

ZUTPHEN BROTHERS CONSTRUCTION)	J.D. MacIsaac, Q.C.
LIMITED, a body corporate)	for the appellant
))
)	Peter W. Gurnham & Mark
)	Belliveau for N.S. Power
)	Corp. and N.S. Power Inc.
))
Appellant)	Gary J. Corsano
)	for the respondent
)	Jones Power Co. Ltd.
- and -))
)	Cathy Dalziel for
)	RKO Steel Ltd.
NOVA SCOTIA POWER INC., a body))
corporate, JONES POWER COMPANY))
LTD., a body corporate, NOVA FENCING)	Gordon Forsyth for Gasland
LIMITED, a body corporate, JACQUES)	and Campbell
WHITFORD AND ASSOCIATES LTD., a))
body corporate, MACPHERSON BROS.)	H.F. MacIntyre for
BURNS PAINTING CONTRACTORS)	Island Distributors Ltd.
LIMITED, a body corporate, DOMINION)	Lynk Electric Ltd. &
DRYWALL AND ACOUSTIC LIMITED, a)	Acres International Ltd.
body corporate, LYNK ELECTRIC LIMITED))
a body corporate, ISLAND DISTRIBUTORS)	J. Michael MacDonald for
LIMITED, a body corporate, MUNICIPAL)	Nova Scotia Fencing Ltd.
READY-MIX LIMITED, a body corporate))
MUNICIPAL READY-MIX LIMITED, a body)	Appeal Heard:
corporate, JONELJIM CONCRETE)	October 13, 1993
CONSTRUCTION LIMITED, a body corporate))
KEVIN CAMPBELL, MILLER RENTALS)	Judgment Delivered:
LIMITED, a body corporate, RKO STEEL)	October 27, 1993
LIMITED, a body corporate, ACRES))
INTERNATIONAL LIMITED, a body corporate))
BELMAC HENDERSON SUPPLY LIMITED, a))
body corporate, CUSACK MASONRY))
LIMITED, a body corporate, and DOMINION))
DRYWALL AND ACOUSTIC LIMITED, a))
body corporate))
))
Respondents))

THE COURT: Leave to appeal granted but the appeal dismissed with costs on the appeal to the successful respondent-claimants in the amount of \$1000.00 for each group represented by counsel, J. Michael MacDonald, Cathy Dalziel, Gordon Forsyth and H.F. MacIntyre for a total of \$4000.00 plus disbursements payable by Zutphen, NSPI and Jones jointly and severally per reasons for judgment of Matthews, J.A. Clarke, C.J.N.S. and Jones, J.A. concurring.

MATTHEWS, J.A.:

The appeal concerns the interpretation of s. 21 of the **Nova Scotia Power Privatization Act**, S.N.S. 1992, c. 8 (the Act) and its application to the **Mechanics' Lien Act**, R.S.N.S. 1989, c. 277.

Mitsui & Company (Point Aconi) Limited entered into a general contract with Nova Scotia Power Corporation (NSPC) on or about October 16, 1989, for construction of the Point Aconi Power Generating Station Project. Jones Power Company Limited is a subcontractor of Mitsui, by contract dated September 25, 1990, for work in connection with that project. The appellant, Zutphen Brothers Contracting Limited, is a general contractor and a subcontractor of Jones. The respondent claimants in C.A. No. 02870 are, in turn,

subcontractors of Zutphen. They have filed liens against the lands at Point Aconi.

On June 19, 1992, Zutphen was awarded a separate contract by Nova Scotia Power Inc. (NSPI) for the construction at Point Aconi of a CFB residue management civil works (the Ash contract). The respondent claimants in C.A. No. 02869 are subcontractors of Zutphen in respect to that project and have also filed liens against the lands at Point Aconi.

On August 10, 1992, the **Act** came into force. Briefly put, the Point Aconi project, up to that time the property of NSPC, then became the property of NSPI.

Section 21 of the **Act** is relevant:

"21 The **Mechanics' Lien Act** applies to the Company only in respect of construction undertaken pursuant to contracts entered into after the coming into force of this Act."

By s. 2(1)(a) "Company" means NSPI.

NSPC, a Crown corporation, was immune from the provisions of the **Mechanics' Lien Act**. After the **Act** came into force, August 10, 1992, NSPI was not immune "in respect of construction undertaken pursuant to contracts entered into after the coming into force of this **Act**".

Zutphen made a proposal to its creditors pursuant to the **Bankruptcy and Insolvency Act of Canada** on March 17, 1993.

NSPC, NSPI and Jones refuses to advance money to Zutphen under either contract with Zutphen until registrations of the various liens are vacated.

On April 13, 1993, Zutphen filed concurrent Originating Notices (Application Inter Partes) in C.A. No. 02869 and 02870 pursuant to s. 29(4) of the **Mechanics' Lien Act**, for orders vacating all liens held by the various respondent lien claimants.

The applications were heard in chambers before Justice H.J. MacDonnell of the Supreme Court on May 21, 1993. He rendered an oral decision on the same day holding that

liens filed by claimants who entered into contracts prior to the **Act** coming into force, that is, prior to August 10, 1992 were to be vacated and claimants who entered into contracts on or after August 10, 1992 were entitled to retain their registrations until such time as their claims are proved and determined by the court.

On May 26, 1993 the chambers judge filed written reasons for his decision.

Zutphen now appeals. The respondents NSPI and Jones join with Zutphen on the appeal. The remainder of the respondents, who are all lien claimants, desire that the decision be upheld.

The sole issue is whether or not the lien claimants who entered into contracts with Zutphen on or after August 10, 1992 are entitled to lien the lands formerly owned by NSPC, now owned by NSPI, for work performed or materials supplied on or after August 10, 1992. This issue entails the interpretation of s. 21 of the **Act**.

There is no issue as to which lien claimant's contracts were prior to August 10, 1992 and which were after that date. The chambers judge left that question to counsel to determine.

In essence Zutphen and the respondents NSPI and Jones assert that the pivotal dates are:

1. In respect to C.A. No. 02869 the date of the contract between NSPI and Zutphen, that is June 19, 1992.
2. In respect to C.A. No. 02870 the date of the contract between Mitsui and Jones, that is, October 16, 1989.

The respondents who are claimants disagree, asserting that the critical dates are those when Zutphen entered into contracts with each of the claimant respondents that is, whether those dates were on or after August 10, 1992.

The **Mechanics' Lien Act** provides a statutory remedy, not known in common law, to permit those persons who perform work or supply materials to a project to file claims

which then become charges upon the owner's land provided that the claimants comply with the provisions of that **Act**.

The interpretation of statutes is codified by s. 9(5) of the **Interpretation Act**, R.S.N.S. 1989, c. 235:

"(5) Every enactment shall be deemed remedial and interpreted to insure the attainment of its objects by considering among other matters

- (a) the occasion and necessity for the enactment;
- (b) the circumstances existing at the time it was passed;
- (c) the mischief to be remedied;
- (d) the object to be attained;
- (e) the former law, including other enactments upon the same or similar subjects;
- (f) the consequences of a particular interpretation; and
- (g) the history of legislation on the subject."

It is trite to say, the authorities being numerous, that when interpreting the words of a statute those words should be given their natural or ordinary meaning and in so doing the statute as a whole must be considered. Statutes must be construed according to their object and intent. The spirit of the legislation must be considered. If the words of a statute are in themselves precise and unambiguous, then no more is necessary than to expound them in their natural and ordinary sense.

E.A. Driedger, **Construction of Statutes**, (2nd Ed.), at p. 87, after considering "The Three 'Rules' - Mischief, Literal, Golden" sets out "The Modern Principle":

"Today there is only one principle or approach, namely, the words of an **Act** are to be read in their entire context and in their grammatical and ordinary

sense harmoniously with the scheme of the **Act**, and the intention of Parliament. This principle is expressed repeatedly by modern judges, as, for example, Lord Reid in **Westminster Bank Ltd. v. Zang**, [(1965) A.C. 182, at p. 222) and Culliton, C.J., in **R. v. Mojelski** [(1968), 65 W.W.R. 565, at p. 570. See also **Cash v. George Dundas Realty Ltd.** (1973), 1 O.R. (2d) 241]. Earlier expressions, though in different form, are to the same effect; Lord Atkinson in **Victoria (City) v. Bishop of Vancouver Island**, [[1921] A.C. 384, at p. 387; and see also **Northman v. Barnet Council**, [1978] 1 W.L.R. 220] put it this way:

'In the construction of statutes their words must be interpreted in their ordinary grammatical sense, unless there be something in the context, or in the object of the statute in which they occur, or in the circumstances with reference to which they are used, to show that they were used in a special sense different from their ordinary grammatical sense.'

After considering the facts and legal principles, Justice MacDonnell commented:

"I find that the ordinary and natural meaning of the words of Section 21 of the Nova Scotia Power Privatization Act is that all contracts entered into after the coming into force of the Act on August 10th, 1992, in respect to construction affecting Nova Scotia Power Inc. lands is subject to the Mechanics' Lien Act.

The intent of the Nova Scotia Privatization Act was to transfer the assets and business of the Nova Scotia Power Corporation, a Crown agency protected by Crown privilege, to a private corporation, subject to the privileges and responsibilities of all private corporations, with certain minor exceptions spelled out in the legislation. The clear and unequivocal meaning of Section 21 is to subject Nova Scotia Power Inc. to the provisions of the Mechanics' Lien Act in regard to all contracts or subcontracts for construction affecting its land on and after August 10th, 1992."

Zutphen, NSPI and Jones, assert that the proper reading of s. 21 is:

"The **Mechanics' Lien Act** applies to the Company

only in respect of construction undertaken pursuant to contracts entered into by the Company after the coming into force of this **Act**."

With deference had that been the case, it would have been simple for the legislators to say so. They did not. It is of importance to note that the **Act** specifically concerns the Company, that is NSPI and s. 21 of the **Act** specifically concerns the application of the **Mechanics' Lien Act** to the Company "in respect of construction undertaken pursuant to contracts entered into after the coming into force of this **Act**". The effect of the section could not have been lost on the legislators. The words are to be given their clear meaning without addition or subtraction.

The purpose and intent of the **Act** was to form a new company, NSPI, which is subject to the provisions of the **Mechanics's Lien Act**. That **Act** applies to NSPI in respect to all construction undertaken pursuant to contracts entered into after the coming into force of the **Act**. That is the unambiguous meaning of s. 21 of the **Act**. The reality is that in performing the construction, contractors do subcontract. Section 21 recognizes that fact. Clearly s. 21 was not intended to refer to the earlier contracts in respect to the projects under consideration here but only to contracts entered into on or after August 10, 1992. The dividing line respecting lienable and non-lienable claims is that date. The dates of the contracts entered into by NSPC with Mitsui and Mitsui with Jones and Jones with Zutphen in C.A. No. 02870 and NSPI with Zutphen in C.A. No. 02869 are not determinative of the lien claimants' rights. The services performed and material delivered on or after August 10, 1992 in respect to contracts entered into on or after that date enhanced the value of the projects and the land of NSPI at Point Aconi. If those claimants were not permitted to register liens then the appellant, NSPI and Jones would obtain the benefit of that work while denying the claimants' rights to lien even though the claimants' contracts were entered into after the coming into force of the **Act**. That would create an inequitable result. It would clearly be contrary to the wording of s. 21 of the **Act**.

In respect to the Ash contract, it was entered into by Zutphen with NSPI, not NSPC, on June 19, 1992. NSPI is a private company. Zutphen and its subcontractors must have known that they were contracting with a company which did not have the Crown immunity enjoyed by NSPC. However the pivotal date remains: "contracts entered into after the coming into force of this **Act**", that is, August 10, 1992.

Claims for liens properly registered by those claimants who entered into contracts with Zutphen on or after August 10, 1992 and who performed services or delivered material pursuant thereto on or after that date are valid.

While I would grant leave to appeal, I would dismiss the appeal.

I would not interfere with the award of costs in the cause by the chambers judge in respect to the application before him.

I would award costs on appeal to the successful respondent-claimants in the amount of \$1000.00 for each group represented by counsel, J. Michael MacDonald, Cathy Dalziel, Gordon Forsyth and H.F. MacIntyre for a total of \$4000.00 plus disbursements, payable by Zutphen, NSPI and Jones jointly and severally.

J.A.

Concurred in:

Clarke, C.J.N.S.

Jones, J.A.

