Court File No. 787/92

ONTARIO COURT OF JUSTICE

(DIVISIONAL COURT)

CALLAGHAN, C.J.O.C., ANDERSON and ADAMS, JJ.

B E T W E E N:	
A Joint Board under the Consolidated Hearings Act, R.S.O. 1990, c.C.29 Applicant	John R. Willms for the Applicant
- and -	
Ontario Hydro, the Ministry of the Attorney General and the Ministry of the Environment Respondents	Laura M.I. Formusa Gail A. Karish for the Respondent Ontario Hydro Thomas C. Marshall, Q.C. for the Respondent Ministry of the Attorney General Stella Couban for the Respondent Ministry of the Environment
Interveners	Bruce B. Campbell Betsy A. Harvie for the Intervener Interim Waste Authority Ltd. R. J. Beaman J. J. Wilker for the Intervener Corporation of the Town of Halton Hills

) John McGowan
) for the Intervener
) Ontario Waste Management
) Corporation
)
)
) David Estrin
) for the Intervener
) Corporation of the City of
) Toronto
)
) Heard: January 25th, 1993

BY THE COURT:

This application is brought as a stated case under the Consolidated Hearings Act, R.S.O. 1990, c. C.29 ("the CHA"). The Respondent Ontario Hydro is proposing to construct new transmission line facilities in the area of West London, Ontario and to expropriate lands required for those facilities (the "West of London Project"). Before proceeding with this project, Ontario Hydro requires approvals under the Environmental Assessment Act, R.S.O. 1990, c. E.18 and the Expropriations Act, R.S.O. 1990, c. E.26 and is seeking those approvals from a joint board under the CHA. This joint board has stated a case pursuant to the provisions of s.11 of the CHA. Section 11 provides:

> (1) A joint board may state a case in writing for the opinion of the Divisional Court upon any question that, in the opinion of the joint board, is a question of law.
>
> (2) The Divisional Court shall hear and determine the stated case and remit it to the joint board with the opinion of the Divisional Court thereon.

1. The Background

A request for approval under the Environmental Assessment Act results in a hearing before the Environmental Assessment Board if that board is required to hold a hearing by the Minister of the Environment. In certain circumstances, the Minister is obliged to require a hearing; in others, she may require a hearing. A request for approval under the Expropriations Act results in a hearing before an inquiry officer if a hearing is requested by a land owner and if the matter is referred to the inquiry officer by the approving authority (for Ontario Hydro, the approving authority is the Minister of Energy). The CHA was enacted to respond to such instances of multiple regulatory frameworks. It applies to undertakings in relation to which more than one hearing is or may be required by more than one tribunal under one or more of the statutes set out in the schedule to the CHA or prescribed by its regulations. Both the Environmental Assessment Act and ss. 6, 7, & 8 of the Expropriations Act are set out in the CHA schedule. However, following the establishment of this joint board, another joint board dealing with a matter unrelated to the West London application found that the CHA requires certain preliminary steps be taken under the scheduled statutes before a joint board would have "jurisdiction" to hold a hearing (the Reclamation Systems Inc. application or "RSI" decision). That decision was seen as casting doubt on the jurisdiction the joint board in the instant matter to hear the West of London application in light of steps not taken by

Ontario Hydro under the Environmental Assessment Act and the Expropriations Act.

The relevant background facts set out in the stated case note that Ontario Hydro submitted an environmental assessment of its proposal to the Minister of the Environment on May 29th, 1990. Pursuant to s. 7 of the Environmental Assessment Act, the Minister caused a review of the assessment to be prepared by government ministries and agencies. Ontario Hydro gave written notice to the Hearings Registrar pursuant to s.3 of the CHA on December 6th, 1990. Pursuant to s.3(2) of the CHA, the notice given by Ontario Hydro specified the general nature of its undertaking and that "hearings are required or may be required or held" under the Environmental Assessment Act and pursuant to ss.6, 7 and 8 of the Expropriations Act. The Hearings Registrar referred the matter to the chairs of the Environmental Assessment Board (EAB") and the Ontario Municipal Board ("OMB") on February 8th, 1991, as required by s.4(1) of the CHA. The two chairs are known as the "establishing authority" for the purposes of s.4 of the CHA and by s.4(2) they are required to establish a joint board following a reference to them by the Hearings Registrar. The establishing authority established a joint board for the West of London application and determined its composition by order dated February 18th, 1992.

Pursuant to s.7(2) of the CHA, Ontario Hydro subsequently made an application for directions dated May 1st, 1992 to the joint board regarding the giving of a Notice of Hearing. The application sought a change to the notice requirements for the hearings in respect of which the joint board was established. In particular, the application sought to modify the notice requirements under the Expropriations Act. The joint board issued an order on May 22nd, 1990 providing directions for the giving of a Notice of Hearing and in June of 1992 a Notice of Hearing was mailed to approximately 12,000 owners and tenants of property and other interested groups. It was also published twice in 24 newspapers in south western Ontario. A preliminary hearing was held by the joint board in Chatham, Ontario on August 10 and 11, 1992. On that occasion, a number of matters were reviewed by those in attendance including procedural guidelines, intervener funding and requirements for making application for party status. On September 16th, 1992, however, the RSI decision was issued by the joint board hearing the Reclamations Systems Inc. application to establish, operate and close a solid waste disposal site in the Town of Halton Hills.

On September 28th, 1992 the Ontario Hydro joint board advised that it would, pursuant to s.11 of the CHA, state a case for the opinion of the Divisional Court regarding its jurisdiction to proceed with the West London application in light of the RSI decision. The stated case is dated December 18th, 1992. It sets

out the following four questions which essentially ask whether the CHA consolidates the "prehearing procedures" otherwise required by the statutes listed in the schedule or whether such requirements first need to be met pursuant to individual applications made under each of the statutes for there to be jurisdiction in a joint board to proceed with a consolidated hearing under the CHA. The questions read:

1. What steps, if any, had to be taken in order for this Joint Board to have jurisdiction under the Consolidated Hearings Act, R.S.O. 1990, c.C.29 to hear West of London application?

2. More specifically, does this Joint Board have jurisdiction under the Consolidated Hearings Act, R.S.O. 1990, c.C.29 to hear the application made pursuant to the Environmental Assessment Act, R.S.O. 1990, c.E.18, given that the Minister of the Environment has not issued a notice under s.12 of the Environmental Assessment Act requiring a hearing?

3. More specifically, does this Joint Board have jurisdiction under the Consolidated Hearings Act to hear the application for approval of the expropriations, given that the procedures set out in subsection 6(1) and (2) and 7(3) and (4) of the Expropriations Act, R.S.O. 1990, C.E.26 have not been followed?

4. If the answer to question 2 or 3 is no, could those insufficiencies be remedied so that this Joint Board has jurisdiction to hear and decide the West of London application?

The CHA was enacted in 1981 (S.O. 1981, c. 20). Accordingly, it had been in operation for over a decade prior to the RSI

decision without such "jurisdictional" preconditions being asserted by joint boards. Notwithstanding this substantial history, the chairs of the EAB and OMB purported to adopt the reasoning of the RSI decision. They advised the Minister of the Environment that, in the future, the establishing authority would not be establishing joint boards "unless at least two of the matters under consideration are at a stage where a hearing could be held". The impact of their position on boards already established was not dealt with. In their letter of November 19, 1992 the two chairs stated:

> The Establishing Authority is now processing hearings on the basis that joint boards will not be established upon a proponents registration with the Hearings Registrar unless at least two of the matters under consideration are at a stage where a hearing could be held. Where the Environmental Assessment Act is one of the statutes under which an approval is required, a referral will be necessary because the Act states that no other approvals or licences can be given unless the EA has been accepted and the undertaking approved. If a referral under the Planning Act is also required, the two ministerial referrals would also allow a joint board to be established and the hearing commenced. Any other matters under contention could, we believe, be decided by the joint board pursuant to its power to control its own practice and procedure and to defer or take other action under subsections 5(3) - (5) of the Consolidated Hearings Act. This practice accords with the decision in Reclamation Systems Inc.
>
> Under this approach, which we believe creates appropriated administrative direction for proponents and for the various authorities and ministries, joint boards would not be

> constituted unless you, as the Minister, referred undertakings requiring approval under the EAA to the Board.

The purpose of the CHA was capsulized by the Court of Appeal in Re Joint Board under the Consolidated Hearings Act and Ontario Hydro et al (1985), 51 O.R. (2d) 65 at p. 82 in the following terms:

> The Consolidated Hearings Act was passed in 1981 to provide for the establishment of a single board to conduct the procedures and hearings that would otherwise be required in order to obtain statutory approval for major undertakings under a number of existing statutes.....

The legislation's purpose was also outlined in Re Central Ontario Coalition Concerning Hydro Transmission Systems et al and Ontario Hydro et al (1984), 46 O.R. (2d) 715 (Div. Ct.) at page 737:

> The object of the Consolidated Hearings Act (the Act) is to permit one tribunal to conduct all of the hearings that are required in connection with a proposed undertaking. Thus, the board herein was enabled to conduct all of the hearings required for the consideration of Hydro's proposal under the Environmental Assessment Act, the Planning Act, R.S.O. 1980, c.379 ..... the Expropriations Act, R.S.O. 1980, c.148, the Niagara Escarpment Planning and Development Act, R.S.O. 1980, c.316, and the Parkway Belt and Development Act, R.S.O. 1980, c.368. The advantages of such a consolidated procedure over piecemeal hearings is manifest.

Further insight into the intent of the CHA may be found in the

Legislature of Ontario Debates, NO. 33, June 1st, 1981 at pp. 1151-1152 where, during the debate on the proposed statute, the Honourable Mr. Keith Norton stated:

> .....
> One of the main concerns raised by the municipalities during consultations before that decision was that municipal projects were already subject to various planning and approval processes which could require public hearings, the most common being the requirements of the Planning Act and the Ontario Municipal Board Act. If we are to place municipal projects under the act, they asked that the government take steps to avoid the possibility of repetitive, expense, complex and time-consuming approval procedures.
>
> It has been this government's aim to improve services to the public by streamlining and simplifying these kinds of procedures. In view of this and in keeping with our commitment to them, I am pleased to be introducing, later today, the Consolidated Hearings Act for first reading.
>
> This bill provides a streamlined approval process for municipal, private and provincial projects or proposed activities which may otherwise require hearings by more than one tribunal. The basic intent is to simplify the processes which provide for public participation without sacrificing the quality of the work required by the proponents and by parties to the hearings. The rights of both proponents and individual citizens remain fully protected in this bill.
>
> .....
> It will be the possibility of multiple hearings that will bring this bill into play. Under it, consolidated hearings, where required, will be conducted by one or more members of the Ontario Municipal Board, the Environmental Assessment Board or members of both, as chosen by the chairman of the two boards in consultation with each other. This will eliminate any need to create a new

permanent board to hold the joint hearings. Some administrative staff, however, including a hearings registrar, will be required.

The decisions of this joint board will replace the decisions that would have been made by other boards. In a case where those other boards would only make recommendations to a government official for decision, the joint board can make that decision itself. Examples are decisions made by a director or myself after a hearing under the Ontario Resources Act or the Environmental Protection Act.

Under the bill, the joint board has the power to deal with all the factors of any given matter, or it may defer specific issues or technical details to another party for consideration at a later date. In the case of the Ministry of the Environment, for example, those details could be referred to the director for environmental approval.

The requirements for detailed planning and the provisions for allowing public access to the decision-making process provided in existing legislation must be preserved. But at the same time the government recognizes that proponents and citizen groups should not be expected to spend inordinate amounts of time and money involved in excessively long and complicated procedures. Such a situation only serves to frustrate the rights of all parties and unnecessarily delay what can be legitimately needed projects.

.....

2. The RSI Decision

Section 2 of the CHA sets out the criteria for the application of the Act. It provides:

> This Act applies in respect of an undertaking in relation to which more than one hearing is required or may be required or held by more

> than one tribunal under one or more of the Acts set out in the schedule or prescribed by the regulation. (emphasis added)

It is against the brevity of this provision that the joint board in Reclamation Systems Inc. (C.H.- 91-03 September 16, 1992) at page 16 held:

> For a joint board to have jurisdiction to hear and determine a matter related to an undertaking, the proponent must have created the possibility that a hearing " may be required" by filing the appropriate requests for approval pursuant to the underlying statutes. The request for approval must include sufficient supporting information to fulfil the processing requirements of the statutes.
>
> We believe that we can proceed to hear and determine matters only where RSI has filed a request for approval to the appropriate agency and has provided information sufficient to allow the agency to fulfil its statutory obligations. It is the filing of these materials that creates the possibility that a hearing "may be required".

The interpretation by that joint board of the phrase "may be required" was further elaborated at page 17 in these terms:

> The mere possibility that a hearing "may be required" is, in our view, insufficient to bring the matter under the aegis of the Act. We interpret this provision to encompass applications or requests for approval whose processing requirements in the underlying statute may lead to a hearing. This would include applications for which approval might be obtained with or without a hearing as a result of processing. It would also include an application for an appeal from the decision of the body charged with the responsibility of

> decision-making pursuant to an applicable statute.
>
> Two situations are needed in order that a hearing may be required: (1) a hearing must be a potential part of the approvals process of a statute which is included in the schedule to the CHA or prescribed by the regulations, and (2) an application must be made to the agency or body that has been given the authority or has the obligation to deal with the application pursuant to the relevant statute.
>
> An application for approval may be in the form stipulated by the agency or, if a form is not provided or required, an application may be a written request by the proponent. No matter how the application is couched it must provide sufficient information to allow the relevant processing requirements to be fulfilled.
>
> If there is insufficient information for the statutory requirements for processing to occur, then the reasonable conclusion is that, according to the statutory regimes, the matter could not progress to the hearing stage.

Finally at pp. 18-19 of its decision, the RSI joint board stated:

> We find the provisions of the CHA, subsection 5(2), do not give the joint board the power to make decisions on these matters in the absence of the required referral period. The joint board is given the power to make a decision that a tribunal would have had the power to make, but for the CHA process. That tribunal would have the jurisdiction to make a decision on a matter, in certain cases, only upon a referral by the designated minister or other official. Referral by a minister or other official takes place before the hearing and their referral power is not replaced by the joint board's power to make a decision that

might be made by any body or person after the holding of the hearing.

3. The Legislative Framework

We question whether an administrative agency should itself raise jurisdictional conditions precedent which are not expressly created or required by statute. Indeed, courts have met severe criticism where they have imposed doubtful jurisdictional restrictions on administrative action in similar circumstances. See, for example: Evans, "Jurisdictional Review in the Supreme Court: Realism, Romance and Recidivism" (1991), 48 admin. L. J. 255; Mullin, "The Supreme Court of Canada and Jurisdictional Error: Compromising New Brunswick Liquor"? (1988), 1 C.J.A.L.P. 71; MacLauchlan, "Approaches to Interpretation in Administrative Law" (1987-1988), 1 C.P.J.A.L.P. 293; MacLauchlin, "Judicial Review of Administrative Interpretations of Law: How Much Formalism Can We Reasonably Bear?" (1986), 36 U.T.L.J. 343 and Mullin, "The Re-emergence of Jurisdictional Error" (1985), 14 Admin. L.R. 326.

The purpose of this legislation is to relieve against the burden of multiple yet related processes and proceedings under defined statutes. The relation of various provisions of a statute to each other is relevant in elaborating the meaning or scope of a statute and a provision should, if possible, be construed to fit into that scheme or framework. See Driedger, Construction of Statutes (1983) at p. 36. In this context, ss.2, 3 (1) and (2),and

4(1) and (2) of the CHA outline a series of steps culminating in a duty on the part of a joint board to hold a public hearing pursuant to s.4(11). Section 2 has been previously set out but bears repeating. The relevant sections provide:

> 2. This Act applies in respect of an undertaking in relation to which more than one hearing is required or may be required or held by more than one tribunal under one or more of the Acts set out in the schedule or prescribed by the regulation.
>
> 3.(1) The proponent of an undertaking to which this Act applies shall give written notice to the Hearings Registrar.
>
> (2) A notice under subsection (1) must specify the general nature of the undertaking, the hearings that are required or may be required or held, and the Acts under which the hearings are required or may be required or held.
>
> 4.(1) Upon receipt of notice in accordance with section 3, the Hearings Registrar shall refer the matter to the chair of Environmental Assessment Board and chair of the Ontario Municipal Board.
>
> (2) Where a matter is referred under subsection (1), the chair of the Environmental Assessment Board and the chair of the Ontario Municipal Board together by order shall establish the joint board and together shall determine the composition of the joint board.
>
> (11) The joint board has the authority and the duty,
>
> (a) to hold a hearing in respect of and consider the matters that could be considered at the hearings specified in the notice to the Hearings Registrar under section 3; and

(b) to make and issue a decision in respect of matters considered by the joint board.

There can be no doubt that the Ontario Hydro proposal is an "undertaking" within the meaning of section 1 of the CHA. In our opinion, the statute is clear in providing that where there is the possibility of more than one hearing being required by more than one tribunal under one or more of the scheduled statutes, the CHA applies. In that event, on the filing of the notice to the Hearings Registrar, the Registrar must refer the matter to the two chairs and they, as the establishing authority, must establish the joint board. Were the hearing requirements of other statutes to govern the jurisdiction of a joint board, the CHA would not have employed the phrase "may be required" in s.2.. Rather, on the clear wording of that statute, the possibility of a hearing is sufficient to trigger the CHA.

In contrast to the joint board's jurisdiction being dependent on a conclusion being reached by someone that certain procedures as contemplated under each scheduled Act or under "at least two" such statutes have been carried out, express powers are conferred by the CHA on joint boards to ensure they have an adequate basis for decision-making. Such powers are comprehensive and provide ample authority for a joint board to integrate complex matters in as innovative a manner as is required by the circumstances. These provisions provide:

5.(3) A joint board may defer any matter or part of any matter,

(a) to be heard and decided under this Act by the joint board or another joint board at another date; or

(b) to be decided by the tribunal, body or person that, but for this Act, would have a power, right or duty to deal with the matter or part under any Act set out in the Schedule or prescribed by the regulations.

5.(4) Where a joint board defers a matter or part of a matter under subsection (3),

(a) the joint board may impose such terms and conditions or give such directions, or both, in respect of the proceedings or the matter or part deferred as the joint board considers proper;

(b) the joint board may direct that the matter or part deferred be decided without a hearing if, in the opinion of the joint board, the matter or part is not in controversy; and

(c) the joint board, tribunal, body or person to whom the matter or part is deferred has power to decide the matter or part in accordance with such terms, conditions and directions.

(5) Where a matter or part of a matter is deferred under subsection (3) to another joint board, this Act applies with necessary modifications in respect of the matter or part deferred shall be deemed to be an undertaking mentioned in section 3.

(6) A joint board may make any decision mentioned in subsection (2) without holding a hearing if the joint board is satisfied that in the circumstances a hearing would not be required or would be dispensed with under the

> Act specified in the Schedule or prescribed by the regulations that, but for this Act, would apply in respect of the undertaking.
>
> 6.(4) A joint board may amend a notice given under section 3 on motion by a person entitled to take part in the proceedings or on its own initiative after the commencement of the joint board hearing and in so doing may impose such terms and conditions and give such directions as the joint board considers proper. 1981, c. 20, s.6.
>
> 7.(1) Subject to subsection (2) and to any rule of conduct or practice or procedure prescribed by the regulations, the notices and documents that would be required to be given or filed in respect of a hearing by a tribunal shall be given or filed, as the case may be, in the same manner in respect of the joint board hearing by the joint board established in respect of the hearing.
>
> 7.(2) Upon the application without notice, a joint board may change the requirements as to filing of documents or giving of notice in respect of any hearing in respect of which the joint board has been established if the joint board is satisfied that the change will facilitate the joint board hearing and is not unfair to any person entitled to be heard at or to attend the joint board hearing.
>
> 7.(3) Subject to this Act and the regulations, a joint board may determine its own practice and procedure.

Accordingly, once a joint board has been established pursuant to s.4 of the CHA, it has a broad authority to dismiss, adjourn or defer the matters before it or any part thereof if it is of the view that the information or level of preparation, assessment or analysis provided by the proponent is inadequate to allow the board

to make a proper determination. A joint board is master of is own procedure and is accorded broad authority to achieve the goals of the CHA and its scheduled statutes. These provisions, in our opinion, illustrate that the perception of an inadequate factual basis at the time notice is given to the Hearings Registrar does not go to the jurisdiction of the joint board. The objections raised by the joint board in the RSI decision are not unlike the objections taken to the description of the proposed undertaking in Re Joint Board under the Consolidated Hearings Act and Ontario Hydro et al. (1985), 51 O.R. (2d) 82 which the Court of Appeal refused to characterize as jurisdictional. In this respect Mr. Justice Zuber at page 84 stated:

> In my respectful view, the description of the undertaking, although general, was adequate. However, even if it could be said that the description of the undertaking in the notice to the Hearings Registrar was in some way deficient, I fail to see how this could lead to the conclusion that the joint board lacked jurisdiction. In my respectful view, the geographical adequacy of the description of the undertaking was a matter of procedure. The joint board itself could have required a better description of the undertaking had it been necessary so that it could more effectively discharge its duties. But, in this case, obviously the joint board felt the description was adequate. I conclude therefore that the joint board had jurisdiction to embark upon the plan stage hearing. (emphasis added)

Not only does the joint board have the authority to defer any matter or part of any matter to another joint board, to the original decision maker or to itself at a later date, pursuant to

s.5(3), the joint board has the express authority to make any decision that might have been made by the original decision maker (but for the CHA) without the holding of a hearing if the board is satisfied that a hearing is not necessary. In this respect s.5(6) of the CHA provides:

> 5.(6) A joint board may make any decision mentioned in subsection (2) without holding a hearing if the joint board is satisfied that in the circumstances a hearing would not be required or would be dispensed with under the Act specified in the Schedule or prescribed by the regulations that, but for this Act, would apply in respect of the undertaking.

Thus, the CHA does not contemplate a minister or some other authority under a scheduled statute exercising a statutory power to direct or not to direct a hearing once the mandatory provisions of the CHA have been engaged. The provision also illustrates the CHA does not intend any jurisdictional demarcation between pre-hearing and hearing procedures.

While obvious policy trade-offs were made in according joint boards comprehensive procedural and decision-making authority in order to achieve the streamlining goals of the CHA, we also point out that s.5(7) specifically adopts the standards and criteria spelled out in the separate statutes for the particular tribunals. In this way, the procedural integration of several matters does not relieve a proponent from meeting the substantive requirements it

would otherwise face under individual legislation. This provision provides:

> 5.(7) The standards and criteria in or under an Act specified in a notice under section 3 that relate to the undertaking specified in the notice apply with necessary modifications in respect of a decision that may be made by a joint board under this Act. 1981, c. 20, s.5.

It is also of note that pursuant to s.6(4) of the statute, a joint board may amend the notice given under s.3 on its own initiative or on motion even after the commencement of the joint board hearing and, in doing so, the board may impose such terms and conditions and give such directions as it considers proper. In short, the CHA's regulatory reach is very pervasive and does not envisage such jurisdictional pre-hearing requirements under the scheduled statutes held to exist in the RSI decision. Indeed, "pre-hearing" procedures are not unrelated to subsequent hearings and their control by the joint board may be crucial to the efficient integration of otherwise separate hearing procedures. To hold that diverse pre-hearing procedures must be complied with under the scheduled statutes as a matter of jurisdiction is to disclaim joint board control over the rationalization and monitoring of such matters. The absence of such control could have a substantial adverse impact on the timely and efficient holding of consolidated hearings. For this reason, such jurisdictional hurdles would have to be clearly spelled out and they are not.

It was argued that extending the reach of joint boards in the manner we believe the legislature intended would remove important pre-hearing participation rights from parties and ministers. It is significant that no minister complained to us in this regard and, in any event, it is an inaccurate submission. The joint board has authority to replicate statute specific pre-hearing rights through its procedural and deferral powers and its authority to determine a matter without a hearing. Moreover, and subject to this latter s.5(6) power, public participation through the mandatory hearing process set out in s.4(1) is guaranteed. Ministerial involvement in such hearings is also provided for as a matter of right by s.8(1). Further, a joint board determination, upon application, may be varied as the Lieutenant Governor in Council considers appropriate pursuant to s.13(1). We are not persuaded that any substantial prejudice arises from a comprehensive authority of joint boards over pre-hearing procedures. While it may be that the exactitude of statute specific pre-hearing processes is compromised to a degree by the integration imposed by the CHA, this is the price to be paid for the substantial benefits conferred by the statute. On the other hand, the creation of ill-defined "jurisdictional hurdles" as are raised by the RSI decision exacerbates the adversarial nature of the litigation in this area and rewards submissions and objections aimed at strategic delay and increasing complexity. In our view, the RSI decision strikes at the heart of the CHA, substantially undermining its achievements.

It is important to observe that the Minister of the Environment has authority to require a hearing by the Environment Assessment Board but has no authority to require a joint board to hold a hearing pursuant to the Consolidated Hearings Act. Moreover, O.Reg.173/90, passed pursuant to the CHA, supports the position that a notice issued pursuant to s.12 of the Environmental Assessment Act is not required in order to give the joint board jurisdiction. It requires that where an environmental assessment is involved, the joint board shall not commence the hearing until the public comment and review period required under s.7(2) of the Environmental Assessment Act has expired. In other words, O.Reg.173/90 places a restriction on the normal procedure under the CHA and indicates an intention on the part of the Legislature that the Minister of the Environment oversee the environmental assessment process until the period for public inspection of the government review has expired. At the expiration of the period set out in s.7(2) of the Environmental Assessment Act, a joint board may begin hearing the matters before it. The hearing, therefore, is in no way dependent upon a referral from the Minister of the Environment under s.12 of the Environmental Assessment Act.

Regulation 173/90 also illustrates a more general reality that proponents may need to initiate various actions under certain scheduled statutes as well as the CHA where the failure to do so would effectively foreclose an approval from the joint board on the

merits. But this reality is far different from holding that the proponent must do so as a matter of joint board jurisdiction.

Our interpretation of s.2 of the CHA is in keeping with the general intent of the legislation to streamline the hearings and procedures required with respect to an undertaking in relation to which more than one hearing is required or may be required. If it were necessary that in order to "find compliance with section 2 [CHA].... there were two good applications, each leading to a hearing before a different tribunal" as required by the RSI decision and now the establishing authority, an effective consolidation of certain matters under the various statutes might never occur. For example, under the Expropriations Act, it is often not possible to know whether the expropriation of property will be necessary until it is known whether the undertaking will be approved. Consequently, it may not be possible to proceed separately but in parallel with an Expropriations Act matter and a matter requiring approval under the Environmental Assessment Act. In other words, it may not be known if a "hearing of necessity" under the Expropriations Act will be necessary until it is known whether approval under the Environmental Assessment Act will be granted, on what terms and conditions and until it is subsequently discovered whether or not a property owner will require a hearing.

Under the CHA, however, and subject to the powers of the joint board to control its own processes, all matters relating to the approval of the undertaking, the selection of the appropriate route and the determination of land requirements and approvals for acquisition can be dealt with in a single proceeding. If it were always necessary for a joint board to wait until the processing requirements under the constituent legislation have been completed and a hearing triggered under each statute prior to a joint board acquiring jurisdiction, there would be great potential for duplication in the processing of applications, significant delays and conflicting decisions. Such a result is inconsistent with the CHA's underlying purpose.

4. Answering the Questions

Against this analysis, the following answers to the four questions emerge.

Question 1: **What steps, if any, had to be taken in order for this Joint Board to have jurisdiction under the Consolidated Hearings Act, R.S.O. 1990, c.C.29 to hear the West of London Application?**

The jurisdiction of the joint board is grounded in the CHA For this joint board to have jurisdiction pursuant to the CHA, the following steps needed to be taken:

(1) Ontario Hydro had to submit a written notice to the Hearing Registrar meeting the requirements of section 2 and 3 of the CHA. This was done.

(2) The Hearings Registrar had to refer the West of London application to the establishing authority pursuant to subsection 4(1) of the CHA. He or she did so.

(3) The establishing authority had to establish the joint board for the West of London application and determine its composition pursuant to section 4(2) of the CHA. This occurred.

Question 2: **More specifically, does this Joint Board have jurisdiction under the Consolidated Hearings Act, R.S.O. 1990, c.C.29 to hear the application made pursuant to the Environmental Assessment Act, R.S.O. 1990, c.E.18, given that the Minister of the Environment has not issued a notice under S.12 of the Environmental Assessment Act requiring a hearing?**

It does. The joint board's jurisdiction does not depend upon the Minister of the Environment issuing a notice under s.12 of the Environmental Assessment Act. Once the Notice of Hearing to the Hearings Registrar has been given and, pursuant to O.Reg.173/90 of the Consolidated Hearings Act, the public comment period under the Environmental Assessment Act has expired, the hearing under the CHA may commence. Accordingly, this joint board has jurisdiction under the CHA to hear the application made pursuant to the Environmental Assessment Act. The notice under s.12 of the Environmental

Assessment Act is not required for the joint board to have jurisdiction to hear and decide the West of London application.

Question 3: **More specifically, does this Joint Board have jurisdiction under the Consolidated Hearings Act to hear the application for approval of the expropriations, given that the procedures set out in subsections 6(1) and (2) and 7(3) and (4) of the Expropriations Act, R.S.O. 1990, c.E.26 have not been followed?**

It does. In our view, those sections of the Expropriations Act not listed in the schedule to the Consolidated Hearings Act are excluded from the application of the CHA. Only ss.6, 7 and 8 are listed. While s.4 of the Expropriations Act is mentioned in s.6(1) of that Act, the incidental reference cannot be taken to include a requirement that an application be filed separately with the approving authority (the Minister of Energy). In our view, the Minister had no jurisdiction to deal with the application because the CHA applies. None of the procedures set out in ss.6(1) and (2) and 7(3) and (4) of the Expropriations Act are preconditions for the joint board to have jurisdiction to hear and decide the West of London application.

Question 4: **If the answer to Question 2 or 3 is no, could those insufficiences be remedied so that this Joint Board has jurisdiction to hear and decide the West of London application?**

In light of the answers to Questions 1, 2 and 3, the joint board has jurisdiction to hear and decide the West of London application and Question 4 need not be answered.

CALLAGHAN, C.J.O.C.

ANDERSON, J.

ADAMS, J.

Released: March 8, 1993