of Chief Justice Lett in B.C. Power Corporation. In his view they went beyond the advantages accorded by law to a federally incorporated company. We are in agreement with Bisson, J.A. that the findings of Chief Justice Lett amount to a considerable extension of the scope of federal power to incorporate companies as defined in the line of cases referred to and in which a distinction was drawn between the federal power to incorporate a company and a federal power to regulate its activities. This distinction was re-stated by Chief Justice Laskin in Morgan v. Attorney-General of Prince Edward Island (1975), 55 D.L.R. (3d) 527 at p.539:

"The issue here is not unlike that which has governed the determination of the validity of provincial legislation embracing federally-incorporated companies. The case law, dependent so largely on the judicial appraisal of the thrust of the particular legislation, has established, in my view, that federally-incorporated companies are not constitutionally entitled, by virtue of their federal incorporation, to any advantage, as against provincial regulatory legislation, over provincial corporations or over extra-provincial or foreign corporations, so long as their capacity to establish themselves as viable corporate entities (beyond the mere fact of their incorporation), as by raising capital through issue of shares and debentures, is not precluded by the provincial legislation. Beyond this, they are subject to competent provincial regulations in respect of businesses or activities which fall within provincial legislative power."



In *Canadian Indemnity Company v. A.G.B.C.* (1976), 73 D.L.R. (3d) 111, Martland, J., speaking for the Supreme Court of Canada, referred to the comments of Chief Justice Laskin in the Morgan case (supra) and quoted with approval the following principle enunciated by McGillivry, J.A. speaking for the Appellate Division of the Supreme Court of Alberta in *R. v. Arcadia Coal Co. Ltd.* [1932] 2 D.L.R. 475 at pp. 487-8:

"A provincial Legislature may enact laws, province wide, of general application (i.e., including the public generally) in respect of any of the subjects enumerated in s.92 and in so doing may completely paralyze all activities of a Dominion trading company provided that in the enactment of such laws it does not enter the field of company law and in that field encroach upon the status and powers of a Dominion company as such.

In my view an enactment of a provincial Legislature limited in direct effect by provincial boundaries which relates to a particular trade or business carried on within its boundaries, quite regardless of whether or not that trade or business is carried on by natural persons or companies, is valid, but the moment that a provincial Legislature legislates concerning companies as such, then, if such legislation constitutes regulation or impairment or sterilization of the powers and capacities which the Dominion has conferred, the legislation will be invalid."

Martland, J. concluded at p. 122:

"I am in agreement with this statement which accords with that of Chief Justice Laskin in the Morgan case, previously quoted. Parliament can create and maintain the legal existence of a corporate entity, with which a Province cannot interfere. But a provincial Legislature within its own field of legislative power can regulate, in the Province, a particular business or activity. The fact that a federally-incorporated company has, by federal legislation, derived existence as a legal person, with designated powers, does not mean that it is thereby exempted from the operation of such provincial regulation. It is subject to such regulation in the same way as a natural person or a provincially-incorporated company."

The Reversion Act deprives CFLCo of the leasehold interest in, and management of, a natural resource within the Province, but it does not purport to regulate or restrict that company in any of its essential corporate capacities. It is still at liberty to raise capital by the issue of shares and debentures and to engage in the furtherance of its corporate objects. The argument that the enactment is invalid in that it is not "law of general application" and is intended to affect a single Dominion company is not tenable in the context of provincial competence to take private property for public purposes. If, as was held in *The Great West Saddlery Co.*, (supra), a federal company dealing only in land is subject to provincial mortmain legislation it would, in our view, be equally subject to provincial expropriation legislation which is the subject matter of the Reversion Act. As stated by Lord Atkin in *Abitibi Power and Paper Company v. Montreal Trust Company* [1943] A.C. 536 at p. 548:

"There appears to be no authority, and no reason for the opinion, that legislation in respect of property and civil rights must be general in character and not aimed at a particular right. Such a restriction would appear to eliminate the possibility of special legislation aimed at transferring a particular right or property from private hands to a public authority for public purposes. The legislature is supreme in these matters, and its actions must be assumed to be taken with due regard for justice and good conscience. They are not, in any case, subject to control by the courts."

It was further contended that the ultimate effect of the expropriation of its fixed assets and other property rights will be to terminate the continuing existence of CFLCo in that S.12 of the Act precludes that company from suing in the courts or bringing other proceedings, either for compensation or for breach of any contractual provision or otherwise as a result of the Act. This, it is contended, is beyond the constitutional competence of the Provincial Legislature. We do not accede to that argument. A Dominion company, as

such, has no constitutional guarantee of being able to carry on any particular business under provincial regulatory control and be exempt from provincial requirements. The fact that a federally owned company is engaged in the management of land or a natural resource that it owns or leases in a province does not give it immunity from the right of a province to expropriate those rights by legislation. In that respect, it is no more privileged than a provincial company or a natural person.

It is trite law to state that a province has an absolute right to expropriate private lands or their property rights for public purposes. That question was considered by this Court in *Newfoundland Colonization and Mining Company Limited v. Province of Newfoundland* (1978), 15 Nfld. & P.E.I. Rep. 338, wherein it was stated at p. 344:

"The right to receive compensation for land taken or injuriously affected, however, depends on the provisions of the statute that authorizes the taking. As stated by Lord Parmoor in *Sisters of Charity of Rockingham and The King* [1922] 2 A.C. 315 at p. 323:

"No owner of lands expropriated is entitled to compensation, either for the value of the land taken, or for damage on the ground that his land is "injuriously affected", unless he can establish a statutory right".

The courts will not assume an intention on the part of the Legislature to expropriate land and exclude compensation therefor unless such an intention is expressed in unequivocal language. On the other hand where an Act expressly provides for the amount of compensation to be paid, as in this case, it is not open to the courts to determine the adequacy or otherwise of such compensation. The clear intent of the Legislature must prevail whatever the consequences."

The alleged inadequacy of compensation does not, in our opinion, restrict CFLCo in its corporate capacity. While the provisions of Sec. 12 do deprive the company of the right to sue for compensation other than as provided under the Act or for damages in respect of the forcible taking of its property rights, they do not affect that company's general right to sue and be sued, to contract and be contracted with.

Counsel for CFLCo challenges the validity of the Act on the further ground that it is legislation in relation to interprovincial works and undertakings within the meaning of the exception to S.92(10) of the *British North America Act* found in sub-section (a) of that section. S.92(10) assigns to the provinces exclusive jurisdiction over local works and undertakings other than such as are, "(a)... other works and undertakings connecting the Province with any other or others of the provinces, or extending beyond the limits of the Province".

In our view the answer to that argument is found in *Fulton et al v. Energy Resources Conservation Board and Calgary Power Ltd.* [1981] 34 N.R. 504. In that case the Supreme Court of Canada held that the construction of a power transmission line within Alberta to the border of Alberta and British Columbia to facilitate connection with the British Columbia and United States power grids was a local undertaking and within the jurisdiction of the province. Laskin, C.J.C. speaking for the Court stated at p. 512-513:

"One matter lightly touched on by counsel for Calgary Power Ltd. but not pressed was whether an electrical distribution system could competently be within s.92(10)(a). I do not doubt that it can be and the matter, in my view, is laid to rest by the judgment of this court in *Hewson v. Ontario Power Co.*, supra. That was a case, however, which, unlike the present one, turned on the existence of affirmative federal legislation. The same factor distinguishes, in my opinion, the pipeline cases. It is one thing for the Parliament of Canada to legislate affirmatively for the creation and regulation of an interprovincial pipeline, as in the *Campbell-Bennett Ltd.* and *Re Saskatchewan Power Corp.* cases. The position is quite different where, absent superseding federal legislation, a provincial legislature authorizes a provincial statutory board to entertain applications for the construction of intraprovincial facilities and also to empower an applicant to connect its

local facilities with those of an agency in an adjoining Province but without presuming to regulate the interconnection. I regard this as falling within provincial authority in relation to local works and undertakings."

As in *Fulton*, the works and undertakings here are wholly within the territorial limits of the Province, there is no superseding federal legislation, and the Act in question does not purport to exercise any regulatory control over the interconnection between the transmission lines of CFLCo and those of Hydro Quebec.

For all the above reasons we conclude that in pith and substance the Reversion Act is legislation in relation to property and civil rights in the Province and that it is in no way legislation in relation to any class of subjects enumerated in Sec. 91 or otherwise within federal jurisdiction by virtue of the B.N.A. Act.

#### Determination of Specific Questions

Having dealt with the validity of the Act as a whole we turn now to a consideration of the specific questions asked. Questions 1, 3, 5 and 7 relate to the validity or otherwise of Sections 4, 5(1), 7(1) and 8 of the Act respectively.

Section 4 is a repealing section that repeals *The Churchill Falls (Labrador) Corporation Limited (Lease) Act 1961*, including the Statutory Lease. The Act of 1961 relates to property and civil rights within the Province and, in our view, the Provincial Legislature has the exclusive right to amend or repeal it in whole or in part. (see *McGregor v. E. and N.R. Company* [1907] A.C. 462 per Sir Henri Taschereau at p. 468.)

Sections 5 and 7 were clearly enacted to ensure that any assignment, sublease, licence or permit issued pursuant to the Statutory Lease, and any right, privilege, liberty or interest in a lease or licence issued under clause 7 of Part III of the Statutory Lease was rescinded and cancelled and that all rights, privileges and interests conferred or accruing therefrom would revert to Her Majesty free and clear of any claim, encumbrance or other right of any person. These matters are clearly within the legislative competence of the Provincial Legislature.

Section 8 expropriates the hydro-electric works of CFLCo to the extent that they would not otherwise vest in Her Majesty upon the determination, rescission or cancellation of the Crown Lease and licences issued under clause 7 of Part III of the Statutory Lease. On the constitutionality of that section we refer again to the unquestioned right of the Legislature to take property or affect some or all of the rights of ownership in property within its territorial limits.

By questions 2, 4, 6 and 8 we are asked to interpret the legal effect of sections 4, 5, 7 and 8 in so far as they are found to be *intra vires*.

The subject matter of this reference is the constitutional validity of the Act in whole or in part and in determining that issue each of the substantive sections must of necessity be considered. The consequential effect of these sections however are not to be confused with legislative subject matter and, in our view, we should not enter more largely upon an interpretation of the statute that is necessary for the decision of the particular question before us. (See *Citizens Insurance Company of Canada v. Parsons* [1881] 7 App. Cas. 96.) It is undesirable for the Court to answer in the abstract questions that may involve consideration of debatable fact and which may affect the rights of persons not represented before it.

In *Attorney-General of British Columbia v. Attorney General of Canada* [1914] A.C. 153 Viscount Haldane L.C., speaking for the Privy Council, after referring to the statutory authority given the Supreme Court by the Dominion Parliament to pronounce on questions of general and abstract character referred to the Court, stated at p. 162:

"Nevertheless, under this procedure questions may be put of a kind which it is impossible to answer satisfactorily. Not only may the question of future litigants be prejudiced by the Court laying down principles in an abstract form without any reference or relation to actual facts, but it may turn out to be practically impossible to define a principle adequately and safely without previous ascertainment of the exact facts to

which it is to be applied. It has therefore happened that in cases of the present class their Lordships have occasionally found themselves unable to answer all the questions put to them, and have found it advisable to limit and guard their replies."

In our opinion questions 2, 4, 6 and 8 fall into the category of questions that cannot be satisfactorily answered in a Reference of this nature, nor are answers to them required in order to pronounce on the constitutional validity of the Act. We therefore consider it advisable to limit our reply to the remaining questions only. We would accordingly answer the questions referred to the Court as follows:

Question 1	- No - Not answered for the reasons given - No - Not answered for the reasons given
Question 2	- No - Not answered for the reasons given - No - Not answered for the reasons given
Question 3	- No - Not answered for the reasons given - No - Not answered for the reasons given
Question 4	- No
Question 5	
Question 6	
Question 7	
Question 8	
Question 9	

MORGAN J.A.