

# Reciprocal News

*Helping to Manage Your Risk*

## **The MEARIE Group's Reciprocal Newsletter**

A publication designed for the benefit of Ontario's Energy Industry.

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## **Standard of Care**

In January of 1999 hydro linemen responded to a power outage complaint raised by one of three light industrial customers who were supplied power from a 27,600 volt secondary / 600 volt primary 3- phase pole - top transformer bank.

After confirming no power was entering the building and after inspecting the secondary service lines of the customer that called, the linemen found that the transformer breakers had opened. Not being able to determine a cause, and since it had been raining quite heavily at the time of the outage, the linemen suspected that the problem may have been weather related and closed the breakers which tripped off once again.

They then installed directional fault indicators on the conductors in their attempt to find out where the fault was coming from and closed the breakers again. After closing the breakers twice they observed a fully engaged fire at one of the neighbouring premises. Damages were significant, the Fire Marshal and various experts were involved and ultimately it was determined that the fire was caused by an arcing failure at the disconnect switch in the building's own equipment.

Despite the fact that the hydro equipment worked perfectly and that it was acknowledged that the equipment that

failed was not the responsibility of the LDC, the building owner and the tenant of the building sued the hydro in the amount of \$1,700,000 plus interest and costs claiming that the linemen involved breached the high standard of care required in the distribution electricity, an inherently dangerous element, by closing the transformer breakers without first making sure it was safe to do so.

They advanced the theory that since only 3 premises were serviced by the transformer bank they should have disconnected the service to all buildings until such a time that they could be satisfied that it would be safe to resume power to each individual premise.

## **Challenging an LDC's Duty/Standard of Care**

After six years of intensive litigation, this claim was the subject of a 2-week trial by jury. Counsel representing the LDC on behalf of MEARIE, Andrew Evangelista, assisted by Janna Balaban of Evangelista Barristers and Solicitors, put forth an extremely compelling case not only in defence of this specific claim, but also in defence of the way electricity is distributed in North America and in defence of the hydro linemen who "work to keep the lights on in difficult and dangerous circumstances".

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## Standard of Care (Continued)

This trial ended in a complete victory for the LDC with both the judge and the jury being absolutely convinced that the activities of the linemen met the standard of care required of them. In addition to totally defeating every aspect of the claim being advanced, a costs award was granted in favour of the LDC. This case clearly demonstrates how every aspect of LDC activities could be subjected to judicial scrutiny in the event of a misfortune.

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