



***Courts can't force parties to renegotiate contracts, the Supreme Court has confirmed. Unexpected changes in electricity prices didn't mean that Hydro-Québec had to share its profits from the Churchill Falls power station.***

In 1969, after many years of negotiations, Hydro-Québec and the Churchill Falls (Labrador) Corporation (part of Newfoundland and Labrador Hydro) agreed to build a power station on the Churchill River. It was a huge and expensive project. Hydro-Québec took on most of the financial risk in the contract. It agreed to buy most of the electricity at fixed prices for 65 years, whether it needed it or not, and to cover any construction cost overruns. But it got a long-term supply of cheap energy in return for taking this risk on. The Corporation got a long-term, stable source of income. That meant it was able to borrow money to build the station, which in 2018 was worth over \$20 billion.

By 2009, the price of electricity was much higher than it had been forty years before. Hydro-Québec was taking advantage of the low rates and selling electricity to customers outside Quebec at higher prices. The Corporation didn't think this was fair. It said it should be able to share in the profits. In 2010, when Hydro-Québec refused to renegotiate the contract, the Corporation asked the courts to force it to.

In Quebec law, people who sign a contract together have certain duties toward each other. The province's *Civil Code* says that all sides have to treat each other with "good faith." That means they have to be honest and not do anything to hurt each other. As part of this duty, they are sometimes expected to cooperate. How far the duty goes depends on the kind of contract it is. It is stronger for a "relational" contract than for a "transactional" one. A relational contract is based on a long-term, cooperative relationship where risks and benefits are expected to be shared (like a partnership). A transactional contract specifically sets out risks and benefits agreed to by all sides. The Corporation said the contract was relational, so Hydro-Québec had to share its benefits. Hydro-Québec said it wasn't a relational contract, so it didn't have to share anything.

Both the trial court and the Court of Appeal ruled for Hydro-Québec.

The majority at the Supreme Court also ruled for Hydro-Québec. It said the trial judge was not wrong to decide that the contract wasn't relational, and that Hydro-Québec didn't have to renegotiate. The contract set out many things very precisely, which showed both sides meant to follow the specific wording of the agreement, not to rely on any ongoing relationship. Good faith didn't mean Hydro-Québec had to give up the benefits it had negotiated. Good faith also didn't mean Hydro-Québec had to renegotiate just because there was an unexpected change in electricity prices. While Quebec courts sometimes make a party compromise a bit to find a solution, no court ever forced parties to renegotiate the key parts of a contract. Also, no court ever found that a duty to cooperate meant a party had to give up some of its profits just because the other party wasn't profiting as much. Finally, the majority agreed with the trial judge that the Corporation's claim was too late anyway.

This case dealt with a long-term contract and civil law concepts of good faith, equity, and unforeseeability. The majority confirmed that courts should not change contracts or force parties to renegotiate them if this would upset the balance the parties originally agreed to.

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**Breakdown of the Decision:** *Majority:* Justice Clément [Gascon](#) dismissed the appeal (Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Wagner](#), [Côté](#), and [Brown](#) agreed) | *Dissenting:* Justice Malcolm [Rowe](#) said the contract was relational and both parties had a duty to cooperate, so would have allowed the appeal | *Note:* former Chief Justice [McLachlin](#) sat on the bench and heard this case, but didn't take part in the judgment

**More information (case # 37238):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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