

COURT OF KING’S BENCH OF MANITOBA

B E T W E E N:

MANITOBA HYDRO,	)	
	)	<u>John B. Martens</u>
	)	<u>Jennifer A. Sokal</u>
applicant,	)	for Manitoba Hydro
	)	
- and -	)	
	)	<u>Jonathan M. Woolley</u>
WAWASUM ENERGY INC. and	)	for the respondent
MICHELS CANADA CO.,	)	Wawasum Energy Inc.
	)	
respondents.	)	<u>Patrick J. Rykes</u>
	)	<u>Simon Q.K. Garfinkel</u>
	)	for the respondent
	)	Michels Canada Co.
	)	
	)	<u>Penny L. Piper</u>
	)	For the Attorney General of Canada
	)	
	)	
	)	Judgment Delivered:
	)	April 17, 2026

REMPEL J.

BACKGROUND

[1] In 2019 and 2023, Manitoba Hydro (“Hydro”) entered into two separate contracts with Wawasum Energy Inc. (“Wawasum”) to perform maintenance work on subtransmission and distribution electrical lines owned by Hydro (collectively, the

“Projects”). Wawasum subcontracted portions of the work on the Projects to Michels Canada Co. (“Michels”).

[2] After invoices for work performed by Michels on the Projects in excess of \$1.4 million were left unpaid by Wawasum, it filed and served a lien on Hydro (the “Lien”) pursuant to s. 16 of *The Builders’ Liens Act*, C.C.S.M. c. B91 (the “**BLA**”).

[3] Hydro has withheld the sum of \$921,521.30 (the “Funds”) from Wawasum, with respect to amounts it is contractually obligated to pay Wawasum, for work on the Projects. The Funds are comprised of two 7.5 per cent holdbacks from amounts owing to Wawasum, one as mandated by the **BLA**, and the other related to amounts retained by Hydro under performance-related provisions of the contracts related to the Projects.

THE LIEN ACTION

[4] A short time after the Lien was filed, Michels filed a statement of claim in suit no. CI 24-01-47041 against Wawasum, Hydro and the Government of Manitoba, among others, seeking final judgment for its unpaid work and other relief relating its Lien under the **BLA** (the “Lien Action”). The filing of this statement of claim served to “perfect” the Lien registered by Michels within the statutory time limits required by the **BLA**.

[5] By way of response, Wawasum filed a statement of defence and counterclaim in the Lien Action. Wawasum denied that any amounts were owing under the contracts as alleged by Michels and further alleged contractual breaches by Michels with respect to the quality of the work performed under the subcontracts and inaccuracies in the invoices that Michels submitted for the work it provided.

[6] The Lien Action proceeded to pre-trial before Suche J. in the Fall Term of 2025, who directed the following questions should be answered in advance of the trial, so as to facilitate the efficient progression of that litigation:

- a) Is the Lien, on its face, valid and, in particular, does ss. 3(3) of the **BLA** act as a bar to the filing of the Lien?; and
- b) What amount of the Funds should be paid by Hydro into court, or otherwise to the parties and/or legally interested parties, pursuant to the interpleader action commenced by Hydro?

THE INTERPLEADER ACTION

[7] The dilemma facing Hydro is that paying the Funds to one claimant could expose it to liability from others. For that reason, Hydro seeks an order of interpleader in this matter (the "Interpleader Action") which would allow it to pay the Funds into court and then drop out of the Lien Action where the priorities of the competing claimants will be adjudicated.

[8] The Canada Revenue Agency (the "CRA") claims a super priority over a portion of the Funds and seeks to have Hydro pay out the existing tax liabilities of Wawasum to CRA in full, before paying any surplus amounts into court under an order of interpleader.

[9] The two questions that need to be answered prior to trial, as noted above in the Lien Action, pertain to the applicability of the exemption under ss. 3(3) of the **BLA** to liens filed with respect to certain Hydro contacts and what part of the Funds, if any, should be paid into court.

[10] For the sake of clarity, I would note that issues relating to the quantum of the Lien or the allegations described in the counterclaim filed by Wawasum are not before me in the Interpleader Action. All of those issues will be litigated at trial in the Lien Action, which will commence in December of 2027.

THE RELIEF SOUGHT

[11] In a nutshell, Hydro seeks the following relief under the Interpleader Action:

- a) Payment of the Funds (less its legal costs) into court or to CRA as I may direct;
and
- b) The discharge of the Lien and the release of Hydro from the Lien Action upon payout of the Funds.

DEEP ISSUE

[12] Key to the two questions before me is the interpretation of ss. 3(3) of the **BLA**, which excludes the application of the **BLA** to work related to certain Hydro contracts.

[13] Subsection 3(3) of the **BLA** provides:

Act not to apply to certain Manitoba
Hydro contracts

3(3) This Act does not apply to contracts, or work related to contracts, entered into by Manitoba Hydro with respect to or in any way associated with the construction, repair or maintenance of hydro-electric generating stations or facilities, and plant appurtenant thereto.

Exclusion de certains contrats de
l'Hydro-Manitoba

3(3) La présente loi ne s'applique pas aux contrats, ni aux travaux qui y sont reliés, conclus par l'Hydro-Manitoba qui concernent ou se rapportent de quelque manière à la construction, la réparation et l'entretien des stations ou établissements produisant l'hydro-électricité et des usines y annexées.

[14] Counsel for Hydro and Michels argue that the work performed by Michels, which related to the repair and maintenance of wooden utility poles and the wires above or below ground connected to such poles, cannot fairly be "*associated with the construction, repair or maintenance of hydro-electric generating stations or facilities, and plant appurtenant thereto*" as described in ss. 3(3) of the **BLA**. Counsel for Wawasum argues that ss. 3(3) provides a blanket ban on liens with respect to all work performed at any point in the Hydro network, from the generating station to the end user.

[15] The deep issue before me is whether the lien rights for unpaid wages and materials under the **BLA** protect subcontractors under some contracts pertaining to work performed on the Hydro network, but not others. In order to reach a conclusion on this issue, I will have to examine the provisions of the **BLA** and **The Manitoba Hydro Act**, C.C.S.M. c. H190 (the "**Act**"), in light of their text, their context and their purpose as required by the modern approach to statutory interpretation.

DECISION

[16] I am satisfied that the exemption created by ss. 3(3) of the **BLA** does not apply to the work performed by Michels in this case and that the Lien filed by Michels is valid. As a result of my conclusion, I will grant the relief sought by Hydro in the Interpleader Action and direct the payment of the Funds held by Hydro in a manner that I will detail later in this decision. My reasons follow.

THE HYDRO NETWORK

[17] In order to understand the nature of the arguments raised by the parties it is essential to understand how hydro-electric power (the "Power") is generated in Manitoba and how it is then transmitted and distributed to customers or end users.

[18] Power is initially produced at generating stations along river dams in northern Manitoba. Due to the fact that the generating stations are located great distances from its customer base, Hydro must send the Power to converter stations in northern Manitoba, where it is converted from alternating current ("AC") to direct current ("DC").

[19] Once converted to DC, the Power is sent south via major high-voltage transmission lines known as "Bipoles", that carry high voltage direct current ("HVDC") from the converter stations and generating stations where the Power originates in northern Manitoba. Power flowing down Bipoles travels south for great distances.

[20] When the Power reaches southern Manitoba, it enters converter stations where it is transformed from DC back into AC. The Power then moves into substations equipped with step-down transformers. The substations lower the voltage of the electricity to below 100 kilovolts ("kV") so it can safely enter the "subtransmission" network.

[21] From the subtransmission network, the Power is routed to the Hydro distribution network, which frequently utilizes infrastructure like wooden poles to deliver the Power to the homes and businesses of its customers and end-users. The Power in the distribution network can flow in any direction and can be routed or re-routed depending on customer demand or as circumstances, such as maintenance or outages, may dictate.

The Nature of the Work under the Subcontracts

[22] The work performed by Michels under the subcontracts was part of a refurbishment project focused on Hydro's distribution and subtransmission network. The focus of Michels' work was on the replacement of wooden poles and the lower voltage lines that ran between those wooden poles either above or below ground.

Does the *BLA* apply to the Subcontracts?

[23] The distinction between work on the local distribution network for customers in the south, as opposed to work on the Bipoles, is a crucial point at issue in this litigation.

[24] Hydro and Michels both argue the work in this case can be fairly categorized as maintenance to the local distribution network rather than work related to high-voltage critical transmission infrastructure. Key to this argument is that the wooden poles and the electrical lines connected to them cannot be considered as either physically annexed to or essential to the operation of the generating stations themselves, which Hydro and Michels assert is necessary for the statutory exclusion created by ss. 3(3) of the ***BLA*** to apply.

[25] Wawasum argues that no distinction can be drawn at law between Hydro's transmission infrastructure and distribution networks, as the Power that lights up a room for a Hydro customer, regardless of their location, is inextricably linked to the originating source of that Power in northern Manitoba. Based on this logic, Wawasum maintains that the work in question was indeed in some way "*associated with the construction, repair or maintenance of hydro-electric generating stations or facilities, and plant appurtenant thereto*" and that I should give the broadest conceivable interpretation to ss. 3(3).

THE MODERN APPROACH TO STATUTORY INTERPRETATION

Text, Context and Purpose

[26] The seminal decision of the Supreme Court of Canada in ***Rizzo & Rizzo Shoes Ltd. (Re)***, 1998 CanLII 837 (SCC); [1998] 1 S.C.R. 27 [1998] 1 S.C.R. 27, teaches that the modern approach to statutory interpretation requires that:

21 ...

... the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[27] The starting point of any interpretive exercise under the modern approach to statutory interpretation is the text of the statute. ***R. v. Carignan***, 2025 SCC 43, teaches that "*the modern approach to statutory interpretation makes the text the "anchor of the interpretive exercise", because the text specifies the means chosen by Parliament to achieve its purposes and attain its goals*" (at para. 58) (citations omitted).

[28] Although the text may be "*the anchor of the interpretative exercise*" it is not the only step in the process. The text must be read in its proper context and in harmony with the purpose of the statute as required by ***Rizzo Shoes*** which confirms "*statutory interpretation cannot be founded on the wording of the legislation alone*" (at para. 21).

The Text of the *BLA*

[29] Interpreting the text in this case also requires me to consider the words used in both the English and French versions of the ***BLA*** under the equal authority rule. In a bilingual jurisdiction such as Manitoba, all legislation is enacted in both English and French. (See s. 23 of the ***Manitoba Act, 1870***, S.C. (33 Vict.), c. 3, S.C. 1870, c. 3).

Re Manitoba Language Rights, 1985 CanLII 33 (SCC), [1985] 1 S.C.R. 721, teaches that the English and French versions of a statute are both considered to be official, original, and “*equally authoritative*” expressions of the law under the equal authority rule (at para. 147).

[30] ***Friesen (Brian Neil) Dental Corp. et al. v. Director of Companies Office (Man.) et al.***, 2011 MBCA 20, serves as a reminder that both the French and English versions of a statute “*are of equal validity and one version cannot simply be chosen over the other*” (at para. 25).

POSITIONS OF THE PARTIES

[31] All three parties rely on an earlier decision of this court in ***American Piledriving Equipment, Inc. v. Manitoba Hydro***, 2018 MBQB 27, to support their respective positions on how ss. 3(3) should be interpreted. In that case, Kroft J. (as he then was), concluded that ss. 3(3) of the ***BLA*** operated as a bar to a lien action filed by the plaintiff subcontractor against Hydro with respect to unpaid work it had performed for a general contractor at a converter station that was a key component of a Hydro mega project.

Wawasum’s Position

[32] Wawasum argues that ***American Piledriving*** governs here, as the facts of that case are substantially similar to this case. The converter station, where the employees of the subcontractor performed their work in that case, was located on a dedicated site 120 kilometres from the nearest generating station, yet the court concluded that the location of the converter station satisfied the ordinary meaning of the words “*plant appurtenant thereto*” found in ss. 3(3) of the ***BLA***. On this basis, Wawasum argues that

there is no logical basis to draw distinctions based on how far any part of the Hydro transmission infrastructure is located from the source of the power, and that every part of the Hydro transmission infrastructure must be considered “*plant appurtenant thereto*” a hydro-electric generating station or facility.

[33] Wawasum also points to the definition of “*appurtenant*” found in Black’s Law Dictionary (5th ed), which Kroft J. cites in ***American Piledriving***:

[31] ... :

Appurtenant. Belonging to; accessory or incident to; adjunct, appended, or annexed to; . . . A thing is “appurtenant” to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter. A thing is deemed to be incidental or *appurtenant* to land when it is by right used with the land for its benefit, as in the case of a way, or water-course, or of a passage for light, air, or heat from or across the land of another.

Wawasum places particular emphasis on the part of this definition that states that “[a] thing is ‘*appurtenant*’ to something else when it stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment the latter”.

[34] This led to the conclusion in ***American Piledriving*** that that the converter station was “*appurtenant thereto*” with respect to the generating station because “*electricity generated at a Hydro station cannot be transmitted to the intended market without first converting it through the Project. It is essential infrastructure, necessarily connected with the use of the generators*” (at para. 31). Wawasum argues that the same reasoning applies here. The work of Michels on the Projects was for “*essential infrastructure, necessarily connected with the use of the generators*” (***American Piledriving***, at para. 31). Consumers cannot receive power from the generating station without the subtransmission and distribution lines that are part of the Projects Michels worked on. In

short, Wawasum asserts there is no principled reason or legislative basis to distinguish between a converter station and transmission lines that reach the end consumers.

[35] As to understanding context in the interpretive exercise, Wawasum asserts that it is necessary to read ss. 3(3) of the **BLA** in conjunction with the rest of s. 3, as was done in **American Piledriving**. Wawasum argues that a fair reading of s. 3 in its entirety in conjunction with the **Act** clearly shows that while the legislature intended the **BLA** to apply to the Crown and its agencies, like Hydro, it carved out exceptions for “*essential infrastructure*” (**American Piledriving**, at para. 34). Again, implicit in this argument is that subtransmission and distribution lines are no less of a type of essential infrastructure than a converter station.

[36] With respect to the context provided by the **Act**, Wawasum draws my attention to the broad definition of “*works*” found at s. 1 of the **Act**, as well as ss. 2(1) and 4(4) of the **Act**, all of which are reproduced below:

Definitions

1 In this Act,
“works” includes all roads,
railroads, plant, machinery,
buildings, structures, erections,
constructions, installations,
materials, devices, fittings,
apparatus, appliances,
equipment, and other property
for the development, generation,
transmission, distribution, or
supply of power.

. . .

Définitions

1 Les définitions qui suivent
s'appliquent à la présente loi.
ouvrages Y sont assimilés les
routes, voies ferrées, usines, la
machinerie, les bâtiments,
structures, édifices,
constructions, installations,
matériaux, systèmes, ferrures,
dispositifs, appareils,
équipements, ainsi que les
autres biens utilisés pour la mise
en exploitation, la production, le
transport, la distribution ou la
fourniture d'énergie.

. . .

Purposes and objects of Act

2(1) The purposes and objects of this Act are to provide for the continuance of a supply of power adequate for the needs of the province, and to engage in and to promote economy and efficiency in the development, generation, transmission, distribution, supply and end-use of power and, in addition, are

(a) to provide and market products, services and expertise related to the development, generation, transmission, distribution, supply and end-use of power, within and outside the province; and

(b) to market and supply power to persons outside the province on terms and conditions acceptable to the board.

...

Proceedings against corporation affecting supply of power prohibited

4(4) No action or proceedings by way of injunction, mandamus, prohibition or other restraining process or proceeding of any nature that has, or may have, the effect of terminating, suspending, curtailing, limiting, or hindering the supply of power to any person shall be brought, or may be maintained, against the corporation in any court.

Objets de la présente loi

2(1) La présente loi a pour objets d'assurer le maintien d'une réserve d'énergie permettant de répondre aux besoins de la province, et de développer l'exploitation, la production, le transport, la distribution, la fourniture et l'utilisation finale de l'énergie et de promouvoir l'économie et l'efficacité dans ces opérations; elle a également pour objets :

a) de fournir et de commercialiser des produits, des services et des compétences ayant trait à l'exploitation, à la production, au transport, à la distribution, à la fourniture et à l'utilisation finale de l'énergie, tant à l'intérieur qu'à l'extérieur de la province;

b) de commercialiser l'énergie et d'en fournir aux personnes de l'extérieur de la province à des conditions que juge acceptables le conseil.

...

Poursuites interdites

4(4) Est irrecevable devant tout tribunal l'action ou la poursuite contre la Régie que ce soit par voie d'injonction, de mandamus, de prohibition ou d'autre procédure ou recours extraordinaire de quelque nature qui a ou pourrait avoir pour effet de mettre fin, de suspendre, de gêner, de limiter ou d'empêcher la fourniture d'énergie à quelque personne que ce soit.

[37] Wawasum contends that the breadth of the definition of “*works*” of the **Act** supports an interpretation of the words “*plant appurtenant thereto*” in ss. 3(3) of the **BLA** that is broad enough to include any work related to Hydro contracts dealing with the transmission, distribution, or supply of Power. Additionally, it asserts that such an interpretation is consistent with the purpose and objects of the **Act**, noting that ss. 2(1) of that **Act** emphasizes the “*continuance of a supply of power adequate to the needs of the province*” as one of Hydro’s core objectives.

[38] Finally, Wawasum argues that a broad interpretation of ss. 3(3) of the **BLA** is consistent with ss. 4(4) of the **Act**, which demonstrates the legislature’s reluctance to allow any court proceedings that would affect the supply of Power to Hydro customers. This broad interpretation is, accordingly, the one that best captures the purpose and objects of the **Act**.

[39] With respect to the equal authority rule, Wawasum argues that the use of the word “*annexées*” in the French version of ss. 3(3) of the **BLA** in place of “*appurtenant*” in the English version, cannot support a narrower interpretation of the provision. In other words, “*annexées*” cannot be interpreted to mean “*attached to*” or “*adjoining*”, which is the interpretation Michels urges me to adopt, but must be interpreted to mean the same as “*appurtenant*” (i.e., a thing that stands in relation of an incident to a principal and is necessarily connected with the use and enjoyment of the latter). Wawasum argues that if I were to find that “*annexées*” meant “*attached to*” or “*adjoining*” in the literal sense, I would have to conclude that **American Piledriving** was wrongly decided, which neither Michels nor Hydro maintains.

Michels' Position

[40] Michels argues that a fair reading of ss. 3(3) of the **BLA** supports a narrower exception for Hydro contracts and work done in relation to such contracts. Relying on the implied exclusion rule of statutory interpretation, which stands for the principle that if legislation includes some members of a class, but not others, it should be presumed that the legislature excluded other items from that class purposefully, Michels takes the position that if the legislature had intended ss. 3(3) to serve as a universal ban on all liens arising from any Hydro contract, it would have said so explicitly. Given that the legislature did not issue a blanket ban, the only utility lines that fall within the exemption are those that are "*appurtenant thereto*" a generating station or facility, which the subtransmission and distribution lines Michels worked on were not.

[41] Michels also relies on two additional rules of statutory interpretation to support its argument. The first rule is that the surrounding statutory scheme, including the heading to ss. 3(3) of the **BLA**, should be used as an interpretive aid. The second rule is that exceptions to general rules are to be strictly construed.

[42] As it pertains to the first rule, Michels points to the fact that the heading above ss. 3(3) of the **BLA** includes the word "*certain*". It argues that use of this word in the heading signals intention to exclude work performed in relation to specific pieces of the hydro-electric system from the provision, not work performed in relation to all aspects of that system. Similarly, Michels relies on the principle of statutory interpretation that states that exemptions and exceptions to general rules contained in statutes should be

narrowly construed in support of its argument, and that ss. 3(3) should be interpreted more narrowly.

[43] Michels further argues that the reading of s. 3 of the **BLA** in its entirety makes it is apparent that ss. 3(3) is an exception to the general rule set out in ss. 3(1) that states “*the Crown, all Crown agencies*”, like Hydro, “*are bound by [the **BLA**]*”, and that therefore a narrower interpretation of the exception is justified.

[44] As to the precise ambit of the word “*appurtenant*”, Michels contends that in determining whether something is “*essential infrastructure*” and therefore “*plant appurtenant thereto*” a hydro-electric generating station or facility, the correct question to ask is whether the generating stations would cease to serve a purpose if the structures worked on were removed from the Hydro network.

[45] In ***American Piledriving***, the answer to this question was “no” because the converter station was continuously fed power by the generating station and as such, was an integral part and essential to the entire Hydro network. By contrast, Michels argues that the work it was doing is not essential or integral to the entire Hydro network. When the utility poles or the distribution lines that attached to them cease functioning, there is no disruption to the generation or transmission of HVDC. In other words, the generating stations do not derive their purpose or existence from the Projects that Michels worked on.

[46] Michels also argues that application of the shared meaning rule leads to a narrower meaning for ss. 3(3) of the **BLA**. This rule provides that if one version of a bilingual provision is ambiguous while the other is clear, the common meaning of the two

provisions is to be preferred. The corollary to this rule is that when the meaning of a word in one version is broader than the other, the common meaning is the narrower and more restricted one (*R. v. Daoust*, 2004 SCC 6, [2004] 1 S.C.R. 217, at para. 26).

[47] Michels argues that the term "*appurtenant*" in the English version of ss. 3(3) of the **BLA** is ambiguous, and that I should therefore be relying on the French version of ss. 3(3) to interpret the English, thereby arriving at a shared, common meaning.

[48] According to the dictionnaire *Larousse*, (last visited 07 April 2025) <https://www.larousse.fr/dictionnaires/francais/annexer/3650>, the term "*annexer*" means "*rattacher à quelque chose de principal*" (i.e., to attach to something main). Michels argues that the verb "*annexer*," as defined, implies the need for a physical connection between the generating station or facility and the object that is "*appurtenant thereto*".

[49] Given that there was no physical connection between the work Michels performed on either the utility poles or the subtransmission and distribution lines attached to them and the generating facility, Michels argues ss. 3(3) of the **BLA** cannot apply in this case. Wooden utility poles are temporary infrastructure, because they can be moved or reconfigured as the needs of customers changes. This stands in stark contrast to high voltage lines supported by metal towers.

[50] Finally, Michels points to the fact that the contracts signed between Hydro and Wawasum, and Wawasum and Michels, in relation to the Projects, explicitly contain provisions requiring Hydro to retain and maintain holdback funds in accordance with the **BLA**. It argues these contractual terms demonstrate an understanding on the part of all three parties that the ss. 3(3) **BLA** exclusion did not apply to the Projects.

Hydro's Position

[51] While Hydro's primary concern is with the outcome of its Interpleader Action, it, like Michels, argues in favour of a narrower interpretation of ss. 3(3) of the **BLA** than that which Wawasum urges the court to adopt.

[52] Hydro agrees with Michels and Wawasum that the converter station in **American Piledriving** was properly found to be "*plant appurtenant thereto*" a hydro-electric generating station, because the converter station was "*essential infrastructure ... necessarily connected to use of the generating stations*" (at para. 34). But Hydro argues that a meaningful distinction can be drawn between Hydro infrastructure that is essential to the generation and transmission of Power on the one hand and infrastructure that is necessary for subtransmission and distribution of Power on the other.

[53] In support of its position, Hydro relies on the affidavit of Jeffrey Strongman, sworn November 20, 2025 (the "Strongman Affidavit"). Jeffrey Strongman is a department manager with the construction division for Hydro. The Strongman Affidavit deposed that Hydro divides its electrical system into five functions. These five functions are involved in transmitting Power from generating stations to the end user and include generation, transmission, subtransmission, distribution, and customer service. The customer service function is not relevant to this case.

[54] Hydro's regulator, the Public Utilities Board (the "PUB"), under PUB Order No. 164/16 (Exhibit N to the Strongman Affidavit) (the "PUB Order") confirms the role

each function plays within the system and the infrastructure belonging to each function for the purposes of allocating costs to customers.

[55] Hydro further argues that the PUB's characterization of these functions and the infrastructure belonging to each of them is relevant and persuasive, notwithstanding that Hydro did not particularize these functions for the purpose of interpreting ss. 3(3) of the **BLA**. According to Hydro, the PUB grouped various pieces of infrastructure together on the basis of how integral they are to one of the five functions.

[56] Hydro maintains both it and the PUB consider all the infrastructure used to transmit Power, from the time that the Power leaves the generating stations to the time that it reaches the southern converter stations, to be performing Hydro's generation function. The high voltage towers and lines that transmit Power to the transformers for "step down" perform the transmission function. The distribution lines and power poles leading from the transformers to end users perform either the subtransmission function (supplying Power to large customers) or the distribution function (carrying electricity to individuals or groups of customers).

[57] Hydro asserts that all of the infrastructure used to generate and transmit power up to and including the southern converter stations should be considered "*plant appurtenant thereto*" hydro-electric generating stations or facilities because if one of these pieces of infrastructure breaks down, the generating station cannot continue to fulfill its function.

[58] It is Hydro's position that the exemption found at ss. 3(3) of the **BLA** typically exempts the application of the **BLA** with respect to all contracts involving the

construction, repair, or maintenance of infrastructure from the point of generation to the point where Power is converted for subtransmission and distribution to customers.

ANALYSIS OF THE TEXT - INTERPRETING THE WORDS IN THEIR GRAMMATICAL AND ORDINARY SENSE

[59] Counsel for Wawasum and Michel have urged me, in my textual analysis of ss. 3(3) of the **BLA**, to focus my attention on the definitions or meanings of the English word "*appurtenant*" and the French word "*annexées*". A review of the grammatical structure of the provision makes it clear that my textual analysis must extend beyond the definitions or meanings of these words alone.

[60] Although the definition of the English word "*appurtenant*" and the meaning of the phrase "*appurtenant thereto*" were key focuses in the ***American Piledriving*** decision, that case is distinguishable on the facts before me, because the work performed by the subcontractor on the converter station in ***American Piledriving*** was squarely captured by the ordinary meaning of the word "*plant*", which appears before the words "*appurtenant thereto*" in ss. 3(3) of the **BLA**. The facts before me are distinguishable.

[61] By concentrating their attention primarily on the meaning of the words "*appurtenant*" and "*annexées*", counsel have failed to account for the full grammatical construction of the phrase "*appurtenant thereto*" in ss. 3(3) which is an adjectival phrase that modifies the noun "*plant*" rather than the term "*hydro-electric generating stations or facility*". I am satisfied that in order for a part of the Hydro infrastructure to be captured by the exclusion in ss. 3(3), the appropriate question to be answered is not whether the infrastructure in question is "*appurtenant thereto*" in relationship to hydro-electric

generating stations or facilities, but whether the infrastructure in question constitutes a "*plant appurtenant thereto*" ("*des usines y annexées*") (emphasis added).

[62] The French version of the provision mirrors the English in this regard. The adjectival phrase "*y annexées*" modifies the noun "*usines*", not the phrase "*stations ou établissements produisant l'hydro-électricité*". In coming to my decision regarding what is meant by "*plant appurtenant thereto*" it is therefore necessary for me to consider not only the possible meanings of the words "*appurtenant thereto*" in the English version and "*des usines y annexées*" in the French version of ss. 3(3) of the **BLA**, but also, and more significantly, what the meanings of the words "*plant*" and "*usine*" are when read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the **Act**.

[63] There is no definition of "*plant*" in Black's Law Dictionary (5th ed). However, the text by Daphne A. Dukelow and Betsy Nuse, *Dictionary of Canadian Law*, (Second Edition) (Thomson Canada Limited 1995), at p. 904, provides two relevant definitions of the word:

PLANT. n. 1. Any establishment, works, or undertaking, in or about any industry.

...

5. The premises on which are situated the fixtures, implements, machinery or apparatus used in carrying on any activity of a manufacturer.

...

[64] While the first definition appears broad enough to encompass work on the wooden utility poles and the subtransmission and distribution lines attached to them pursuant to the Projects, the second definition is not. The English word "*plant*" is accordingly capable of supporting more than one meaning.

[65] In accordance with the shared meaning rule of statutory interpretation, I must also consider the meaning of the French word "*usine*". It is only by considering the meaning of both terms that I will be able to arrive at a shared common meaning for them in the context of the statutory provision.

[66] The word "*usine*" is frequently and commonly translated as "*factory*" in English. In the text by Marie-Éva de Villiers, *Multidictionnaire de la langue française*, 4e éd., (Montréal: Éditions Québec Amérique Inc., 2003), p. 1485, "*usine*" is defined a bit more broadly, as an "*[é]tablissement industriel où l'on transforme des matières premières en produits*", or, in English, an "*industrial establishment where raw materials are transformed into products*". This definition of "*usine*" accords with the narrower of the two relevant definitions of the word "*plant*" contained in the *Dictionary of Canadian Law*.

[67] The definition of "*usine*" found in dictionnaire *Larousse*, the dictionary upon which Michels relies in its submissions, is similar to that found in both *Multidictionnaire de la langue française* and the *Dictionary of Canadian Law*. The dictionnaire *Larousse* defines "*usine*" as :

1. Établissement industriel où, à l'aide de machines, s'effectue la transformation des matières premières ou semi-ouvrées en produits finis.

[An industrial establishment where, with the help of machines, raw or semi-finished materials are transformed into finished products.]

[68] As the Supreme Court of Canada teaches in ***Daoust***, and more recently in ***Piekut v. Canada (National Revenue)***, 2025 SCC 13:

[53] ... The shared meaning is generally preferred unless other indicators of legislative intent suggest that the shared meaning is inappropriate (citations omitted)

...

[59] Where one version of bilingual legislation is broader than the other version, the narrower version reflects the shared meaning ...

[69] Applying these interpretive principles, I find, based on the grammatical and ordinary sense of the text of ss. 3(3) of the **BLA**, that in order for a portion of Hydro infrastructure to be "*plant appartenant thereto*" a hydro-electric generating station or facility, the infrastructure in question must first qualify as a "*plant*". I am also relying on the use of the word "*usines*" in the French version of the statute, and the narrower meaning associated with that word, to find that a "*plant*" in the context of ss. 3(3) of the **BLA** is an industrial establishment that performs a transformative function (takes materials and transforms them into something else).

[70] Given these findings, I am not satisfied that subtransmission and distribution power lines, attached to wooden utility poles, placed outside of homes and businesses, are captured by the plain and ordinary meaning of the words "*plant*" or "*usine*". It is not reasonable on an objective basis to characterize wooden utility poles as "factories" or an "industrial establishment" that performs some sort of transformative function in relation to Power. These wooden poles, along with the subtransmission and distribution lines are merely a means to deliver Power to customers and end users.

[71] Due to my interpretation of the word "*plant*" in ss. 3(3) of the **BLA**, I agree with Wawasum that an "*appurtenant*" item (in this case, a "*plant*") does not need to be physically attached to a hydro-electric generating station. Although the French verb

"*annexer*" means "*attached to*" it does not necessarily follow that "*attached*" means "*directly attached*." The dictionnaire *Larousse* defines "*annexer*" with reference to another French verb "*rattacher*":

annexer

1. Faire entrer quelque chose dans une nouvelle unité, rattacher à quelque chose de principal ; joindre : Annexer un témoignage à un dossier.

[To incorporate something into a new unit, to attach to something main; to join;
To attach a witness statement to a file.]

...

Synonymes :

incorporer - rattacher - réunir

...

rattacher

...

2. Relier quelque chose ou quelqu'un à quelque chose, unir deux choses jusqu'alors indépendantes : Rattacher plusieurs services à une nouvelle direction.

[connect something to something else, unite two previously independent things:
To integrate multiple departments into a new management structure.]

Synonymes :

annexer - incorporer

The *Multidictionnaire de la langue française* similarly defines "*annexer*" with reference to "*rattacher*" ("*1. Rattacher à un objet principal*", or "*to attach to a main object*") (at p. 86).

The *Multidictionnaire* defines "*rattacher*" to mean "*2. Établir un rapport entre des personnes, des choses*" or "*to establish a relationship between persons, things*" (at p. 1236).

[72] These dictionary definitions of "*annexer*", particularly when read in context with the definitions of "*rattacher*", seem broad enough to accord with the definition of "*appurtenant*" in Black's Law Dictionary, which states" *[a] thing is "appurtenant" to*

something else when it stands in relation of an incident to a principal'. Neither the French nor English term, as defined in these reference sources, seems to require a direct, physical connection between the two items, although both terms, as defined, allow for this. Based on the shared meaning rule, I find that while a "*plant*" or "*usine*" must be connected to a hydro-electric generating station or facility for the ss. 3(3) **BLA** exclusion to apply, a direct, physical connection is not required.

[73] I further note that this interpretation of ss. 3(3) accords with how Hydro and the PUB view the various functions of Hydro's electrical system. As indicated in the Strongman Affidavit, both Hydro and the PUB consider infrastructure associated with power generation (the generating station or facility, both the southern and the northern converter stations and the Bipoles) as performing one integrated generating function.

OTHER RULES OF STATUTORY INTERPRETATION

[74] Michels urges me to consider the word "*certain*" in the heading of ss. 3(3) of the **BLA** as an interpretive aid. Whether a heading can or should be used as an interpretive aid in Manitoba is open to question given that s. 14 of **The Interpretation Act**, C.C.S.M. c. I80, provides:

Reference aids

14 Tables of contents, headings, notes, historical references, overviews, examples, and other readers' aids are included in an Act or regulation for convenience of reference only and do not form part of it.

Indications complémentaires

14 Les tables des matières, les intertitres et les titres, les notes, les mentions ayant trait à l'historique législatif, les aperçus, les exemples ainsi que les autres éléments qui visent à faciliter la consultation des textes ne font pas partie des lois ni des règlements; ils y figurent seulement à titre de repère ou d'information.

[75] Decisions of this court have, however, relied on headings from time to time to resolve ambiguities in statutory provisions (See ***Bell ExpressVu Inc. v. City of Winnipeg***, 2010 MBQB 26, at paras. 45-47). To the extent I can rely on heading as an interpretive aid, the use of the word “*certain*” in the English version and “*certaines*” in the French version, in relation to the Hydro contracts captured by the exclusion, militates in favour of interpreting ss. 3(3) of the **BLA** more narrowly, in accordance with the narrower French meaning of the provision.

[76] The implied exclusion rule and the rule regarding construing exceptions narrowly also support relying on the narrower meaning of “*usines y annexées*” to interpret ss. 3(3) of the **BLA**.

[77] Ruth Sullivan in *The Construction of Statutes* (Seventh Edition) (Toronto: LexisNexis Canada Inc., 2022), explains the implied exclusion rule, and how and when it is to be applied, as follows at pp. 247-248:

An implied exclusion argument lies whenever there is reason to believe that if the legislature had meant to include a particular thing within its legislation, it would have referred to that thing expressly. Because of this expectation, the legislature’s failure to mention the thing becomes grounds for inferring that it was deliberately excluded. Although there is no express exclusion, exclusion is implied. As Laskin J.A. succinctly put it, “legislative exclusion can be implied when an express reference is expected but absent.” The force of the implication depends on the strength and legitimacy of the expectation of express reference. The better the reason for anticipating express reference to a thing, the more telling the silence of the legislature.

. . .

The reasoning here is essentially counterfactual: if the legislature had intended to include comparable items, it would have mentioned them expressly or used a general term sufficiently broad to encompass them; it would not have mentioned some while saying nothing of the others. This reasoning is grounded not only in drafting convention but also in basic principles of communication. If I am with a group of people arranging rides and announce that my car can carry four passengers, my statement would be true and informative even if the car was

capable of carrying six. However, my listeners would rightly assume that four was the maximum I could carry. A basic convention of communication is that speakers say as much as is required to achieve the communicative goal. ...

[78] In this case, the **BLA** exclusion in ss. 3(3) as it relates to certain Hydro contracts is directly preceded by a much more extensive exclusion (at least on its face) in ss. 3(2) of the **BLA**. Subsection 3(2) of the **BLA** states:

Exemption re Infrastructure
Contracts Disbursement Act

3(2) Subject to section 4 of *The Infrastructure Contracts Disbursement Act*, this Act does not apply in respect of work done, services provided or money received or disbursed under a contract or sub-contract to which that Act applies, nor in respect of materials supplied under a sub-contract to which that Act applies.

Exemption — Loi sur l'acquittement
du prix des contrats de travaux
d'infrastructure

3(2) Sous réserve de l'article 4 de la *Loi sur l'acquittement du prix des contrats de travaux d'infrastructure*, la présente loi ne s'applique pas aux travaux effectués, aux services fournis ni aux sommes d'argent reçues ou déboursées en vertu d'un contrat ou d'un contrat de sous-traitance auquel s'applique la *Loi sur l'acquittement du prix des contrats de travaux d'infrastructure*, ni aux matériaux fournis conformément à un contrat de sous-traitance que vise cette même loi.

[79] While I recognize that this provision was added to the **BLA** in 2018, and thus may reflect a more modern sensibility when it comes to drafting style, it was certainly open to the legislature to craft a provision that exempted all work done for Hydro under any contract or subcontract anywhere on Hydro's electrical system. Yet the legislature chose not to do so and instead decided to make the relationship between the hydro-electric generating station or facility and a particular portion of Hydro's infrastructure a paramount consideration for the purpose of interpreting ss. 3(3). The

application of the implied exclusion rule accordingly also supports the narrower shared meaning of ss. 3(3).

[80] Finally, the rule of statutory interpretation that provides that when exceptions are made to a general rule, those exceptions should be strictly construed similarly supports a narrower interpretation of ss. 3(3). *Air Canada v. British Columbia*, 1989 CanLII 95 (SCC), [1989] 1 S.C.R. 1161, teaches that exceptions “*should not be construed more widely than is necessary to fulfil the values that support it*” (at p. 1167). As will be detailed later in these reasons, ss. 3(2) and 3(3) of the **BLA** are exceptions to the general rule, set out in ss. 3(1) of the **BLA**, that explicitly makes the Crown and its agencies like Hydro subject to the provisions of the **BLA**.

Subsection s. 3(3) of the **BLA** in Context with Other **BLA** Provisions

[81] Several rules of statutory interpretation, including the shared meaning rule, support interpreting what constitutes a “*plant appurtenant thereto*” a hydro-electric generating station or facility, and thus the scope of ss. 3(3) **BLA** more narrowly. However, the modern approach to statutory interpretation also requires me to read ss. 3(3) in its broader statutory context and in accordance with the purpose and objects of the **BLA**, since these are also important indicators of legislative intent.

[82] In examining how ss. 3(3) of the **BLA** fits into the larger statutory scheme, it is necessary to read the provision in the context of the other subsections of section 3. For ease of reference, I will insert s. 3 of the **BLA** in its entirety below:

Crown, etc. bound

3(1) Subject to subsections (2) and (3), the Crown, all Crown agencies, and all boards, commissions and bodies performing any duties or functions under an Act of the Legislature on behalf of the Crown, are bound by this Act.

Exemption re Infrastructure Contracts Disbursement Act

3(2) Subject to section 4 of *The Infrastructure Contracts Disbursement Act*, this Act does not apply in respect of work done, services provided or money received or disbursed under a contract or sub-contract to which that Act applies, nor in respect of materials supplied under a sub-contract to which that Act applies.

Act not to apply to certain Manitoba Hydro contracts

3(3) This Act does not apply to contracts, or work related to contracts, entered into by Manitoba Hydro with respect to or in any way associated with the construction, repair or maintenance of hydro-electric generating stations or facilities, and plant appurtenant thereto.

Couronne liée par la présente loi

3(1) Sous réserve des paragraphes (2) et (3), la présente loi lie la Couronne, tous les organismes gouvernementaux, ainsi que tous les offices, commissions et organismes remplissant des fonctions au nom de la Couronne en vertu d'une loi de la Législature.

Exemption — Loi sur l'acquittement du prix des contrats de travaux d'infrastructure

3(2) Sous réserve de l'article 4 de la *Loi sur l'acquittement du prix des contrats de travaux d'infrastructure*, la présente loi ne s'applique pas aux travaux effectués, aux services fournis ni aux sommes d'argent reçues ou déboursées en vertu d'un contrat ou d'un contrat de sous-traitance auquel s'applique la *Loi sur l'acquittement du prix des contrats de travaux d'infrastructure*, ni aux matériaux fournis conformément à un contrat de sous-traitance que vise cette même loi.

Exclusion de certains contrats de l'Hydro-Manitoba

3(3) La présente loi ne s'applique pas aux contrats, ni aux travaux qui y sont reliés, conclus par l'Hydro-Manitoba qui concernent ou se rapportent de quelque manière à la construction, la réparation et l'entretien des stations ou établissements produisant l'hydro-électricité et des usines y annexées.

[83] The definition of “*Crown agency*” in s. 1(1) of the **BLA** includes “*Manitoba Hydro*”. The plain wording of ss. 3(1) signals a generalized intent on the part of the legislature that the provisions of the **BLA** should apply to work performed for or services provided by Hydro under a contract or subcontract.

[84] I note that the wording of s. 16 of the **BLA**, upon which Michels relied in filing its Lien Action, signals a similar intent. Section 16 of the **BLA** states:

Liens against Crown, etc.

16 Where the owner of the land or structure upon or in respect of which any work is done, or services are provided, or materials are supplied, is the Crown, a Crown agency, or a municipality, the lien created by section 13 does not attach to the interest of the Crown, the Crown agency or the municipality, in the land or structure but constitutes a charge on amounts required to be retained under section 24 and, subject to section 45, this Act applies, with such modifications as the circumstances require, and shall be construed to have effect in the enforcement of the charge on the amounts retained without the requirement of registration of the lien or a claim for lien against the land or structure.

Privilèges contre la Couronne

16 Lorsque la Couronne, un organisme gouvernemental, ou une municipalité est le propriétaire d'un bien-fonds ou d'un ouvrage sur ou à l'égard duquel les travaux sont effectués ou les services ou matériaux fournis, le privilège créé par l'article 13 ne grève pas leur intérêt dans le bien-fonds ou l'ouvrage, mais il constitue une charge sur les montants qui doivent être retenus aux termes de l'article 24; sous réserve de l'article 45, la présente loi s'applique et s'interprète alors, avec les adaptations nécessaires, à l'égard de l'exécution de la charge contre les montants retenus sans qu'il soit nécessaire d'enregistrer le privilège ou une réclamation de privilège sur le bien-fonds ou sur l'ouvrage.

[85] This provision specifies that builders’ liens filed against the Crown and its agencies do not constitute a charge on any interest in land or structures held by the Crown or a Crown agency, as typical builders’ liens do, but rather constitute a charge against the holdback funds (7.5 per cent of the total contract price) which the Crown and its agencies,

in common with other owners or principals, are required to retain until 60 days a certificate or specific performance has been issued, or all work under the contract has either been performed or abandoned, whichever comes first. Had there been no intent on the part of the legislature for the **BLA** to apply to the Crown or its agencies like Hydro, there would be no need for s. 16.

[86] Although ss. 3(1) and s. 16 of the **BLA** signal a generalized intent on the part of the legislature to make the **BLA** applicable to the Crown and its agencies, ss. 3(2) and ss. 3(3) carve out two specific exceptions to this rule.

[87] Subsection 3(2) operates to prevent subcontractors from filing liens under the **BLA** against the Crown with respect of work done, services provided, or monies disbursed under contracts or subcontracts to which **The Infrastructure Contracts Disbursement Act**, C.C.S.M. c. I36 (the "**ICDA**") applies.

[88] The term "*contract*" is defined under the **ICDA** as:

Definitions

1 In this Act

"contract" means a contract between the department and a contractor for the construction, alteration, repair or improvement of

- (a) a transportation facility, including a highway, bridge, airstrip, dock and ferry terminal, or

Définitions

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

«contrat» Contrat conclu entre le ministère et un entrepreneur et ayant pour objet la construction, la modification, la réfection ou l'amélioration :

- a) soit d'une installation servant au transport, notamment une route, un pont, une piste d'atterrissage, un embarcadère et un terminus de traversiers;

(b) water control works as defined in *The Water Resources Administration Act*,

b) soit d'ouvrages d'aménagement hydraulique au sens de la *Loi sur l'aménagement hydraulique*.

and includes a contract for the provision of services, as defined in *The Builders' Liens Act*, in respect of such construction, alteration, repair or improvement;

Accordingly, subcontractors who are engaged to provide work, services or materials under contract or subcontract for transportation facilities projects and water control works cannot file builders' liens against the Crown's holdback funds.

[89] While on its face, the exclusion provided by ss. 3(2) of the **BLA** appears broader than the exclusion provided by ss. 3(3) of the **BLA**, it becomes clear when one reads ss. 3(2) in conjunction with the **IDCA** that this is not the case. The **IDCA** provides an alternative statutory scheme designed to protect the interests of subcontractors.

[90] Under ss. 2(1) of the **IDCA**, subcontractors may notify the department of transportation and infrastructure if they have not received payment from a contractor in relation to a subcontract on an **IDCA** project, and if so, the department must take actions to safeguard the subcontractor's interests:

Action by department when sub-contractor unpaid

2(1) Where the department is notified prior to paying out the holdback to the contractor that a sub-contractor claims that monies are owing to the sub-contractor under the sub-contract, the minister shall not pay the holdback to the contractor but shall either

Sous-traitant impayé

2(1) Lorsque le ministère est avisé, avant de verser la retenue à l'entrepreneur, des prétentions d'un sous-traitant portant que des sommes lui sont dues aux termes du contrat de sous-traitance, le ministre ne verse pas la retenue à l'entrepreneur, et prend l'une ou l'autre des mesures suivantes :

(a) retain the holdback or enough thereof to satisfy the claim of the sub-contractor until the contractor and sub-contractor direct the department in writing how to pay the holdback; or

(b) take interpleader proceedings before the proper court; or

(c) appoint a trustee to act under this Act.

a) il garde la retenue, ou en garde une partie suffisante pour couvrir le montant de la créance du sous-traitant, jusqu'à ce que l'entrepreneur et le sous-traitant transmettent au ministère des directives écrites sur la façon de verser cette retenue;

b) il engage une instance en entreplaiderie devant le tribunal compétent;

c) il nomme un fiduciaire conformément à la présente loi.

[91] The primary purpose of the **ICDA** appears to be to the establishment of a separate mechanism from the **BLA** which ensures that funds remain available to pay subcontractors for work done or services provided in relation transportation facilities and water control works projects undertaken by the Crown.

[92] Subsection 3(3) of the **BLA** carves out a similar, albeit narrower, exception to the one created under ss. 3(2). However, no alternate scheme exists under the **BLA** or the Act or another statute for securing the interests of subcontractors whose work comes within the ss. 3(3) exception.

[93] In my view, the fact that there is no similar statutory scheme for the protection of subcontractors whose work is tied to Hydro contracts, supports interpreting ss. 3(3) of the **BLA**, and, in particular, the words "*plant appartenant thereto*" more narrowly, in the manner suggested by the narrower meaning of "*des usines y annexées*". This narrower interpretation accords with the purposes and objects of the BLA which I will discuss in further detail below.

THE PURPOSE AND OBJECTS OF THE *BLA*

[94] Given how long Manitoba has had mechanics' or builders' liens legislation, it is surprising that the ***BLA*** does not contain a preamble or clause outlining its purposes and objects. Courts and scholars, as well as the Manitoba Law Reform Commission, have provided thoughtful commentary on both the history and the purpose of builders' liens legislation.

[95] The Manitoba Court of Appeal in ***Canotech Consultants Ltd. v. 5994731 Manitoba Ltd.***, 2017 MBCA 48, stated:

[21] In the Manitoba, Law Reform Commission, *Report on Mechanics' Liens Legislation in Manitoba*, (13 August 1979), online: <www.manitobalawreform.ca/pubs/pdf/archives/32-full_report.pdf> (the report), the authors describe the previous applicable legislation as follows (at p 3):

"The Mechanics' Liens Act" has been around long enough and in a sufficient number of jurisdictions to become an integral part of the construction industry and related industries which nurture it. The statute affects virtually every job where an asset attached to real property is created by the application of labour and materials. The fundamental purpose of this legislation and "The Builders and Workers Act" (C.C.S.M. cap. B90) is to ensure that a person contributing to the improvement of such land is paid for that contribution in accordance with his contractual entitlement.

[Emphasis in original]

[96] The purpose of the ***BLA*** is undoubtedly remedial. It is designed to provide subcontractors, particularly those engaged in large construction projects with complex contractual layers between multiple contractors and subcontractors, a mechanism to secure payment against those who ultimately benefit from their work as these individuals or entities generally have the deepest pockets and control the purse strings. David I. Bristow, Duncan W. Glaholt, R. Bruce Reynolds & Howard M. Wise, in

Construction Builders' and Mechanics' Liens in Canada, (7th ed.) (Toronto: Thomson Carswell, 2010) (Loose-leaf, release 2), vol. 1, p. 1-3 to 1-4, at para. 1.1, state:

1.1 HISTORY AND PURPOSE OF LIEN LEGISLATION

A lien against real property for services and material provided supplied to that property was unknown to the English common law and comes to us from early Roman law. ... The law of all European countries governed by the Civil Code, and in North America, the Civil Codes of the state of Louisiana, and the Province of Quebec, which are also based on Roman law, contain provisions protecting providers of labour, services, and materials to the lands of others. The law of England contained no such provision and does not to this date. However, all common law jurisdictions of North America, commencing with Maryland in 1791, have progressively enacted lien legislation. Because there was no right to a lien upon land in favour of workers performing work or services or in favour of suppliers of material, either at common law or in equity, the lien is a creature of statute.

[97] The importance of the issue of whether a subcontractor is or is not entitled to file a lien under the **BLA**, either as a charge against title or, in the case of the Crown and its agencies, against the holdback funds, cannot be overstated. Without lien rights, subcontractors and their workers have no recourse to secure payment for the work and materials that have improved the value of an owner's land.

[98] The Manitoba Law Reform Commission succinctly describes the risk facing subcontractors and their workers in Manitoba Law Reform Commission, *The Builders' Liens Act: A Modernized Approach*, Final Report (November 2018) (online) https://manitobalawreform.ca/pubs/pdf/fullreports/136-full_report.pdf, p. 1:

1. Why Current Remedial Legislation Exists

... there is no business model comparable to that of the construction industry. At a broad level, work performed and materials supplied on a project typically involve many tiers or layers of two-party contracts while contractual remedies available at common law are limited to those parties bound to each other by the terms of each specific contract by the principle of "privity". Most construction projects give rise to a complex construction contract pyramid composed of many two-party contracts

connected to form a series of payment chains that require payment for completed work to flow from owner to contractor to sub-contractor/supplier, and so on. There is considerable legal risk in this model for an innocent party whose contract may be remote from the owner or the contractor in possession of the project funds.

At the contractual level, receivables on a construction project are typically based upon bespoke or unique work or services performed under a contract or sub-contract. Unlike in a standard consumer contractual relationship where the product is generally ready-made and can be inspected before purchase, construction deliverables are often unique to the project and project plans themselves. Entitlement to payment is therefore always subject to the payer's subjective assessment of whether the contractual obligations have been fulfilled satisfactorily, which can be difficult to prove.

The Builders' Liens Act of Manitoba and similar statutes in other provinces and territories have long provided remedial schemes intended to supplement and enhance inadequate common law contractual remedies to provide more effective means to collect payment from various sources or levels within the construction contract pyramid.

[Emphasis added]

[99] It is certainly within the legislature's purview to carve out exceptions to the applicability of the **BLA** to work done in relation to Hydro contracts. Given, however, the underlying purpose of the **BLA** to protect the interests of subcontractors who would otherwise potentially have no realistic ability to secure payment for unpaid work or materials, interpreting the exception under ss. 3(3) narrowly, in accordance with wording of the French version of the provision, is in keeping with the modern approach to statutory interpretation.

THE PURPOSE AND OBJECTS OF THE ACT

[100] There is a statutory interpretation principle that states that when interpreting legislation with ambiguous terms, the court can look to related legislation for interpretive assistance. This is because statutes dealing with the same subject matter, enacted by the same jurisdiction, are presumed to be drafted with each other in mind. These statutes

should therefore be capable of being read together coherently. The Supreme Court of Canada, in ***Pointe-Claire (City) v. Quebec (Labour Court)***, 1997 CanLII 390 (SCC), [1997] 1 S.C.R. 1015, teaches “*the principle that statutes dealing with similar subjects must be presumed to be coherent means that interpretations favouring harmony among those statutes should prevail over discordant ones*” (at para. 61).

[101] The question I must therefore ask myself is whether there is any discordance between the provisions of the **Act** and the interpretation of “*plant appartenant thereto*” in the **BLA** that I have reached through the application of the shared meaning rule.

[102] While I agree that the definition of “*works*” found in s. 1 of the Act is broad, I do not see how it is relevant to the interpretive exercise I am engaged in because the word “works” does not appear in ss. 3(3) of the **BLA**. The term “power plant” is defined in s. 1 of the **Act** as:

Definitions

1 In this Act,

. . .

“power plant” includes all land and works, constructed, acquired, used, or adapted, or that might be used or adapted, for or in connection with the development or generation of power;

Définitions

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

. . .

« installation de production » Y sont assimilés les biens-fonds et ouvrages construits, acquis, utilisés ou adaptés, ou encore susceptibles d'être utilisés ou adaptés et qui sont directement ou indirectement reliés à l'exploitation ou à la production de l'énergie.

That definition may be relevant to my interpretation of ss. 3(3) given that the meaning of “*plant*” in ss. 3(3) of the **BLA** is a key matter at issue.

[103] Although the definition of “*power plant*” in the **Act** is broad, it does not extend to every piece of Hydro infrastructure involved in its network. Rather, the definition of “*power plant*” is restricted to the infrastructure involved, or which may be involved in the “*development or generation of power*” (i.e., infrastructure associated with Hydro’s generation function as described in the Strongman Affidavit). The definition of “*power plant*” is consistent with the meaning of “*plant appartenant thereto*” a hydro-electric generating station that I arrived at through the application of the shared meaning rule.

[104] I do not accept Wawasum’s assertion that the purpose and object of the **Act** as outlined in ss. 2(1) supports a broader interpretation of the exception in ss. 3(3). Subsection 2(1) of the **Act** delineates two primary purposes and objects. The first is to ensure the “*continuance of a supply of power adequate for the needs of the province*” (“*le maintien d’une réserve d’énergie permettant de répondre aux besoins de la province*”) (emphasis added). The second is to “*promote economy and efficiency in the development, generation, transmission, distribution, supply and end-use of power*” (“*et de développer l’exploitation, la production, le transport, la distribution, la fourniture et l’utilisation finale de l’énergie et de promouvoir l’économie et l’efficacité dans ces opérations*”).

[105] I am not persuaded by Wawasum’s argument that the first purpose or object supports its position that the ss. 3(3) exception in the **BLA** should be interpreted broadly, to include work on all of Hydro’s electricity infrastructure. The purpose or object Wawasum relies on in support of its position specifically concerns the adequacy of the

power supply. In other words, it is focused on ensuring that Hydro is generating enough power to meet the needs of Manitobans.

[106] That purpose is entirely consistent with my interpretation of ss. 3(3) of the **BLA** which involves the application of the shared meaning rule. It is beyond question that Hydro's Power generating function is an essential part of the daily life of every Manitoban. In order to secure the adequacy of the Power supply in this province, the legislature would appreciate the public policy interest in carving out an exception in the **BLA** with respect to work done under contract or subcontract for Hydro in relation to Power generating stations.

[107] I also disagree with Wawasum that ss. 4(4) of the **Act** supports a broader interpretation of the exclusion in ss. 3(3) **BLA** than I have arrived at. While it is clear from ss. 4(4) that the legislature intended to ensure that no action or other court proceeding should impact the "*supply of power to any person*", it is unclear to me why the Lien Action would have this kind of effect based on the description of how Hydro's generating, transmission and distribution system functions.

[108] The Strongman Affidavit, and in particular p. 12 of the PUB Order indicates that as it pertains to the subtransmission and distribution lines:

... The subtransmission and distribution systems are designed in either a network configuration or in a radial configuration. A network configuration has several redundant paths for electricity to travel, such that the loss of one part of a transmission network does not result in the loss of electric service to consumers. A radial configuration does not have this redundancy. The combination of transmission, subtransmission and distribution systems is also known as the electric grid.

[109] Based on this evidence I am satisfied that if a subcontractor were to halt work on a Hydro project due to a dispute with the contractor, and file a lien against Hydro, the end result would not necessarily or automatically impact the supply of power to end users. The evidence is clear that the grid system has been designed or configured for work arounds. I am also mindful of Michels' submission, in its brief, that wooden power poles and the distribution lines attached to them are generally viewed as temporary infrastructure which can be moved or reconfigured as the needs of the community change. Considering these points, I am of the view that ss. 4(4) of the **Act** can be read coherently with the narrower interpretation of ss. 3(3) of the **BLA** that I have arrived at, and which is supported by all the rules of statutory interpretation I have referenced above.

INTERPLEADER – THE LAW

[110] Rule 43 of the ***Court of King's Bench Rules***, M.R. 553/88, sets out the criterion for interpleader applications:

WHERE AVAILABLE	APPLICABILITÉ
43.02 Where two or more persons make adverse claims in respect of property against a person who, (a) claims no beneficial interest in the property, other than a lien for costs, fees or expenses; and (b) is willing to deposit the property with the court or dispose of it as the court directs; that person may seek an interpleader order (Form 43A).	43.02 La personne contre laquelle plusieurs personnes font valoir des demandes opposées sur des biens et qui : a) ne demande aucun droit à titre bénéficiaire sur ces biens, à l'exception d'un privilège en garantie de dépens, d'honoraires ou de dépenses; b) est prête à remettre au tribunal les biens en cause ou à les aliéner suivant les directives du tribunal, peut demander une ordonnance d'entreplaiderie (formule 43A).

[111] ***Shawano Consulting Services Ltd. et al. v. Penn-Co Construction Canada (2003) Ltd. et al.***, 2022 MBQB 134, confirms that interpleader orders are discretionary and are not granted as a matter of right (at para. 12). Further, ***Shawano*** confirms that interpleader applications properly arise when applicants “*want to discharge their legal obligations (to pay a debt, deliver up property etc.) but do not know to whom they should do so*” (at para. 13).

[112] A key requirement of an interpleader action is that the applicant must disclaim any right to the disputed funds, which leaves only one issue for adjudication, namely the identification of the party who can lawfully claim the funds. ***Shawano*** confirms:

[13] ...

...

60 ... It follows from this that interpleader relief is not available where the applicant is separately liable to both claimants (see *Farr v. Ward* [1837] 150 ER 1000) because there is no controversy in such a case: there are two obligations both of which the applicant is legally bound to discharge.

[113] ***Shawano*** also confirms the three key ingredients of the competing claims with respect to the same funds at para. 13:

- a) They must pertain to the same subject matter;
- b) They must be mutually exclusive (i.e., at trial the claims of the unsuccessful party or parties will be extinguished); and
- c) The claims place the applicant in an actual dilemma as to how it should act.

[114] ***Shawano*** defines the standard of proof resting on an applicant with reference to the decision in ***Canadian Imperial Bank of Commerce v. Costodian Inc. et al.***, 2018 ONSC 6680:

[14] ...

(a)The applicant is not required to prove competing claims have actually been filed against it;

(b)The applicant is only required to demonstrate that there is a real foundation for the expectation of competing claims; and

(c)The applicant is not required to establish that competing claims are valid or likely to succeed only that they are not frivolous.

[115] No serious challenge to Hydro's entitlement to an order of interpleader was raised by the parties and I am satisfied that Hydro is entitled to that relief on the facts of this case.

THE CRA CLAIMS

[116] The CRA has advanced claims against Wawasum in two main tiers. The first tier pertains to unremitted source deductions, penalties and interest. The second tier of claims is with respect to unremitted goods and services tax ("GST"), penalties and interest. The combined totals of these claims are currently in excess of \$535,000.

[117] The proposed distribution of the Funds to CRA was heavily dependent on my ruling regarding the validity of Michels' claim under the **BLA**.

[118] The CRA asserts that it holds a super priority over \$148,300.73 plus accrued interest calculated to the date of payment. This amount represents the enhanced requirements to pay ("ERTP") issued for unremitted payroll and GST debts. All of the parties agree that the ERTTP constitutes a super priority that overrides all competing claims from both secured and unsecured creditors, including any valid liens under the **BLA**. Therefore, I will order that this amount plus interest will be paid to CRA by Hydro from the Funds.

[119] There was no dispute among the parties with the position taken by CRA with respect to the priority of the ERTF over the other claims or that the distribution of the remainder of the Funds was entirely dependent on my decision regarding the validity of the Lien filed by Michels. Given my decision that the Lien is in fact valid, I am not satisfied for the purposes of this Interpleader Action that CRA is in a superior position to Michels with respect to a claim to the remainder of the Funds under its standard Requirement to Pay (RTP). That question must be decided in the Lien Action.

CONCLUSION

[120] My order is as follows:

- a) Hydro will pay the CRA \$148,300.73 plus accumulated interest with respect to the ERTF;
- b) Hydro will be entitled to deduct its legal costs, as per the agreement of all parties, under Tariff A, Class 4 in the sum of \$4,044.50;
- c) I am granting the order of interpleader as sought by Hydro with respect to the remaining balance of the Funds and they will be paid into court;
- d) The Lien will be discharged and Hydro will be released from the Lien Action upon payment of the Funds as described herein; and
- e) The costs of this motion can be spoken to at the conclusion of the trial in the Lien Action.

Rempel J.