



Case in Brief: **Resolute FP Canada Inc. v. Hydro-Québec**

Judgment of December 11, 2020 | On appeal from the Court of Appeal of Quebec
Neutral citation: 2020 SCC 43

Hydro-Québec could make a company pay government charges based on a contract with a power company which was transferred to it, the Supreme Court has ruled.

In 1926, the Canadian International Paper Company concluded a contract with the Gatineau Power Company. The paper company agreed to pay the power company for electricity to run its mills.

The contract said the paper company could have to cover any “taxes or charges” the power company paid to the Quebec government. The contract also said it would apply to the “successors or assigns” of both companies. That meant anyone who took over the company’s rights would have to follow it.

The Quebec government created Hydro-Québec in the 1940s. The government wanted to nationalize electricity (that is, make it publicly-owned). In the 1960s, Hydro-Québec bought most of Gatineau Power’s shares. Hydro-Québec supplied power to the paper company, and the paper company paid for it, like the 1926 contract said. The paper company concluded a contract with Hydro-Québec for more power in 1982. That contract referred to the contract with Gatineau Power in 1926. The paper company’s electricity bills came from Hydro-Québec from at least 1999 on.

In 2007, the Government of Quebec started making Hydro-Québec pay two yearly amounts. In 2011, Hydro-Québec sent the paper company a bill for \$3 million to cover these amounts.

Hydro-Québec said it could do this because of the 1926 contract. It said Gatineau Power “assigned” (transferred) the contract to Hydro-Québec in 1965. The paper company said the 1965 contract made Hydro-Québec a “mandatary” of Gatineau Power. That meant Hydro-Québec was acting on behalf of Gatineau Power, not on behalf of itself. The paper company said its contract was with Gatineau Power. It said it didn’t owe Hydro-Québec anything. Even if this wasn’t the case, it said assigning the contract wasn’t allowed. It also said the amounts weren’t “taxes or charges.” (Everyone agreed the paper company that signed the contract in 1926 eventually became Resolute FP.)

The trial judge said Gatineau Power didn’t assign the 1926 contract to Hydro-Québec. She said the 1965 contract made Hydro-Québec a “mandatary” of Gatineau Power. She also said the amounts owed weren’t “taxes or charges.” That meant Resolute FP didn’t have to pay. The Court of Appeal said the 1926 contract was assigned by the 1965 contract. It also said the amounts *were* “taxes or charges.”

The majority of judges at the Supreme Court agreed with the Court of Appeal, but for different reasons. They said the trial judge made important mistakes in saying the 1965 contract was a “mandate.” (That is, it made Hydro-Québec a “mandatary” acting on Gatineau Power’s behalf.) This meant the Court of Appeal could intervene.

The majority said Gatineau Power assigned the contract with the paper company to Hydro-Québec in 1965. If Hydro-Québec was acting on *behalf* of Gatineau Power, like Resolute FP argued, Hydro-Québec wouldn’t get to keep the profits for itself. And it wouldn’t be responsible for the debts owed to Resolute FP itself.

The majority said that a party to a contract needs the other party’s permission to assign it to someone else. In this case, Gatineau Power had the permission in advance. The 1926 contract said it was allowed. The paper company (which later became Resolute FP) also knew it was doing business with Hydro-Québec since at least 1982.

The majority said it didn’t matter if the amounts charged by the government were considered “taxes” or not. That’s because the 1926 contract said the paper company would have to pay increases in “taxes or charges.” It also didn’t matter if Hydro-Québec was owned by the government. Provinces are allowed to tax or charge Crown corporations (corporations they own). Hydro-Québec could ask Resolute FP to cover these taxes or charges because it was assigned the 1926 contract, and that contract said so.

The *Civil Code of Québec* applies to most non-criminal legal issues in Quebec. Part of the issue in this case was that there weren't explicit rules about assigning contracts in the *Civil Code*. The Court last looked at a contract that was assigned in [*Modern Cleaning Concept Inc. v. Comité paritaire*](#).

Breakdown of the decision: *Majority:* Justice Nicholas [Kasirer](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), [Karakatsanis](#), [Brown](#), and [Martin](#) agreed) | *Dissenting:* Justice Suzanne [Côté](#) said that the trial judge wasn't wrong to decide that Hydro-Québec was only acting on behalf of Gatineau Power and that the contract hadn't been assigned to Hydro-Québec, which meant Hydro-Québec couldn't take advantage of the contract to pass on the taxes or charges to Resolute; she would have allowed the appeal (Justice [Rowe](#) agreed)

More information (case # 38544): [Decision](#) | [Case information](#) | [Webcast of hearing](#)

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