Faculty of Law
University of Toronto

2/ CANADIAN TELECOMMUNICATIONS REPORTS

Peter S. Grant

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The following report sets out in chronological order a detailed summary of every judicial and administrative decision relating to the regulation of the telecommunications carriers at the federal level from 1904 to 1974. The compiling and preparation of these abstracts was a project of the Research Program in Communications Law and Policy at the Faculty of Law, University of Toronto.

The preparation of these abstracts was made possible by financial support from a number of government agencies, whose assistance is gratefully acknowleged. Primary funding was provided by the federal Department of Communications. Supplementary funding was supplied by the Canadian Radio-television and Telecommunications Commission, the British Columbia Department of Transport and Communications, the Manitoba Department of Consumer, Corporate and Internal Services, the Ontario Department of Transportation and Communications, and the Quebec Department of Communications. The preparation of these digests was undertaken by the Research Program in Communications Law and Policy at the Faculty of Law, University of Toronto, which takes sole responsibility for any errors or omissions.

The preparation of these abstracts would not have been possible without the help of a number of law students who participated in a number of other related studies, as well as this research project. The students who assisted in the program were Paul Baston, Ann Devitt, Paul Emond, John Gregory, John Hunter, Lesley Lane, John Loosemore, Paul Morrison, Gordon Norsworthy, Nicholas Poppenk, Ann Scott, Elizabeth Stewart and Rosalind Zisman. Their contribution is particularly acknowledged.

The original abstracts were designed to be utilized as self-indexing headnotes to a series of volumes reporting and reproducing the various decisions. The immense quantity of material involved, however, rendered it impossible to publish volumes in this format. Instead, it has been decided to publish the abstracts separately, with a distinct numbering system designed to make it possible to index each decision readily by number. This material would constitute a separate Part in a forthcoming two-volume Regulatory Manual which the Law Society of Upper Canada has undertaken to publish in the fall of 1976.

The material set out herein constitutes the final report to the funding agencies. Because of the changed nature of the use intended for the following abstracts, however, the version presented herein does not represent the final version intended to be published. In its published form, the following editorial changes and additions are intended to be made: (a) all decisions will be numbered, cross-referenced internally, and edited for style; (b) decisions from 1974 to 1976 and certain selected other abstracts will be added; and (c) a topical index by number will be added. Pending the completion of these publication changes, and the typesetting of the final version, however,

it is hoped that these abstracts will be of substantial benefit to those interested in analysing the evolution of telecommunications regulation at the federal level in Canada.

Peter S. Grant,
Director

Port Arthur and Fort William v. Bell Telephone Co. and Canadian Pacific Railway Co., 3 C.R.C. 205, 1908-09 Ann.Rep. B.R.C. Canada 142 (Board of Railway Comm'rs for Canada, Blair, Bernier, and Mills, CC., March 15, 1904)

An application by the municipally-owned telephone system under s.193 of the Railway Act, 1903 (a predecessor section to s.316 of the present Railway Act) for an order permitting it to install its phones in the railway stations of the C.P.R., was granted, subject to payment of compensation to C.P.R. and Bell, who had a contract giving Bell exclusive installation rights for ten years. The Commissioner and Deputy Commissioner held that this contract gave no more than a reasonable protection to the parties and was therefore not void for restraint of trade; a third Commissioner dissented. The order sought was suspended until a later hearing when the amount of compensation was to be fixed.

It was further held that in disputes over questions of law, the opinion of the Chief Commissioner was to prevail.

[Note: For a further consideration of this application, see Towns of Port Arthur and Fort William v. Bell Telephone Co. and C.P.R. at paragraph 802- below.]

Towns of Port Arthur and Fort William v. Bell Telephone Co. and Canadian Pacific Railway Co., 4 C.R.C.279, 1908-09 Ann.Rep. B.R.C. Canada 142 (Board of Railway Comm'rs for Canada, Killam and Bernier, CC., July 14, 1905)

The installation of telephones from the local telephone systems of Port Arthur and Fort William in C.P.R. railway stations was permitted by order of the Board. As this order caused a breach in an exclusive contract between Bell Telephone and the C.P.R. for provision of telephone services, both companies were entitled to compensation. The issuing of the order, however, did not, under the law of Quebec where the contract was made, have the effect of voiding the contract; therefore Bell was only entitled to compensation for the loss of its exclusive privilege in Port Arthur and Fort William. C.P.R. was entitled to compensation for the use of its stations and interference with its property. The evidence was not sufficient to determine exact amounts of compensation; this would be done later by the Board or by arbitration.

[Note: Section 193 of the Railway Act, 1903, was amended on July 13, 1906 to reverse this decision and preclude the Board from taking prior exclusive contracts into consideration in fixing compensation: see S.C. 1906, c.42, s.17. The section as amended is now s.316 of the Railway Act.]

Re Bell Telephone Co. and Windsor Hotel Agreement, 1908-09 Ann.Rep. B.R.C. Canada 232, 307 (Board of Railway Comm'rs for Canada, Killam and Mills, CC., May 13, 1908)

The Board considered an agreement between Bell and the Windsor Hotel for provision of telephone service. The agreement was approved subject to two conditions: the rate for local messages should be subject to any reduction the Board might order in the future; and any extension of the agreement beyond ten years should be subject to approval of the Board.

Bell Telephone Co. v. Windsor, Essex & Lake Shore Rapid Railway Co., 8 C.R.C. 20, 1908-09 Ann.Rep.B.R.C. Canada 285 (Board of Railway Comm'rs for Canada, Mabee, C., October 20, 1908)

The Board held it did not have jurisdiction under sections 237 and 238 of the Railway Act to give approval ex post facto to certain measures taken by Bell Telephone Company in connection with an emergency situation at a crossing, or to order the railway company in question to compensate Bell Telephone for the cost. These sections contemplate decisions on emergency action being taken by the Board rather than by the companies.

Dignam v. Bell Telephone Co., 8 C.R.C. 200, 1908-09 Ann. Rep. B.R.C. Canada 289 (Board of Railway Comm'rs for Canada, Mabee, C., November 13, 1908)

Application by a Toronto subscriber for an order requiring Bell Telephone to furnish him with a Western Ontario directory was refused by the Board of Railway Commissioners. The Board declared it had no authority to grant such an order and even if it had authority it is not reasonable that subscribers in one district should be entitled to directories from other areas.

Peoples' and Caledon Telephone Cos. v. Grand Trunk and Canadian Pacific Railway Cos., 9 C.R.C. 161, 1909-10 Ann.Rep. B.R.C. Canada 302 (Board of Railway Comm'rs for Canada, Scott, Mabee and McLean, CC., May 5, 1909)

under the predecessor section to what is now s. 316 of the Railway Act.

C.P.R. and Grand Trunk Railway were ordered to install telephones of the Peoples' and Caledon Telephone companies in certain railway stations. Similar orders will be made on application of a telephone company when the applicant's instruments are in general use in the surrounding area and it appears to be in the public interest that such an installation be made. As the telephone companies desiring such an order are not generally subject to federal jurisdiction such orders would be conditional on the telephone company entering into an agreement with the railways containing fair and reasonable conditions, a suggested form of which is set out in the judgment.

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Times Publishing Co. v. Canadian Pacific Railway Co., Great North Western & Western Union Telegraph Cos., 9 C.R.C. 169, 1909-10 Ann.Rep. B.R.C. Canada 208 (Board of Railway Comm'rs for Canada, Mabee, C., May 19, 1909)

An application was made to the Board for an order directing certain telegraph companies to transmit press messages to the Marconi wireless station at Glace Bay at the same rate as to other points along the Atlantic coast of Canada from the City of Ottawa. It was alleged that the rates were excessive and discriminatory because the telegraph companies on messages to Glace Bay charged the higher private rate rather than the lower press rate. Held, that the evidence did not establish that excessive or discriminatory rates were charged, the rates being lower from Ottawa to Glace Bay than from the same point to other Canadian Atlantic coast points and the application must be dismissed.

Bell Telephone Co. v. Nipissing Power Company, 9 C.R.C. 473, 1909-10 Ann.Rep. B.R.C. Canada 251 (Board of Railway Comm'rs for Canada, Mabee and Mills, CC., November 17, 1909)

Crossing of telephone lines by wires of the Nipissing Power Co. was restrained by the Board. The provisions of the Railway Act requiring that the Board approve all crossings of railways by high tension power wires apply equally to crossing of telephone lines by power wires.

Re Counting of Words in Domestic Telegraph Messeages, 1909-10 Ann.Rep. B.R.C. Canada 259 (Board of Railway Comm'rs for Canada, Mabee, Scott and McLean, CC., December 21, 1909)

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The Board granted an amendment to a rule of the tariffs of certain telegraph companies, revising the ~~ending~~ system by which domestic messages were sent. ^To this date, a coding system ~~was~~ used that was disadvantageous to the company in terms of time, transmission, and revenue received. The amendment stipulated that a code word is restricted to five letters in length; any number of letters over five will be deemed to form a new word.

Western Associated Press v. Canadian Pacific Railway and Great Northern Western Telegraph Cos., 9 C.R.C. 482, 1909-10 Ann.Rep. B.R.C. Canada 270 (Board of Railway Comm'rs for Canada, Mabee, C., January 1, 1910)

The Board held that C.P.R. Telegraph does not discriminate against the Western Associated Press by charging a lower rate to C.P.R. customers where the information is "subject to publication in one newspaper only" than it does to the Western Associated Press which is an association of several newspapers. Rates for a "class" of one newspaper should not arbitrarily be applied to a "class" of an association of newspapers. On the other hand, C.P.R. does discriminate against Western Associated Press in its practice of charging a flat rate for a news service to its customers while charging members of W.A.P. on a per-word basis, and the practice must be discontinued.

Dominion Park Co. of Montreal v. The Bell Telephone Co., 1910-11 Ann.Rep. B.R.C. Canada 321 (Board of Railway Comm'rs for Canada, Scott, Mills and McLean, CC., April 27, 1910)

that that

The Dominion Park Co. complained that certain charges made by the Bell Co. for telephone service were excessive. The Board held that a full charge for excess mileage was justified even for short-term telephones, since the wires had to be maintained throughout the year; that the terms of an agreement guaranteeing a minimum monthly charge at the pay station was not within the Board's jurisdiction and could not be interfered with; and that short-term rates should apply to extension services used for four months.

Winnipeg Board of Trade v. Telegraph Cos., 1910-11 Ann. Rep. B.R.C. Canada 326 (Board of Railway Comm'rs for Canada, Scott and Mills, CC., June 11, 1910)

In response to a complaint that the rates charged by telegraph companies were unreasonable, excessive, and discriminatory, the Board ordered that at its next sitting in Winnipeg, an investigation be held into the rates, with the onus on the telegraph companies to demonstrate that their rates are otherwise than as alleged.

NOTE: That such a decree reverses the common burden of proof.

Bayly v. Bell Telephone Company, 11 C.R.C. 190, 1910-11 Ann.Rep. B.R.C. Canada 185 (Board of Railway Comm'rs for Canada, Mabee, C., October 15, 1910)

The Board rejected a nurse's complaint that despite infrequent business use of her residence phone (averaging once a week) she was charged business and not residential rates. The purpose of use and not the frequency of use was the determining factor. If a business person has no office phone charged at the business rate, then the home phone used for business purposes may be so charged. Although it may seem inequitable that a man using a telephone once a week should pay as much as a man using his telephone 50 times a day, there is no way of differentiating between these two subscribers. Moreover, the telephone is open to be used more often by the former subscriber if his business so demands.

Byron Telephone Co. v. Bell Telephone Company, 11 C.R.C. 433, 1910-11 Ann.Rep. B.R.C. Canada 364 (Board of Railway Comm'rs for Canada, Mabee, Scott, Mills and McLean, CC., January 20, 1911)

An interchange agreement between the Byron Telephone Company and Bell Telephone provided that Bell would permit an interchange of messages and provide the necessary equipment. The Board held that this obliged Bell Telephone to provide a switchboard that was sufficient to accommodate traffic between the Bell system and the Byron system, but did not require Bell to provide a larger switchboard needed to accommodate increased traffic within the Byron system.

People's Telephone Co. v. Bell and Canadian Telephone Companies, 1 J.O.R.R. 32, 12 C.R.C. 19, 1910-11 Ann.Rep. B.R.C. Canada 218 (Board of Railway Comm'rs for Canada, Mabee, C., January 25, 1911)

A clause in the interconnection agreement between the Bell Telephone Co. and the Canadian Telephone Co. provided that the Canadian Telephone Company could not enter an interconnection agreement with any other telephone company without Bell's consent. In an application for approval of the agreement, the clause was found to be contrary to the public interest and the Board struck it out. Comments were also included on the purpose of the legislation requiring interconnection agreements to be approved by the Board.

[Note: The ~~provision~~ provisions ~~was~~ respecting telephone interconnection (now s. 320(7) and (8) of the Railway Act) were originally introduced in 1906: see S.C.1906, c. 42, s. 31.]

Re Colborne Municipal Telephone System, Connection with Bell Telephone Company, 1911-12 Ann.Rep. B.R.C. Canada 289 (Board of Railway Comm'rs for Canada, Mills, Mabee, Scott and McLean, April 3, 1911)

The Board approved the applicant company's request for connections with the Bell Telephone Co., dismissing the latter's objection that this might lead to competition between the applicant and another local telephone company. The Board refused to go into the question of competition.

Ingersoll Telephone Co. et al. v. Bell Telephone Co. of Canada, 22 C.R.C. 135, 1 J.O.R.R. 67, 1911-12 Ann.Rep. B.R.C. Canada 289 (Board of RAilway Comm'rs for Canada, Mabee, C., May 10, 1911)

An interconnection between Ingersoll Telephone Co. and certain other independent systems and Bell Telephone was ordered by the Board. It was held that the Board was empowered by the Railway Act to order interconnection on such terms of compensation as the Board might deem just and expedient. Subscribers to the local systems in competition with Bell ought to be given access to long distance facilities, but Bell is entitled to compensation. Chief Commissioner Mabee reviewed the circumstances leading up to this application and granted an interconnection order subject to a 15 cent surcharge payable to Bell on each call originating from the independent company and routed through Bell's facilities.

Editorial Note: For the form of interconnection agreement approved by the Board, see below at p. 000. This matter was later reheard by the Board in Independent Telephone Cos. v. Bell Telephone Co. and again in Ingersoll Telephone Co. et al. v. Bell Telephone Co., 22 C.R.C. 135, 145, 2 C.T.R. 000. Leave to appeal on a question of law was later granted in 22 C.R.C. 135, 148, J.O.R.R. 259, 302, 2 C.T.R. 000, and the Supreme Court of Canada eventually dismissed the appeal in Ingersoll Telephone Co. et al. v. Bell Telephone Co., 53 S.C.R. 583, 31 D.L.R. 49, 22 C.R.C. 152, 2 C.T.R. 000.

Re Toronto Island; City of Toronto v. Bell Telephone Co., 1 J.O.R.R. 536 (Board of Railway Comm'rs for Canada, Order No. 15953, February 12, 1912)

In this consent order, the Board approved a revision of the rates charged by Bell Telephone to subscribers on Toronto Island, which had unjustly discriminated between the Island and other parts of Toronto. An interesting part of the order required Bell to install an Island switchboard and provide single party service if 100 subscribers were secured before March 15, 1912; otherwise, two or four-party service would be adequate.

St. Boniface Board of Trade v. C.P.R. Telegraphs et al., 4 J.O.R.R. 109 (Board of Railway Comm'rs for Canada, Order No. 16341, April 17, 1912)

The free delivery of telegraph messages in the City of St. Boniface by C.P.R. Telegraphs, Great North Western Telegraph Co., and Canadian Northern Telegraph Co. was ordered by the Board of Railway Commissioners, upon the application of the St. Boniface Board of Trade.

Canadian Press v. Great North Western, Western Union and C.P.R. Telegraph Cos., 14 C.R.C. 151, 2 J.O.R.R. 122, 1912-13 Ann.Rep. B.R.C. Canada 35 (Board of Railway Comm'rs for Canada, Scott, Mills and McLean, CC., May 10, 1912)

The application by the Canadian Press for special press rates from the Great North Western and Western Union Telegraph Companies, similar to those provided by C.P.R. Telegraphs, was refused. Those companies were not party to the C.P.R. agreement and had neither sought press business nor provided the necessary special facilities for it, as they felt that its business would be unremunerative.

The restoration of the 25 cent per 100 words "press special" rate in the Maritimes, formerly in effect prior to September 1, 1910, was ordered. That rate had been continued in Ontario and Quebec while the rate was revised from 25 to 50 cents in the Maritimes and this was held to be a prima facie case of unjust discrimination. The 25 cent rate was ordered to be restored since the companies had not established that there were special circumstances and conditions justifying the difference.

Bell Telephone Co. v. C.P.R. and City of Toronto (Brock Avenue Subway Case), 14 C.R.C. 14, 2 J.O.R.R. 189, 1912-13 Ann.Rep. B.R.C. Canada 212 (Board of Railway Comm'rs for Canada, Scott, Mills and McLean, CC., May 24, 1912)

The Board had ordered a grade separation, requiring the C.P.R. and the City of Toronto to lower a city street so as to go under the railway line. An application by Bell Telephone to recover the cost of the relocation of its overhead wiring was refused by the Board. Bell must bear the cost of relocation of lines when a grade separation is ordered by the Board for the public good.

City of Montreal v. Bell Telephone Company (Montreal Telephone Tolls Case), 2 J.O.R.R 353, 15 C.R.C. 118, 1912-13 Ann.Rep. B.R.C. Canada 19 (Board of Railway Comm'rs for Canada, Scott, McLean and Goodeve, CC., October 28, 1912)

This decision constituted the first major examination by the Board of Bell's rate structure in a large urban market, and contains the Board's first comments on value of plant, depreciation practices, obsolescence, and free exchange limits. The City of Montreal had applied to the Board for an order requiring Bell Telephone to reduce its rates within the city to $50 and $30 annually for business and residential telephones respectively; these rates were $5 lower than those generally in effect, although equal to the rates still charged to the 615 out of 35,407 subscribers still using the obsolete "Blake Set" transmitters. Bell had in turn applied to abolish the Blake rates entirely. In addition, the City had applied to have the flat rate area extended so as to avoid alleged discrimination against the areas to the north and east of Montreal.

The spirited attack mounted by the city on Bell's general rates failed, although Bell in turn was not allowed to increase its Blake rates. Based on book value of plant, the Bell return was shown to be 8.28 per cent, which was held to be reasonable. Montreal contended without success that "idle plant" (plant constructed in reasonable anticipation of growth but at present unused) should be deducted; the Board also ruled that either the straight line or the sinking fund method of depreciation accounting was acceptable. An arbitrary allocation by Bell of its long distance costs and revenues for Montreal was accepted in the absence of any recognized scientific basis for such allocation. The Board declined to order the abolition of the Blake sets since the number remaining was too small to interfere with the efficiency of the system as a whole. Bell was ordered to extend the Montreal flat rate area, based on a finding of discrimination against territories equidistant from the main exchange, although the Board noted that there was no necessary connection between free exchange limits and civic limits. The Board also ordered a change in Bell's zoning principles, ruling that any excess mileage charges for subscribers beyond the flat rate zone be based solely on the portion of line located beyond this zone.

City of Toronto v. Bell Telephone Company (North Toronto Telephone Tolls Case), 15 C.R.C. 142, 3 J.O.R.R. 69, 89 (Board of Railway Comm'rs for Canada, Scott and Goodeve, CC., March 8, 1913)

Upon application by the City of Toronto to have the Toronto rates apply to two recently annexed areas, the Board held that the Moore Park area being in similar circumstances to areas having the Toronto rates was entitled to the Toronto rate, but that North Toronto being one and three-quarter miles north of the nearest exchange, was not in similar circumstances and therefore was not entitled to the flat rate. The Toronto exchange limit was found to be the limits of the City of Toronto in 1911, but the mere fact of annexation to Toronto would not entitle an area to Toronto flat rates. Mileage rates, however, should be calculated from the boundaries of the Toronto exchange, following the Montreal Telephone Tolls Case, 1 C.T.R. 000.

Re Marconi Wireless Telegraph Co., Interconnection with C.P.R. Telegraphs, 3 J.O.R.R. 63 (Board of Railway Comm'rs for Canada, Order No. 18811, March 11, 1913)

In this order, C.P.R. Telegraphs was required by the Board to accept and transmit the Marconi Wireless company's overseas wireless messages over its landlines.

Consul General of Japan v. Canadian Telegraph Companies, 3 J.O.R.R. 110, 1913-14 Ann.Rep. B.R.C. Canada 254 (Board of Railway Comm'rs for Canada, Scott, Mills and Goodeve, CC., April 1, 1913)

Following a decision by Canadian telegraph companies to follow U.S. precedent and apply cipher rates to domestic messages in Japanese, the Consul-General of Japan applied to require the companies under the Board's jurisdiction to transmit such messages at plain language rates, as the international telegraph conventions had authorized for other plain languages. After examining the international rules for plain, code and cipher language, the Board agreed with the applicant and ordered the companies to transmit and receive Japanese telegrams at the more advantageous code language count until a comprehensive dictionary could be prepared and officially approved.

Re City of Hamilton, Removal of Poles, Wires and Cables from Streets, 3 J.O.R.R. 169, 1913-14 Ann. Rep. B.R.C. Canada 134 (Board of Railway Comm'rs for Canada, Drayton and McLean, CC., April 28, 1913)

Board: In the matter of the removal of poles and wires of certain companies from the street, to be placed underground, the ~~Commission~~ held that Bell was under no such obligation unless it is allowed an easement over the municipality's poles in order to carry its service from the street to individual houses; Bell should be under no obligation to run its wires underground to individual houses.

Toronto Electric Light, Bell Telephone Cos. and Hydro Electric Commission v. Canadian Pacific, Canadian Northern Railway Cos. and City of Toronto (North Toronto Grade Separation Case), 15 C.R.C. 309, 3 J.O.R.R. 241, 1913-14 Ann.Rep. B.R.C. Canada 135 (Board of RAilway Comm'rs for Canada, Scott, C., June 4, 1913)

In this decision, Bell Telephone Co. and other utilities were ordered by the Board to bury wires where a grade separation had been earlier ordered between the streets and railway lines. Following the Brock Avenue Subway Case, the costs were ordered to be borne by each company in respect of its own expenses. For technical reasons Bell Telephone was permitted to maintain its long-distance wires overhead.

Re Construction of Bell Telephone Line on Certain Montreal Streets, 3 J.O.R.R. 346, 1913-14 Ann.Rep. B.R.C. Canada 137 (Board of Railway Comm'rs for Canada, Drayton, Scott and McLean, CC., August 14, 1913)

In this order, the Board authorized Bell Telephone to construct and maintain poles and wires along specified streets in Montreal, as indicated on an accompanying map. The order is representative of the role played by the Board in arbitrating disputes between Bell and municipal officials as to the location of lines on city streets. The order is untypical in that it followed upon a formal hearing; by the 1920's disputes on such matters were almost invariably dealt with through informal correspondence with the parties.

Re City of Berlin, Relocation of Telegraph Poles and Wires, 3 J.O.R.R. 507 (Board of Railway Comm'rs for Canada, Order No. 20816, November 12, 1913)

In this representative order, made at the request of the City of Berlin (now Kitchener), the Board required the relocation of certain poles and wires owned by the C.P.R. and Great North Western Telegraph Co. Provision was made for the settlement of any disputes arising from the proposed new layout by the Electrical Engineer of the Board.

Medico-Chirurgical Society of Montreal v. Bell Telephone Company, 16 C.R.C. 267, 3 J.O.R.R. 553, 1913-14 Ann.Rep. B.R.C. Canada 252 (Board of Railway Comm'rs for Canada, Scott, C., January 5, 1914)

In this short judgment, the Board refused to interfere with the decision of Bell Telephone to eliminate a special telephone rate for doctors and charge them at the higher business rate. The Board expressly followed its earlier decision in Bayly v. Bell Telephone Co., 11 C.R.C. 190, 1 C.T.R. 000.

City of Toronto v. Bell Telephone Co. (North Toronto Telephone Toll Case), 17 C.R.C. 263, 4 J.O.R.R. 15 (Board of Railway Comm'rs for Canada, Scott, C., March 26, 1914)

This decision followed a rehearing of an earlier application which had determined that the newly annexed North Toronto area was not entitled to be included in the Toronto flat rate zone. Despite new evidence of an increase in population, number of phones, and number of places of business in the newly annexed area, the Board held that North Toronto was not yet in circumstances sufficiently similar to those of areas within the Toronto flat rate area to be entitled to Toronto rates. When a projected new exchange was completed, North Toronto would qualify for Toronto rates.

Port Hope Telephone Co. v. Bell Telephone Company, 17 C.R.C. 343, 4 J.O.R.R. 133, 1914-15 Ann.Rep. B.R.C. Canada 122 (Board of Railway Commissioners for Canada, McLean, Scott and Goodeve, CC., March 30, 1914)

An independent Ontario telephone company applied for a ruling that it was not a "competitive" company and hence entitled to a long distance connection with Bell. The Board held that the mode of application was incorrect, as the Board could not issue a declaratory order as to status. Moreover, a provincial company could not invoke the jurisdiction of the Board to prohibit, on the ground of unjust discrimination, a company subject to the Board's jurisdiction from, in the exercise of its discretion, making an agreement with the non-competitive provincial telephone company and refusing it to another, alleged to be similarly situated, in order to prevent competition, or more correctly speaking, duplication. On the other hand, the Board does have jurisdiction to order a federally regulated company like Bell Telephone to afford to another, whether or not subject to federal jurisdiction, the use of a long distance system upon terms that seem to the Board just and reasonable.

Independent Telephone Companies v. Bell Telephone Co. (Ingersoll Case), 17 C.R.C. 266, 5 J.O.R.R. 163, 1914-15 Ann.Rep. B.R.C. Canada 181 (Board of Railway Comm'rs for Canada, McLean, Scott and Goodeve, CC., July 16, 1914)

Following the judgment of Chief Commissioner Mabee in Ingersoll Telephone Co. et al. v. Bell Telephone Co. relating to Bell interconnection agreements, 1 C.T.R. 000, 22 C.R.C. 135, 1 J.O.R.R. 67, Bell Telephone and the independent companies affected brought applications to rescind or vary the terms of the order. The independents contended that the connecting tolls payable to Bell should be reduced, eliminated, or made reciprocal, and that the order should be made applicable to all independents desiring interconnection. In this judgment, the Board reaffirmed its earlier decision and held that it had the power to order compensation to Bell for competitive loss as well as compensation for service rendered. Factors considered by the Board included interference with Bell's business, the contribution by Bell subscribers toward long distance initial and maintenance costs, the convenience to the independent subscribers, and the increased "value of service". The first three factors would be met by a flat payment to Bell by the independent company, ranging from $100 to $300 per year. The last factor would be met by a surcharge of 10 cents per call, of which 7 cents would go to Bell.

Newman v. Bell Telephone Co., 17 C.R.C. 271, 4 J.O.R.R. 181 (Board of Railway Comm'rs for Canada, Drayton, McLean and Scott, CC., July 17, 1914)

Here the Board held that a telephone in the residence of a market gardener and fruit raiser should be charged at the business rate, irrespective of frequency of use, following its earlier decision in Bayly v. Bell Telephone Co., 11 C.R.C. 190, 1 C.T.R. 000.

Additionally the Board ruled that Bell was not justified in eliminating a lower business rate charged to party lines beyond a primary rate area merely because a change in tolls within the area arising out of an area extension had rendered party line service within the area obsolete.

Noviciat de Notre Dame des Anges v. Bell Telephone Co., 17 C.R.C. 277, 4 J.O.R.R. 183 (Board of Railway Comm'rs for Canada, Drayton and McLean, CC., July 17, 1914)

The Board held that a telephone in the house of a religious community should be charged at the business rate.

City of Toronto v. Bell Telephone Co. (North Toronto Annexation), 5 J.O.R.R. 63 (Board of Railway Comm'rs for Canada, Order No.23497, April 8, 1915)

Following its earlier decision set out at 17 C.R.C. 263, 4 J.O.R. 15, 1 C.T.R. 000, the Board ordered Bell Telephone to file a tariff applying Toronto rates to the former Town of North Toronto, recently annexed to the City of Toronto and now serviced by a new exchange.

London Railway Commission v. Bell Telephone Co., 18 C.R.C. 435, 1915-16 Ann.Rep. B.R.C. Canada 117 (Board of Railway Comm'rs for Canada, Drayton and Scott, CC., April 19, 1915)

In this decision, Bell Telephone was ordered to raise its wires where they crossed the London and Port Stanley railway line in order to enable the railway company to install wires necessary to convert from a steam to an electric operation. In cases where the Bell wires cross property whose fee is vested in the railway, the railway is senior in construction and the telephone company must bear the cost. However, where the telephone lines are built along the highway and cross the railway at highway crossings the fee is in the municipality and the railway has only the right to use tracks across the highway. The railway's overhead wires are therefore junior to the Bell wires in these cases and the cost must be borne by the railway.

Ernesttown Rural Telephone Co. v. Bell Telephone Co., 18 C.R.C. 325, 5 J.O.R.R. 78, 1915-16 Ann.Rep. B.R.C. Canada 123 (Board of Railway Comm'rs for Canada, McLean, Drayton, Scott, Goodeve and Nantel, CC., May 17, 1915)

Here the Board was asked for a ruling as to the meaning of Clause 8 in the standard form of traffic agreement between Bell and the independents ~~(see Re Bell Telephone Company, traffic agreement between Bell and the independents~~ (see Re Bell Telephone Company, Standard Form of Traffic Agreement, 3 J.O.R.R. 522, 1 C.T.R. 000). The board stipulated that ~~the all such calls, that is~~; if Bell Telephone is asked to collect the charge of the applicant company respecting messages originating on Bell's line, the applicant company must similarly collect for messages originating on its own line.

Dosroches v. Bell Telephone Company, 18 C.R.C. 322, 5 J.O.R.R. 119, 1915-16 Ann.Rep. B.R.C. Canada 150 (Board of Railway Comm'rs for Canada, Scott and Goodeve, CC., July 8, 1915)

moreover

A clergyman was entitled to be charged the residence and not the business rate for a telephone installed in his residence. The circumstances and conditions of the use of the applicant's telephone were distinguishable from the use by other professional people and business institutions as a clergyman did not depend on the telephone, ~~for in this case as~~ a number of other clergymen in Quebec City who paid only the residence rate made similar use of their telephones.

Stoney Point Village v. Bell Telephone Co., 18 C.R.C. 319, 5 J.O.R.R. 139, 1915-16 Ann.Rep. B.R.C. Canada 155 (Board of Railway Comm'rs for Canada, McLean, Drayton and Scott, CC., July 28, 1915)

In this case, the Board was requested to compel Bell to restore its pay telephone in the police village. The Board held that it had no jurisdiction to order the reopening of a telephone pay station. Although pay stations are analogous to railway stations and under the Railway Act the Board has certain powers to order construction of railway stations, these powers do not apply to telephone stations.

Ingersoll Telephone Co. et al. v. Bell Telephone Co., 22 C.R.C. 135, 145, 1915-16 Ann.Rep. B.R.C. Canada 241 (Board of Railway Comm'rs for Canada, Scott, Nantel, McLean, Goodeve and Drayton, CC., September 3, 1915)

Following its judgment in Independent Telephone Companies v. Bell Telephone Co. 17 C.R.C. 266, 5 J.O.R.R. 163, 1 C.T.R. 000, the parties were unable to agree upon the form of a general order and a further hearing was held. In this decision, the Board affirmed its earlier judgment, holding 4 to 1 that it should not be concerned with the distinction between competing and non-competing companies but merely with setting just and reasonable terms. By agreement of the parties no other charges except long distance tolls would be made to non-competing companies. Otherwise on any Board order for compulsory connection an annual charge, ascertained with reference to the number of subscribers only, would be payable to Bell Telephone. Chief Commissioner Drayton dissented on the ground that the Act in question did not create a new law of compensation covering business losses suffered by one public service corporation as the result of competition with another public service corporation.

Ingersoll Telephone Co. et al. v. Bell Telephone Co., 22 C.R.C. 135, 148, 5 J.O.R.R. 259, 302 (Board of Railway Comm'rs for Canada, Drayton, Goodeve, McLean and Scott, CC., November 26, 1915)

In this decision, the Board granted leave to appeal its order in the Ingersoll case (immediately preceding), to the Supreme Court of Canada.

Re Bell Telephone Co. Rates for Clergymen and Religious Institutions, 5 J.O.R.R. 302 (Board of Railway Comm'rs for Canada, Scott, Nantel and Goodeve, CC., December 7, 1915)

Following an application by Bell Telephone, the Board sought to clarify its earlier judgments on whether clergymen and religious institutions should be charged a residential or business rate. The Board ordered that the business rate be charged where the telephone was listed in the name of an institution, but the residence rate be charged when the telephone was listed in the individual's name, save where it appeared that the telephone was to be used for the direct financial gain of the user.

City of Woodstock v. Great North Western Telegraph Co., 19 C.R.C. 429, 5 J.O.R.R. 317, 1915-16 Ann.Rep. B.R.C. Canada 264 (Board of Railway Comm'rs for Canada, McLean and Scott, CC., January 14, 1916)

The City of Woodstock applied to the Board for an order directing the respondent to put its lines of wires underground, although the existing poles were in reasonably good condition. The Board held that it did not have the jurisdiction to order wires placed underground for aesthetic reasons. For an order to be made there would have to be evidence of danger, fire hazard or other factors.

Re Telegraph Tolls, 20 C.R.C. 1, 6 J.O.R.R. 29, 1916-17 Ann.Rep. B.R.C. Canada 52 (Board of Railway Comm'rs for Canada, McLean, Scott, Goodeve and Drayton, CC., March 29, 1916)

In this lengthy judgment, the Board undertook its first comprehensive review of the rate structures of the telegraph companies under its jurisdiction and ordered general rate reductions. Although one original complaint in 1910 was against alleged discrimination in rates into and out of Winnipeg, the Board decided to broaden the scope of the inquiry into a general investigation into the reasonableness of the tariffs of rates set by the Canadian Northern, Grand Trunk Pacific, Great North Western and Canadian Pacific Telegraph Companies. All hearings had been held and submissions completed by June, 1914, but when the war broke out, the Board decided not to issue its judgment until after the effect of the war on the evidence presented could be assessed. The Board justified this decision by distinguishing between the scope of the jurisdiction conferred upon the Board and that exercised in ordinary judicial procedure. In actions in court, the assumption was that all material evidence had been presented, and that judgment should be based on the hearing record alone. The Board however had the dual functions of investigating matters on its own motion and of deciding matters, whether originated on its own motion or on complaint. The scope of the Board's activity was not punitive or prohibitory in respect of past transactions, but corrective and amendatory in respect of future transactions. Thus the record on which it based its decisions customarily included both evidence presented at the hearings and supplementary research made by the Board.

In responding to the complaint that telegraph rates discriminated against Western Canada in favour of Eastern Canada, the Board stated that the ultimate test of discrimination was not whether the rates were different, but whether as a result of this difference an injury accrued to an individual or locality. A comparison of rates in the United States and Canada was informative but had no necessarily conclusive bearing on the reasonableness of rates in Canada. Distance was a factor to be considered, but it was not nearly as significant for telegraph rates as for railway transportation, where equal mileages should result in comparable rates. In the telegraph business, only the costs of pole and wire line mileage were proportionate to distance; other significant cost factors such as volume of business and capital improvements in the physical plant were by the natrue of telegraph communication confined in their impact to specific localities. Thus a rate structure conforming to a zone system was more appropirate to the telegraph business than one based on distance. The mere extent of one zone had no necessary bearing on the extent of another zone. A more significant consideration was the comparative utilization of plant as between different seasons in the year.

In an attempt to assess the value of each telegraph company, the Board reviewed briefly the historical development of the companies, with particular emphasis on their relationship with railway companies. The practice of the telegraph companies to locate lines along railroad tracks was noted, and the provisions of three agreements involving Great North Western Telegraph Co. and various railroad companies were discussed in detail as typical of those agreements whereby the telegraph company obtained a free and exclusive right of way in return for the free transmission of railway messages and a percentage of any cash receipts from commercial wires. The Board noted the advantages of a close working relationship between the telegraph and railway companies, but pointed out that this often made it difficult to assess the cost of the telegraph enterprise, since it was impossible to divide precisely the commercial and railway uses of telegraph. After an independent examination of the cost of equipment on a section of Canadian Pacific telegraph line made by the Board's Electrical Engineer, the valuation of the company submitted by Canadian Pacific was reduced by seven per cent.

The Board adopted the principle that where telegraph lines either compete in a given territory or traverse contiguous portions of the same general territory, there must be a uniform standard of rates. It was necessary to arrive at a reasonable readjustment of rates having regard to current traffic and its probable expansion, as well as the question of fair return. Value of service was not a criterion for reasonableness of rates, so that the fact that customers were willing to pay the current rates rather than do without the service did not indicate that the rates were reasonable. The rates charged by the Government Telegraph system were not conclusive as to what was reasonable except insofar as conditions were identical, but they afforded evidence pointing in that direction.

On the basis of these considerations, the Board set out a schedule of reasonable maximum rates for telegraph companies. The schedule was based on fourteen zones, with rates ranging from the local minimum of 25 cents which was held to be statutorily imposed on Great North Western Telegraph, to the current coast-to-coast maximum of $1, which was found to be a reasonable rate by the Board. The effect of the schedule was to reduce rates by an average of 17 per cent.

The order which put this schedule into effect ended the Board's practice originating in 1910, of approving the tariffs of the telegraph companies for six month periods only.

Tinkess v. Bell Telephone Company, 20 C.R.C. 249, 6 J.O.R.R. 100 (Board of Railway Comm'rs for Canada, Drayton, Nantel, Goodeve and McLean, CC., April 19, 1916)

In this leading decision, the Board first enunciated the principle that it has no jurisdiction to interfere with matters relating to the internal management of telephone companies under its jurisdiction. Bell Telephone had purchased a rural system and in view of traffic congestion on the existing trunk line had rearranged a number of subscriber lines to connect them to a different exchange. Upon a complaint of certain of these subscribers, the Board noted that "the jurisdiction conferred upon the Board in respect of telephone companies is a rate jurisdiction, including . . . the provisions . . . in regard to discrimination", but did not include a jurisdiction in regard to operating conditions. In an absence of an attack on rates or discrimination, or an application for the provision of service under the Bell charter, the rearrangement is "a matter of the internal management of its business" and beyond the Board's jurisdiction.

Maritime Telegraph & Telephone Co. v. Dominion Atlantic Railway Co. et al., 20 C.R.C. 213 (Board of Railway Comm'rs for Canada, Drayton, Scott and McLean, CC., May 3, 1916)

In this decision, the Board ruled that it was not its practice to grant compensation to a railway whose property rights had been technically violated by the construction of wire crossings over or under the property. At best an easement was obtained which could be cancelled or varied by the Board if necessary.

Bell Telephone Co. v. Falkirk Telephone Co., 20 C.R.C. 256, 6 J.O.R.R. 260 (Board of Railway Comm'rs for Canada, McLean and Scott, CC., June 12, 1916)

Bell Telephone sought to increase its charges to an independent telephone company for local switching service (long distance connection already being provided without surcharge). The Board held that it did not have the jurisdiction to direct that local service be given to an applicant who was not a subscriber of a company subject to its jurisdiction. Therefore it did not have jurisdiction over Bell's rates for the switching service performed for the independent system.

Ingersoll Telephone Co. et al. v. Bell Telephone Co., 53 S.C.R. 583, 31 D.L.R. 49, 22 C.R.C. 152 (Supreme Court of Canada, Fitzpatrick, C.J., Davies, Idington, Anglin and Brodeur, JJ., June 24, 1916)

On an appeal from a decision of the Board of Railway Commissioners ordering payment of compensation by local independent telephone companies to the Bell Telephone Co. for interconnection with Bell's long distance lines, the Supreme Court of Canada held that:

1. The Board had the power to authorize the charging of an additional toll beyond the established rates of the Bell Telephone Co. as compensation for the use of Bell's long-distance lines. Idington, J., dissenting.
2. The Board had the power to order compensation to Bell for the loss of its local exchange business occasioned by giving independent companies long-distance connection. Davies and Idington, JJ., dissenting.
3. The Board had the power to authorize the payment of a special toll to companies competing with the Bell who obtain long-distance connection with Bell, while exempting non-competing companies from the toll, notwithstanding the provision in the Railway Act relating to discrimination. Idington, J. dissenting.

Editorial Note: This decision represents the final stage of the major dispute between Bell and the local independent telephone companies regarding interconnection. For the decision of the Board appealed from, see Ingersoll Telephone Co. et al. v. Bell Telephone Co., ~~21 C.R.C. 126, 1 C.R.C. 15, 2 C.P.R. 000~~, affirming ~~17 C.R.C. 266, 5 L.O.R.R. 163, 1 C.T.R. 000~~ and ~~28 C.R.C. 135, 1 L.O.R.R. 67, 1 C.P.R. 000~~.

City of Chatham v. Great North Western Telegraph and Bell Telephone Cos., 21 C.R.C. 183, 6 J.O.R.R. 434 (Board of Railway Comm'rs for Canada, Scott and McLean, CC., November 21, 1916)

In this decision, the Board ordered G.N.W. Telegraph Company to place its lines on King and William streets underground, following evidence that the large number of poles and wires on these streets was injurious to the public interest, a menace to fire protection, and interfered with proper street lighting and pedestrian travel. A similar order in regard to a different line was refused as the street in question also had Hydro-Electric poles and poles of the Chatham Gas Company, to which the city had raised no objection, running along with it.

Although the Board has jurisdiction to order wires to be placed underground, it was held that it could not order that they be moved to other streets or cabled and placed on a different line of poles. In addition, a company that is ordered to place its wires underground on a certain street can, if it chooses, simply remove its wires from the street altogether.

Re Reduction of Rates to Toronto Island, 6 J.O.R.R. 463 (Board of Railway Comm'rs for Canada, Order No.23749, December 21, 1916)

In this order, the Board reduced the rates for Toronto Island Rate Area (Summer Service), the exact tariff to depend on the number of subscribers in the area.

Richmond v. Bell Telephone et al., 6 J.O.R.R. 512, 7 J.O.R.R. 85 (Board of Railway Comm'rs for Canada, Order Nos. 25912, 26056, March 1 and April 30, 1917)

In these two orders the Board required Bell Telephone and two telegraph companies to relocate certain poles in order to improve access to the Grand Trunk Railway station. The cost was to be shared equally by the three companies and the town.

Joliette Telephone Co. v. Bell Telephone Company, 21 C.R.C. 443, 7 J.O.R.R. 35, 1917-18 Ann.Rep. B.R.C. Canada 26 (Board of Railway Comm'rs for Canada, Scott and McLean, CC., April 4, 1917)

In this case, the Board declined to intervene in the renegotiation of a connection agreement respecting local exchange switching between the Joliette Telephone Co. and Bell Telephone. Following the Falkirk decision, 20 C.R.C. 286, 6 J.O.R.R. 260, 2 C.T.R. 000, the Board held that it only has jurisdiction to order connection and fix tolls for long-distance purposes, but not for local business connections provided by Bell to interconnecting companies.

In a conflict respecting the collection of long-distance tolls, the Board followed its decision in the Ernesttown case, 18 C.R.C. 325, 5 J.O.R.R. 73, 2 C.T.R. 000, and held that it was the duty of both companies to collect the full amount for such tolls, and one company should not absorb its share of the through rate.

Mace and City of Ottawa v. Bell Telephone Co., 23 C.R.C. 137, 7 J.O.R.R. 68, 106, 1917-18 Ann.Rep. B.R.C. Canada 29 (Board of Railway Comm'rs for Canada, Scott, Nantel, Goodeve and McLean, CC., April 27, 1917)

Bell Telephone and the City of Ottawa had agreed as part of a franchise granted by the City of Ottawa to limit its residential and business exchange rates to certain amounts. In this case, notwithstanding a tenant's complaint, the Board refused to interfere with a contract between Bell Telephone and the owner of an apartment building for the installation and operation of a semi-public pay phone, with a commission to the landlord, pursuant to a tariff filed with the Board. The fact that such a service was not dealt with in the agreement between Bell Telephone and the City did not prevent the company from making the installation. Bell had the right to install telephones before the agreement with the City and the only effect of that agreement was to fix maximum rates for the specific services dealt with.

Province of Manitoba v. Canadian Pacific Railway Co. (Telephone Connection Case), 21 C.R.C. 445, 7 J.O.R.R. 71, 1917-18 Ann.Rep. B.R.C. Canada 30 (Board of Railway Comm'rs for Canada, McLean and Scott, CC., May 1, 1917)

For some years, the C.P.R. had paid for telephones from Manitoba Government Telephones to be installed at its railway stations for the use of railway patrons. Upon C.P.R.'s refusal to continue to pay for such telephones, the Province of Manitoba sought to have the Board direct C.P.R. to continue to maintain such telephones at C.P.R.'s expense. In this decision, the Board declined jurisdiction on the grounds that s.245 of the Railway Act did not empower the Board to compel a railway company to continue to maintain a service already installed; moreover the earlier Caledon decision indicated that compensation in any case would be payable by the telephone system.

Residents of Senate, Saskatchewan v. C.P.R., 7 J.O.R.R. 173 (Board of Railway Comm'rs for Canada, Order No.26246, June 25, 1917)

In this order, the Board directed C.P.R. to appoint a station agent, and to install a telephone service at Senate, Saskatchewan.

Re Canadian Telegraph Companies, Conditions Limiting Liability, 7 J.O.R.R. 179, 236, 1917-18 Ann.Rep. B.R.C. Canada 38 (Board of Railway Comm'rs for Canada, Drayton, Scott, Nantel and McLean, CC., July 14, 1917)

A joint application of the Great North Western Telegraph Co. and C.P.R. Telegraph to alter the conditions on its telegraph forms (previously approved in 2 C.T.R, 000) so as to limit their liability towards an addressee of a telegram was dismissed. The Board held that since the sender of a telegram could insure against the possibility of damages by having the message repeated, the present practice of limiting the companies' liability as against a sender should be continued. Although the absence of privity of contract between the telegraph company and the addressee probably precludes a successful action by such an addressee except in Quebec, there was no reason to further limit such actions; the option of insuring message delivery was not open to such addressees.

North Lancaster Exchange v. Bell Telephone Co., 21 C.R.C. 220, 7 J.O.R.R. 314, 350, 1917-18 Ann.Rep. B.R.C. 57 (Board of Railway Comm'rs for Canada, Drayton, Nantel, McLean and Goodeve, CC., November 2, 1917)

An application was brought by subscribers in a village exchange to require Bell Telephone to provide continuous (day and night) service as soon as the subscribers reached 100 in number. The subscribers needing service required at least one-quarter mile more construction and in most cases much more. The Board held that it did not have jurisdiction to order the Bell Telephone Co. to install telephone service except under the Bell charter as amended in 1902, and this was limited to cases where not more than 200 feet of construction would be necessary

Town of Le Pas v. Great North Western Telegraph Co., 22 C.R.C. 402, 1917-18 Ann.Rep. B.R.C. Canada 61 (Baord of Railway Comm'rs for Canada, McLean, Scott and Goodeve, CC., December 4, 1917)

In this decision, the Board denied an increase in the telegraph tolls charged by Great North Western Telegraph for the town of Le Pas. G.N.W. Telegraph had sought to raise the rates arguing that the existing rates were anomalous and abnormally low considering the expenses involved. It was held that these rates made sufficient allowance for the isolation and lack of business at the Le Pas office. The Board reviewed the company's rate structure for comparable areas, assisted by its earlier judgment, Re Telegraph Tolls, 20 C.R.C. 1, 6 J.O.R.R. 29, 2 C.T.R. 000. In denying the increase, it noted that to allow the company's proposal of creating a separate zone that contained only the Le Pas office would create great discrepancies in rates charged for similar deliveries.

City of Windsor v. Bell Telephone Company, 22 C.R.C. 416, 7 J.O.R.R. 493, 1917-18 Ann.Rep. B.R.C. Canada 65 (Board of Railway Comm'rs for Canada, Scott, McLean and Boyce, CC., December 11, 1917)

Prior to 1912 Bell Telephone voluntarily entered into agreements with the city of Windsor to pay the city $1500 a year and provide certain free telephone services; in exchange the city granted Bell Telephone an exclusive franchise to carry on its telephone business in the city. As Bell Telephone no longer wished to enter such agreements the city applied to the Board under s.248 of the Railway Act, 1906, to make these payments and free services a condition of the company's right to use city streets. The Board refused the application, holding that its jurisdiction over poles and wires was confined to routes and manner of use and did not include the power to order the payment of compensation or provision of free telephone service. Neither the Board nor city could take away the company's right under its charter to use public highways and streets. In addition, Bell Telephone's application for certain extensions within Windsor was granted without objection.

Bell Telephone Co. v. City of Ottawa and County of Carleton, 22 C.R.C. 421, 7 J.O.R.R. 474, 1917-18 Ann.Rep. B.R.C. Canada 108 (Board of Railway Comm'rs for Canada, Scott, Boyce and McLean, CC., January 21, 1918)

Bell Telephone applied to the Board under s.248 of the Railway Act, 1906, for permission to use the public highways and streets in the city of Ottawa. Following the decision in the City of Windsor v. Bell Telephone Company, 22 C.R.C. 416, 7 J.O.R.R. 493, 3 C.T.R. 000, the Board rejected the city's contention that it had the authority to make the payment of compensation for the use of city streets a term of the order. In reply to the city's argument that if Parliament authorized the use of the city streets without compensation the legislation was ultra vires the Board held it was not its function to consider the constitutional validity of the legislation.

In a lengthy discussion of Bell Telephone's application to install conduits across Cummings Bridge, the Board held that under the company's charter and the interpretation clause of the Railway Act it had power to carry its lines along a bridge on which there was a public right of travelling if it did not interfere with such a right.

Subscribers at Kemptville et al. v. Bell Telephone Co., 31 C.R.C. 350, 7 J.O.R.R. 499, 520, 1917-18 Ann.Rep. B.R.C. Canada 108 (Board of Railway Comm'rs for Canada, Scott, Nantel and Goodeve, CC., February 8, 1918)

Upon the expiry of the second term of certain of Bell's standard 3-year subscriber contracts, Bell proposed to eliminate free service between Kemptville, North Gower and South Mountain. At the time the exchanges were established, canvasses for the Bell Telephone company had represented that there would be free service between the three exchanges, and on the strength of those representations a movement to establish an independent telephone system at North Gower was abandoned. The Board held that although there was a moral obligation the subscribers in the area had no legal right to free service, and that having provided free interchange for six years Bell should be relieved of any obligations. Implementation of the new arrangements, however, were delayed until January 1, 1919, at which time the subscribers would be permitted to terminate their contracts with Bell whether they had expired or not. The question of the Board's jurisdiction to so relieve subscribers of their contractual obligation was not considered as Bell consented to the condition.

Irish & Maulson v. The Bell Telephone Co., 23 C.R.C. 19, 7 J.O.R.R. 528, 1917-18 Ann. Rep. B.R.C. Canada 112 (Board of Railway Comm'rs for Canada, McLean, Nantel, Boyce and Goodeve, CC., March 5, 1918)

The applicant insurance company's six trunk lines were listed in the telephone directory under one entry. In not calling for the gratuitous listing of the other five lines, as permitted by the tariff, the company argued that a credit was created which could be applied to certain other listings it required. The Board held that since the requested listings were of separate residential lines of company members, they were distinct from the company's private branch exchange service and that a separate listing charge was authorized by the tariff.

Lemieux v. Bell Telephone Co., 23 C.R.C. 141, 8 J.O.R.R. 182, 1918-19 Ann.Rep. B.R.C. Canada 34 (Board of Railway Comm'rs for Canada, Boyce, Drayton, Nantel and McLean, CC., June 4, 1918)

The company's practice of charging ten cents for local calls from an attended public telephone and only five cents for the same calls from coin box public telephones was declared discriminatory by the Board. It rejected the company's argument that the extra charge was levied to cover the extra expense of the attendant. The Board held that "whether a public station is attended or not the service to the public as regards local calls is now the same" and therefore ordered the company to equalize its tolls for local calls.

Alberta United Farmers v. Canadian Pacific Railway Co., 23 C.R.C. 104, 1918-19 Ann.Rep. B.R.C. Canada 40 (Board of Railway Comm'rs for Canada, Scott and Boyce, CC., June 27, 1918)

In this case, the Board held, following its earlier decision, province of Manitoba v. C.P.R. (Telephone Connection Case), 21 C.R.C. 445, 7 J.O.R.R. 71, 2 C.T.R. 000, that it did not have jurisdiction under s.245 of the Railway Act, 1906 to order C.P.R. to install a telephone in its station at Blackie, Alberta. The Board stated that the section was intended to deal with the situation where a company refuses to allow a telephone company or a municipality to install a telephone in one of their stations without charge.

Re Access to Bell Telephone Co. Books (No.1), 8 J.O.R.R. 422, 1918-19 Ann.Rep. B.R.C. Canada 57 (Board of Railway Comm'rs for Canada, Drayton, Nantel, Goodeve and Boyce, CC., November 6, 1918)

Various municipalities applied for an order giving their accountants access to Bell Telephone books and directing Bell Telephone to provide particulars in order to ascertain whether the proposed rate increase was warranted. The Board ordered the company to supply specific particulars on the basis that it was important for the applicants to determine not only the increases in wages and material costs but also the effect that such increases would have on the company's revenue.

Bell Telephone Co. v. City of London, 24 C.R.C. 102, 8 J.O.R.R. 467, 1918-19 Ann.Rep. B.R.C. Canada 57 (Board of Railway Comm'rs for Canada, McLean, Drayton and Boyce, CC., November 13, 1918)

The company applied to the Board for an order authorizing construction of telephone lines because it was unwilling to accept the City's permission on the terms as to compensation attached to it. The Board rejected the city's request for compensation under the Railway Act, following its decisions in the City of Windsor v. Bell Telephone Co., 22 C.R.C. 416, 7 J.O.R.R. 493, 2 C.T.R. 000 and Bell Telephone Co. v. City of Ottawa et al., 22 C.R.C. 421, 7 J.O.R.R. 474, 2 C.T.R. 000. The Act did make provision for the Board to approve the company's application if it was unable to negotiate conditions acceptable to it but because the city's only objection was based on the issue of compensation and because the company had shown the merits of the construction, the application was approved by the Board. The Board recognized the municipal concern over the compensation issue, as reflected by the Ontario Municipal Association resolution stating that existing legislation which did not provide for compensation was defective.

Re Access to Bell Telephone Co. Books (No.2), 8 J.O.R.R. 447, 1918-19 Ann.Rep. B.R.C. Canada 59 (Board of Railway Comm'rs for Canada, Drayton, McLean, Goodeve and Boyce, CC., December 5, 1918)

This decision arose out of a rehearing of the application for particulars dealt with earlier by the Board in Re Access to Bell Telephone Co. Books (No. 1), 8 J.O.R.R. 422, 2 C.T.R. 000. The municipalities requested further particulars on the advice of an expert in telephone rates and practices. The Board approved the application holding that the municipalities were entitled to the fullest information that the company's books would provide. An exhaustive list of specific details the company would have to provide was included. It further held that uncertain labour and material costs made it necessary to order a temporary rate increase and that once costs became normal again a permanent rate increase could be considered. The Board rejected the City of Montreal's contention that the Board pay the cost of an audit of the company's books as the Board had no fund for such purpose and the taxpayer was "not interested" as Bell Telephone's operations were confined to Ontario and Quebec.

Anderson v. Bell Telephone Co., 24 C.R.C. 224 (Board of Railway Comm'rs for Canada, McLean, Nantel, Goodeve and Boyce, CC., February 8, 1919)

An application for an order requiring Bell Telephone Co. to dismiss an employee was refused by the Board. Following Tinkess v. Bell Telephone Co., 20 C.R.C. 249, 6 J.O.R.R. 100, 1 C.T.R. 000, the Board held that the matter was one of internal management and discipline of the telephone company over which the Railway Act gave no jurisdiction to the Board.

Re Bell Telephone Co. Increased Tolls, 25 C.R.C. 1, 9 J.O.R.R. 63, 101 (Board of Railway Comm'rs for Canada, McLean, Boyce, Goodeve, Drayton and Nantel, CC., April 24, 1919)

The Board conducted a detailed investigation of Bell Telephone Co.'s rates as there had been immense increases in the cost of material and labour since the previous hearing in the Montreal Telephone Toll Case, 15 C.R.C. 118, 2 J.O.R.R. 353, 1 C.T.R. 000. The Board approved an increase in exchange rates, long distance tolls and various service charges, but held that service connection (installation) charges were beyond the competence of Bell according to its enabling statute. The increases were said to be temporary and subject to the Board's continuing supervision, in order to deal with the current post-war emergency state of high costs of equipment and labour and the maintenance which Bell had not pursued during the war, when it was financed largely out of its reserves. The carrying of war-related special expenses was to be shared between the company and its subscribers; such subjects as the payment of war profits tax, employees' funds, and the general rate base, arose under this heading. The Board decided not to adopt the "scientific" rate setting of two-party lines and measured-service rates proposed by the City of Montreal and used in the United States but rather to continue the pragmatic methods of flat rates already in service.

A long discussion of the use and size of depreciation reserves involved comparison with telephone enterprises in Manitoba, Nova Scotia and Great Britain, as well as a consideration of Interstate Commerce Commission accounting practices in the U.S.A. The depreciation rate computed on tangible fixed capital except right of way and land was cut to 5.7% in order to have the company share in the costs of the emergency conditions.

The local rate increase was opposed by the cities of Toronto and Montreal, both of which called expert evidence; the long distance toll increases were unopposed but reduced to 10% by the Board to prevent long distance calls from subsidizing local service; a 10% increase in exchange tolls was approved. One Commissioner favoured a general overhaul of the Bell rate structure; another pointed out that the company was to be kept financially healthy in the interests of the public served, and not of the shareholders.

Editorial Note: The order granting the 10% increase to Bell Telephone Co. was later unsuccessfully appealed by the Proprietor's League of Montreal to the Governor in Council.

City of Montreal v. Canadian Pacific and Great North Western Telegraph Cos., 24 C.R.C. 226, 9 J.O.R.R. 224 (Board of Railway Comm'rs for Canada, Drayton, Nantel and Goodeve, CC., August 1, 1919)

The Board held that while the telegraph companies have a right to use municipal property, that right ought to be exercised with the least possible disadvantage and loss to the local municipalities. Thus, where urban development had reached the stage where all other wires were being placed underground, the Board would order the companies under its jurisdiction to put their wires underground at their own expense or, if city ducts were used for this purpose, at such rentals as may have been agreed upon by the parties.

Re Limitation of Liability of Telegraph Companies, 9 J.O.R.R. 273 (Board of Railway Comm'rs for Canada, Boyce, Drayton, Scott and Nantel, CC., October 7, 1919)

An application by the Canadian Manufacturers Association for the imposition of a penalty on the telegraph companies for failure through gross negligence to deliver a message was refused by the Board. As the question of liability of the telegraph companies under the Quebec Civil Code had been dealt with by the Board in an earlier decision, and as an appeal by stated case to the Supreme Court of Canada was pending, the Board held it should not at present sanction further conditions.

Editorial Note: The appeal to the Supreme Court of Canada on the questions of law referred to in this judgment was later abandoned.

Re Complaint of Richardson & Sons Ltd. v. Canadian Pacific and Great North Western Telegraph Cos., 9 J.O.R.R. 357 (Board of Railway Comm'rs for Canada, Carvell, C., December 24, 1919)

A complaint was lodged by James Richardson and Sons Ltd. concerning a proposed charge by CPR Telegraph and G.N.W. Telegraph for registration of international cable addresses. It was held by the Board that since the charge was for a service to be performed by the cable companies the telegraph companies were acting as agents for the cable companies and the Board had no jurisdiction to intervene in the matter.

Re Attachment of Bell Telephone Co. Cables to Gouin Bridge, 9 J.O.R.R. 474 (Board of Railway Comm'rs for Canada, McLean, Carvell, Nantel, Boyce and Rutherford, CC., February 6, 1920)

Bell Telephone Co. applied to the Board for permission to attach cables to Gouin Bridge as the municipalities contended that they could attach conditions to such entrance and use of the bridge. Following its previous decisions in City of Windsor v. Bell Telephone, 22 C.R.C. 416, 7 J.O.R.R. 493, 2 C.T.R. 000, Bell Telephone v. City of Ottawa, 22 C.R.C. 421, 7 J.O.R.R. 474, 2 C.T.R. 000 and Bell Telephone v. City of London, 24 C.R.C. 102, 8 J.O.R.R. 467, 2 C.T.R. 000, the Board held that bridges formed part of the public highway along which Bell Telephone had the power to construct its lines; consequently, the liability of the company for wires and cables was the same as for wires and cables along highways.

Re Increase in Telegraph Tariffs of Tolls, 26 C.R.C. 65, 10 J.O.R.R. 159, 1920-21 Ann.Rep. B.R.C. Canada 26-xviii (Board of Railway Comm'rs for Canada, McLean, Carvell, Rutherford and Goodeve, CC., May 6, 1920)

In its first judgment concerning an application for a general increase in telegraph rates, the Board examined in considerable detail evidence of recent increases in the costs of labour and materials, and authorized general rate increases on that basis. Particular stress was placed on the increase in labour costs due to the general application of the provisions of the McAdoo award to the telegraph industry, although the Board took care to point out that it was not assenting to the general proposition that whenever labour costs were increased, rates should be increased in a corresponding manner.

The other ground for the application was the increased valuation of the telegraph companies. It was contended by Canadian Pacific that their Commercial Telegraph Department should be considered to own the complete telegraph plant, should provide free telegraph service to the railway, and should pay all line maintenance and renewal costs. In return, the railway granted the Telegraph Department a free and exclusive right-of-way, which was said to be essential to provide a coast-to-coast telegraph service entirely through Canadian territory, because of the incomplete highway system. The Board accepted the desirability of a return on capital of 10.5 percent, 7 percent for dividend, plus 3.5 percent by way of surplus.

The Board authorized the telegraph companies to submit rate schedules with increases on inter-zone rates of from 10 to 25 percent, and on the intra-zone flat rate of 20 percent, raising it from 25 cents to 30 cents. The Chief Commissioner held as a point of law that the Board was not bound by provisions regarding tolls in any Special Act incorporating any telegraph company, including the provision which purported to set the maximum intra-zone flat rate for Great North Western at 25 cents, thereby reversing In re Telegraph Tolls, 1 C.T.R. 000, on this point.

A complaint by the Winnipeg Board of Trade alleging that cable rates to Great Britain were discriminatory against Manitoba in favour of Ontario and Nova Scotia was dismissed by the Board, on the grounds that no new evidence had been presented to distinguish this complaint from the one which had been dismissed by the Board in its decision, In re Telegraph Tolls, 1 C.T.R. 000. It was further held that a complaint by the Board of Trade of Charlottetown alleging rate discrimination against Prince Edward Island concerned an agreement between the Dominion Government and the Anglo-American telegraph Co., with which the Board refused to interfere until it had heard representations from all the parties concerned.

Marconi Wireless Telegraph Co. v. Western Union and Great North Western Telegraph Cos., 26 C.R.C. 343, 1920-21, Ann.Rep. B.R.C. Canada 86-xcvi (Board of Railway Comm'rs for Canada, McLean, Carvell and Rutherford, CC., December 28, 1920)

Marconi Wireless Telegraph Co. complained against a proposed increased proportion of trans-Atlantic tolls and applied to the Board to compel the respondents to enter through rate arrangements with them. The Board held that section 375 of the Railway Act, 1919 provided that on telephone matters a company not chartered by the Parliament of Canada could make an application for joint rates but it did not confer such jurisdiction on telegraph companies operating under different jurisdictions; therefore, the Board had no power to regulate a trans-oceanic telegraphic system under the joint tariff provisions, sections 336-341. Section 376 which would have given the Board jurisdiction had not yet been proclaimed.

Bell Telephone Co. v. City of Toronto et al., 27 C.R.C. 231, 11 J.O.R.R. 35, 73, 75, 1921-22 Ann.Rep. B.R.C. Canada 8 (Board of Railway Comm'rs for Canada, McLean, Nantel and Boyce, CC., April 1, 1921)

Following the 10% rate increase authorized by the Board in Re Bell Telephone Co. Increase in Rates, 2 C.T.R. 000, the company applied for an additional increase to meet further advancing costs of labour and materials. As an emergency measure the Board approved a 12% increase in rates but retained filing of monthly reports to the Board. In calculating the financial needs of the company the depreciation reserve was examined in detail and the Board, following its earlier decision, emphasized the need for the company to develop from its own actual experience a depreciation ratio. It approved as an emergency provision the rate of 4% on the average depreciable plant.

Bell Telephone's contract for equipment with Northern Electric, which amounted to 60% of Northern Electric's telephone business at an average of $4 million a year, was considered. The Board rejected the necessity of an examination into the corporate financing of Northern Electric and rejected the contention that because of the relations between the companies and the assured nature of the business, the prices, although reasonable in themselves, should be further reduced. The Board held that it was given "no general supervisory power in regard to intercorporate relations" and that its jurisdiction was limited to situations where such a contract resulted in unreasonably high rates which, according to the comparative evidence submitted on prices, was not the case here.

The Board refused to allow Bell to introduce a new measured rate service on the grounds that the flat rate service had been voluntarily installed and continued for a long period of time, and that the evidence introduced to justify such a system based on United States experience was not sufficiently pertinent to Canadian conditions.

In dealing with the City of Montreal's complaint of higher rates than the City of Toronto, the Board held that when a complaint was made that telephone rates were discriminatory the initial burden was upon the applicant to make out a prima facie case, after which the Board would determine whether the discrimination was unjust or the preference undue. Where a case had been established, the normal practice of the Board was to equalize the rates by reducing the higher rate to the lower rate. Thus, the rates for the City of Montreal were ordered lowered to correspond to those of the City of Toronto.

No objection was taken to the aspect of the application that provided for a monthly basis of payment after service was performed instead of the present quarterly basis. The Board noted that the Railway Act had no provision precluding a railway company or a telephone company from collecting for exchange service

in advance; however, the Bell charter provided that on an application for exchange service and on payment of lawful rates semi-annually in advance, facilities for service were to be afforded within the limited area prescribed by the charter. The Board noted that Bell could voluntarily depart from its lawful rights of collecting payment in advance.

Town of Dundas et al. v. Bell Telephone Co., 27 C.R.C. 352, 11 J.O.R.R. 83, 1921-22 Ann.Rep. B.R.C. Canada 9 (Board of Railway Comm'rs for Canada, Carvell, McLean and Boyce, CC., April 26, 1921)

Representations were made by the town of Dundas and various other municipalities and townships who objected to the Bell's proposed separation of exchanges which would have the effect of introducing toll charges between areas that had previously enjoyed free dialing. The arguments against the new charges were that the free dial arrangements had been in existence for a long duration, that the proposed changes would result in increased revenue for Bell and cost for the subscribers, that there had been earlier Bell "representations" that promised free dialing and that there was a "community of interest" in favour of the free dial areas as they were at the time of the hearing. Bell argued that from an economic and business point of view it made sense to separate the exchanges. It adduced figures to show that in fact relatively few calls were being made between these free exchanges. The Board held that the proposed district rearrangements were within the scope of the company's power and the Board was not empowered to interfere in this matter of internal management following Kemptville Subscribers v. Bell Telephone, 31 C.R.C. 350, 7 J.O.R.R.499,520, 2 C.T.R. 000 and Tinkess v. Bell Telephone, 20 C.R.C. 249, 6 J.O.R.R. 100, 2 C.T.R. 000. The Board would only intervene if there were charges of unreasonable rates or unjust discrimination. Such charges had not been made in this case. In the Hamilton-Dundas case, where the proposal of a lower toll rate had not been withdrawn, the company was required by the Board to bear the burden of putting in an inexpensive two number rate between Hamilton and Dundas.

Village of Rockliffe v. Bell Telephone Co., 27 C.R.C. 258, 11 J.O.R.R. 107, 1921-22 Ann.Rep. B.R.C. Canada 77 (Board of Railway Comm'rs for Canada, Carvell, McLean and Boyce, CC., May 16, 1921)

In this decision, the Board upheld a complaint by the village of Rockliffe that its telephone rates were excessive, in that subscribers in Rockliffe were being charged the Ottawa rate plus an excess mileage charge for connection with the Ottawa exchange, while subscribers in Hull, which was even further from Ottawa, were charged only the Ottawa rate. The Hull rate was based on an earlier agreement between the Bell Telephone Co. and Hull which was no longer in effect. Although the company submitted that it was more economical to serve Hull through the Ottawa exchange at the Ottawa rate than to build an exchange in Hull and introduce toll charges for calls to and from Ottawa, the Board held that the difference in treatment amounted to an unjust discrimination against the village of Rockliffe. Bell was ordered to extend the same toll-free dialing privileges that existed for Hull to the subscribers in Rockliffe. This arrangement would continue as long as Hull remained within the limits of the territory connected up with the Ottawa exchanges and not subject to any excess mileage, and as long as the outer limits of Rockliffe were no more distant from the Queen Exchange than the outer limits of Hull.

Re Bell Telephone Co., Joint Use of Poles, 11 J.O.R.R. 233 (Board of Railway Comm'rs for Canada, Carvell, McLean and Boyce, CC., June 29, 1921)

In its first decision on the question of charges for the use of pin space on Bell Telephone poles by a rural telephone company, the Board held that such charges constituted a "service incidental to a telephone business", and accordingly fell under the jurisdiction of the Board by section 2 of the Railway Act. An independent rural telephone company had complained to the Board regarding the rental fee Bell Telephone was proposing to charge for pin space on its poles, an increase from 15¢ to 30¢ per pole. By this judgment, Bell was required to submit a tariff of these charges for approval by the Board, before the charges could be implemented.

British Columbia Telephone Co. v. The City of Vancouver et al, 27 C.R.C. 259, 11 J.O.R.R. 216, 1921-22 Ann.Rep. B.R.C. Canada 14, 124 (Board of Railway Comm'rs for Canada, Carvell, Boyce and McLean, CC., July 23, 1921)

In this first major rate case for B.C. Telephone the Board briefly reviewed the company's early history. In 1906 the Vernon & Nelson Co. bought out National (the Victoria Co.) and converted the amalgamated business into B.C. Telephone under a charter from the B.C. Legislature. In 1916 a federal charter was granted to a new B.C. Telephone Co. who in turn leased all of the property of the original B.C. Telephone in 1918, paying a rental of 8% of the value of the physical plant per annum. The lease was ratified by the Board and from that date B.C. Telephone was regulated by that body.

In preparation for this rate hearing B.C. Telephone undertook a complete valuation of its physical plant considering current inventory and existing physical property which was calculated on an average of the actual labour and material costs incurred by B.C. Telephone in the ten year period immediately preceding the inventory made in 1918. This valuation was accepted by the Board. By using the valuation figures the Board followed its earlier statements in the Montreal Telephone Tolls Case, 15 C.R.C. 118, 2 J.O.R.R. 353, 1 C.T.R. 000.

After noting that B.C. Telephone was efficiently and economically managed and that the service it provided was excellent, the Board indicated the basic problem that all regulated public utilities must face; they must pay the prevailing price for labour and materials but can only sell their product (telephone service) at the rate a regulatory body establishes. Consequently the Board must sanction rates that will cover operating costs, maintenance, depreciation, interest, dividends and necessary extensions of the system.

Concerning depreciation, the Board stated that the guiding principle should be that the rate of depreciation which is used to calculate the amount of funds to go into the reserve for depreciation should be sufficient to produce an amount that at the end of the cycle (the period after which the plant as a whole must be replaced) is sufficient to rebuild the plant although for the first five years or longer little is required for this purpose. The Board approved a rate of 6.04% for calculation of the reserve for depreciation each year. This reflects a cycle of sixteen years. This rate is to be applied to the value of the plant and supplies.

In order to satisfy the capital needs of B.C. Telephone the public should be encouraged to purchase securities and this would require a "reasonable assurance of interest or dividends" the Board noted. The Board then list 4-1/2% interest on debenture stock, 6% on preference stock and 8% on common shares as reasonable rates. It also permitted 2% of total value of plant and supplies to be set aside to meet the financial requirements of meeting these rates. Since B.C. Telephone could borrow at 7%, the rate permitted on account of working capital was 7% of the working capital.

The Board concluded that the costs of operation and maintenance were to be added to the above amounts to find the company's overall cost. The Board calculated that a 10% rate increase would permit B.C. Telephone to meet these costs. B.C. Telephone had requested a 15% increase. The increase was to apply to Vancouver, Victoria, New Westminster and the Municipality of South Vancouver.

Among other arguments about regional differences the Board faced the contention that there should be a different rate increase for Victoria than Vancouver because of the different plant investment in the two cities. The Board replied that rates should be based on the service rendered not the actual cost of investment in each locality and noted that it regarded the lower mainland and Vancouver Island as one unit.

The Board specifically dismissed an appeal that the increase not apply to residential telephones.

Re Cancellation of B.C. Telephone Co. Tariff, 11 J.O.R.R. 324, 1921-22 Ann.Rep. B.R.C. Canada 126 (Board of Railway Comm'rs for Canada, Carvell, McLean, Boyce and Rutherford, CC., November 17, 1921)

Following the Board decision in B.C. Telephone v. City of Vancouver et al, 27 C.R.C. 259, 11 J.O.R.R. 216, 3 C.T.R. 000 ordering a 10% increase in rates in specified areas, the company filed a tariff applying the increase to all exchanges claiming this was their interpretation of the judgment. The Board cancelled the tariff for all but the exchange areas mentioned in the judgment.

Union of British Columbia Municipalities v. B.C. Telephone Co., 27 C.R.C. 319, 11 J.O.R.R. 326, 353 (Board of Railway Comm'rs for Canada, Carvell, McLean and Rutherford, CC., November 21, 1921)

A complaint was made against B.C. Tel.'s establishment of a new exchange which resulted in a division of the territory of the Eburne exchange and the charging of long distance tolls between points that were formerly part of the flat rate area. Following Tinkess v. Bell Telephone Co., 20 C.R.C. 249, 6 J.O.R.R. 100, 2 C.T.R. 000 and subsequent cases, the Board held that its jurisdiction over Bell Telephone and included questions of reasonableness or discrimination in rates, but not internal management decisions over the location of exchanges.

Municipality of Nelson, B.C. v. B.C. Telephone Co., 27 C.R.C. 270, 1921-22 Ann.Rep. B.R.C. Canada 154 (Board of Railway Comm'rs for Canada, McLean and Rutherford, CC., December 21, 1921)

The municipality of Nelson complained that the telephone company's proposed increase in party line rates to be charged to the west side of Kootenay Lake violated an old agreement between the residents and British Columbia Telephone establishing a flat rate of $4.00 on the strength of which construction of an independent line had been abandoned. The Board held it was not precluded by the terms of any agreement from seeing that rates were reasonable. Under the Railway Act, rates or its components must be set out in tariffs and are not a matter of bargaining in individual contracts. In the present case as this rate was not set out in any tariff, the company could establish new rates; based on a further investigation of the situation by the company certain downward revisions in the proposed rates were made.

Editorial Note: See Kemptville Subscribers et al v. Bell Telephone, 1 C.T.R. 000, for a discussion of a similar agreement to which the above case does not refer.

Bell Telephone Company v. Province of Ontario et al., 27 C.R.C. 277, 11 J.O.R.R. 440, 1922-23 Ann.Rep. B.R.C. Canada 46 (Board of Railway Comm'rs for Canada, Carvell, McLean, Nantel, Boyce and Lawrence, CC., February 7, 1922)

In a lengthy and controverted judgment, the Board rejected an application by Bell Telephone for certain rate increases. The Board held that the onus of establishing that rates were reasonable and non-discriminatory lay on the company and that Bell had failed to discharge that onus and failed to disclose any specific or cogent reasons for the particular tariff changes proposed. The Board felt that insufficient effort had been made to obtain additional capital on the existing basis of tolls, and that economies in operation already instituted would result in a satisfactory improvement in the company's net earnings. The proposed tariff made no effort to eliminate existing inequalities and discriminations already pointed out by the Board and acknowledged by the company; the rates had not been adjusted in any scientific way to the value of the telephone service to the subscriber, having regard to the population of the telephone area, the number of stations, or the cost of service. In addition, the proposed tariff was unreasonable, both having regard to cost and value of services as compared with rates on other commodities, and in the absolute, regarded as a tax on the people who ultimately pay telephone charges. No emergency condition existed, as had been the case to justify the earlier rate increases. It was further held that it was not the Board's function to substitute an acceptable tariff but rather to approve, modify or reject proposals of the company.

Carvell, C., (dissenting) was of the opinion that the Board should authorize a rate increase sufficient to cover the company's anticipated deficit. The Board had on many occasions laid down the principle that, as a public utility corporation could only charge tolls permitted by the Board, the Board should give such corporations sufficient rates to produce certain results, in the absence of evidence that the utility was being inefficiently operated. There was no such evidence with respect to Bell Telephone. Furthermore, an examination of the company's wage rates indicated that they were reasonable, and should not be reduced by any significant amount.

McLean, C., (dissenting) was of the opinion that emergency conditions found to exist in the Board's two recent judgments granting Bell a rate increase were still in existence, and that the Board should authorize a rate increase in this case.

Seaport Agencies Ltd. v. British Columbia Telephone Company, 28 C.R.C. 130, 12 J.O.R.R. 359 (Board of Railway Comm'rs for Canada, Carvell , McLean, and Boyce, CC., February 6, 1923)

An insurance company applied for an additional free listing in the classified business directory issued by B.C. Telephone. The Board held that the company was under no obligation to publish an advertising appendix to its directory under the Railway Act, but that this was a matter of special contract and therefore the Board had no power to regulate the arrangement, rates or quantum of advertising.

Lower St. Lawrence Power Company v. Canadian National Railways, 28 C.R.C. 331 (Board of Railway Comm'rs for Canada, Carvell, Nantel and Lawrence, CC., July 4, 1923)

Construction of a high voltage power line along the right-of-way of the Canadian National Railways and across the tracks from their telegraph lines was authorized by the Board under Section 372 of the Railway Act, 1919. While the Board had power to block the construction it had not been convinced that the interference with the telegraph lines would be so great as to justify doing so. The Board retained the authority to order the line changed or removed should it prove a serious interference.

Quebec Farmers' Telephone Company v. Bell Telephone Company, 29 C.R.C. 341, 14 J.O.R.R. 92 (Board of Railway Comm'rs for Canada, Carvell and Boyce, CC., May 13, 1924)

The Quebec Farmers' Telephone Company had instituted a practice of charging their subscribers a flat rate for service to the Bell Telephone central at St. Hyacinthe rather than a toll charge of 10¢ a call as provided in the interchange agreement between the two companies. This practice had given rise to such a large volume of traffic that an additional line was needed between the two centres for which the Quebec Farmers' Telephone was applying. The Board held that the company should charge rates as set out in the contract, and as this would probably reduce the volume of traffic there was no need for the extra connection. If the traffic continued at a high level the applicants could reapply.

Re Complaints concerning the Proposed British Columbia Telephone Company Toll in the Point Grey Exchange, 14 J.O.R.R. 146 (Board of Railway Comm'rs for Canada, Order No.35623, October 1, 1924)

Upon the complaint by members of the Point Grey exchange against the B.C. Telephone Co. concerning the tariff for connection with telephones at Vancouver, the Board suspended the toll pending a further hearing on the matter.

Editorial Note: For further consideration of this issue see below at pages 000 and 000.

District of Saanich et al. v. British Columbia Telephone Company (No.1), 15 J.O.R.R. 99 (Board of Railway Comm'rs for Canada, McKeown, C., January 17, 1925)

The B.C. Telephone Co. proposed an alteration in exchange areas surrounding the city of Victoria. At the hearing an initial objection to the new boundaries became an objection to the increase in rates which would result as a consequence of the new exchange divisions. Because the Board was divided as to whether it had jurisdiction, the Chief Commissioner, who had become a board member after the hearing, was asked to prepare an opinion. The Chief Commissioner noted that the Board had no jurisdiction over the rearrangement of exchange areas but did have jurisdiction to consider the reasonableness of rates that are charged as a result of a rearrangement. He stated that the issue was a question of fact involving the reasonableness of the proposed rates and therefore the Commissioners who had heard the evidence must make the determination.

Editorial Note: For final determination of the issue see below at 4 C.T.R. 000.

District of Saanich et al. v. British Columbia Telephone Company (No.2), 31 C.R.C. 364, 15 J.O.R.R. 63, 1925-26 Ann. Rep. B.R.C. Canada 64 (Board of Railway Comm'rs for Canada, McLean, Boyce and Oliver, CC., April 15, 1925)

The District of Saanich and a committee from Cadboro Bay complained that an exchange area alteration by the B.C. Telephone Co. was objectionable and that the new exchange would involve higher costs for some telephone users. McLean, the Assistant Chief Commissioner and whose determination on a point of law was binding on the rest of the Board held as a matter of law that the Board did not have jurisdiction to interfere with the internal management of a telephone company. He further held that the mere fact that rates are increased as the result of an exchange area redistribution does not entitle the Board to examine the rates. Since the complaints did not challenge the rates as unreasonable or discriminatory but only objected to the increase per se, the Board did not have jurisdiction to review the increase following Tinkess v. Bell Telephone Co., 20 C.R.C. 249, 6 J.O.R.R. 100, 2 C.T.R. 000, Dundas v. Bell Telephone Co., 27 C.R.C. 352, 11 J.O.R.R. 83, 2 C.T.R. 000. Boyce, C. (Oliver, concurring) acknowledge they were bound by the Assistant Chief Commissioner's determination on a matter of law but expressed a dissenting opinion that if as the result of an exchange area regrouping rates are increased, the onus should fall on the telephone company to demonstrate that the new rates are fair, reasonable and not discriminatory. In their opinion the B.C. Telephone Co. had not justified the increase and therefore it could not stand.

Editorial Note: Boyce, C. in a later decision of the Board (3 C.T.R. 000) noted that his statements on onus of proof were not adopted by a majority of the Board.

Re Quebec Central Railway Co., Installation of Telephone Service in Certain Stations, 15 J.O.R.R. 144, 1925-26 Ann.Rep. B.R.C. Canada 111 (Board of Railway Comm'rs for Canada, McKeown, McLean and Boyce, CC., June 22, 1925)

This application by certain citizens of Wolfe County for an order directing the Quebec Central Railway Co. to install telephones in three of its stations was turned down by the Board. The Board held that it had no authority to direct the railway company to install telephones and did not have jurisdiction to order a telephone company to install a service under the Railway Act; the Board can only authorize the telephone company to install such service. The correct form of application would be for the Board to authorize the telephone company to install a telephone connection and for general directions with reference to the annual charge and all other terms and conditions connected therewith. The telephone company should be notified to appear to answer the application and since the telephone company was not summoned and did not appear no order should be made at this time with respect to it.

Towns of Riverside, Tecumseh et al. v. Bell Telephone Company, 31 C.R.C. 381, 15 J.O.R.R. 263, 1925-26 Ann.Rep. B.R.C. Canada 186 (Board of Railway Comm'rs for Canada, McLean and Boyce, CC., August 12, 1925)

The Town of Riverside applied for an order that the Bell Telephone Co. include the town within the Windsor base area rather than divide the town into two exchanges. The Board held that its jurisdiction over telephone companies applied only to rates and therefore the formal application was dismissed following Tinkess v. Bell Telephone Co., 20 C.R.C. 249, 6 J.O.R.R. 100, 2 C.T.R. 000, Dundas v. Bell Telephone Co., 27 C.R.C. 352, 11 J.O.R.R. 83, 2 C.T.R. 000, Union of B.C. Municipalities v. B.C. Telephone Co., 27 C.R.C. 319, 11 J.O.R.R. 326, 2 C.T.R. 000 and District of Saanich et al v. B.C. Telephone Co., 3 C.T.R. 000. The issue of the reasonableness of the proposed rates charged under the new exchanges was raised at the hearings. Bell Telephone Co. voluntarily assumed the onus of demonstrating the reasonableness of the rates and so demonstrated to the Board's satisfaction. Boyce C. commented that his statement in the Saanich case that the onus of demonstrating that a rate increase resulting from an exchange area alteration was on the telephone company had not been adopted by a majority of the Board in that case.

Cowichan Ratepayers Association v. British Columbia Telephone Company, 15 J.O.R.R. 395, 1926-27 Ann.Rep. B.R.C. Canada 21 (Board of Railway Comm'rs for Canada, McLean, Boyce and Oliver, CC., January 22, 1926)

A complaint of the Cowichan Ratepayers' Association concerning a readjustment of certain exchange boundaries by B.C. TTel. was dismissed by the Board, following the line of decisions commencing with Tinkess v. Bell Telephone, 20 C.R.C. 249, 6 J.O.R.R. 100, 2 C.T.R. 000. The Board held that it had jurisdiction over the reasonableness of rates charged, but not over the demarcation of exchange areas and that in this case the tolls had not been shown to be unreasonable. Oliver, C. dissented on the grounds that where boundary changes were not fair to subscribers as regards both service and rates the Board should not sanction them.

Municipality of Point Grey v. British Columbia Telephone Company, 31 C.R.C. 387, 16 J.O.R.R. 37, 1926-27 Ann.Rep. B.R.C. Canada 57 (Board of Railway Comm'rs for Canada, McLean, Boyce and Oliver, CC., February 10, 1926)

In this further example of subscriber complaints concerning the effect of the readjustment of telephone exchange boundaries the Board reiterated the position adopted in the line of cases beginning with Tinkess v. Bell Telephone Co., 20 C.R.C. 249, 6 J.O.R.R. 100, 2 C.T.R. ooo. In this case subscribers in Point Grey who had formerly enjoyed connection to Vancouver without paying an inter-exchange charge per call, and who were now required to pay an inter-exchange charge for each call to Vancouver, complained to the Board. The Board reiterated that the Railway Act did not give it authority to interfere with the discretion of telephone companies over the establishment, re-division or re-adjustment of exchange areas because this was a matter of internal management. The Board stated its jurisdiction was confined to determining the reasonableness of tolls and rates for service and to any question of unjust discrimination. The Board could find no evidence that rates were unreasonable or that the toll subscribers had to pay for Vancouver interchange was unjustly discriminatory. The fact that a boundary put some subscribers in one area and some in another so that one could call Vancouver without paying an inter-exchange charge and other could not was discriminatory but not unjustly so in this instance even though the demarcation line was irregular. Oliver, C. dissented accepting the subscribers' argument that the value of the telephone service would be decreased under the new exchange division and the cost per subscriber would be increased without justifiable cause.

Editorial Note: For further consideration of this application see below at 4 C.T.R. 000.

Bell Telephone Company v. Cities of Montreal, Toronto, Ottawa et al., 34 C.R.C. 1, 16 J.O.R.R. 229, 1927-28 Ann.Rep. B.R.C. Canada 19 (Board of Railway Comm'rs for Canada, McKeown, McLean, Vien, Boyce, Oliver and Lawrence, CC., February 21, 1927)

This lengthy and important decision marks the final resolution of the Bell Telephone rate case continued since Bell's original application for a rate increase in 1918. The Board had previously granted Bell increases on an emergency basis in 1919 and 1921 (see 2 C.T.R. 000 and 3 C.T.R. 000), but had refused to grant a further increase in 1922 on the grounds that the emergency conditions had ended, and the tariff proposed by Bell made no effort to eliminate the inequalities and discriminations pointed out by earlier Board judgements (see 3 C.T.R. 000).

In this judgement, the Board granted the application by Bell to increase rates and to eliminate the existing discriminations by creating nine rate groups; rates were approved as submitted, except for reductions in the rates for residential service in two of these groups. The Board held that rates should be permitted by the Board which were non-discriminatory, and which produced sufficient revenue for the company to cover its operating expenses, its current maintenance expenses, a proper amount for depreciation and amortization, its taxes, including income tax, interests, dividends upon its stock, and a reasonable surplus. Additional funds would be necessary in this case to make very substantial and expensive alterations involved in the change from manual to automatic equipment. The Board was not, however, willing to accept the argument that Bell should be permitted to earn a "fair return" on the fair value of the corporation property.

In assessing the company's fiscal needs, the Board examined projected expenditures over the next five years, as well as the company's balance sheets for 1925 and 1926. The respondents contended that the level of the surplus account was adequate, on the grounds that the depreciation rate, which had been raised from 4.75 percent to 5.41 percent in 1926, was figured too high, and that there were features of the company's financing, specifically Bell's contract with the American Telephone and Telegraph Company and their relationship with the Northern Electric Company, that could be corrected to its great financial benefit, thereby obviating any necessity for a raise in rates.

The Board noted that Bell's depreciation rate had been reduced by both previous Board judgements of 1919 and 1921, and then examined in detail each of the twenty-five separate classes of property utilized by both Bell and the respondents in determining the composite depreciation rate which most accurately reflected the actual depreciation in value of the company's assets. The Board was of the opinion that the depreciation rate for buildings should not take into account possible appreciation in value of the land. Bell's depreciation ratio for central

office equipment was similarly preferred, because it took into account the proposed change from manual to automatic switching, which would result in a premature retirement of the manual equipment. After hearing expert evidence on the appropriate ratio for machine switching, the Board concluded that due to lack of facts or experience in connection with automatic switching, the estimate of each expert was little better than a guess; the Board then set a depreciation rate which fell between the estimates of Bell and those of the respondents. For private branch exchanges, the difference of opinion concerned the percentage to be allotted for salvage. The Board accepted the company's estimate, pointing out that this figure could be altered when the effect of the changeover to automatic equipment became clearer. The Board also accepted the company's estimate of its equipment requirements that led to their proposed depreciation ratio for outside property; the company's proposed depreciation ratios for office furniture and fixtures, and for wire lines and wire drops in exchange aerial service were also accepted by the Board. The Board then approved a composite depreciation rate of 5.34 percent, but stated that on the record then before the Board, the percentage of reserve as submitted by Bell was not excessive.

The Board then turned to the contract between Bell and A.T. &T., whereby A.T.&T. provided certain services in return for $300,000 plus $30,000 for every $2 million of gross revenues over $20 million achieved by Bell. The Board concluded that services of value were being obtained by Bell, although it was pointed out that the function of the Board was not one of business management, but of corrective regulation. If the directors abused their discretion and entered into an improvident contract, that would be a matter to be given full weight when it arose in connection with a rate hearing, but in the present case, there was no such abuse to justify the Board invalidating the agreement. Similarly, in dealing with Bell's contract with Northern Electric for purchase of equipment, the Board reiterated its position as expressed in its 1921 judgement that it had no general supervisory power regarding intercorporate relations. Although Bell owned 50% of Northern Electric's stock outright, and controlled through its directors enough of the remaining stock to make Northern Electric a subsidiary of Bell, no examination of the finances of Northern Electric should be made unless it were clearly shown that the prices charged to Bell were enhanced illegitimately. No such conclusion had been shown.

Having established the extent of the company's revenue needs, the Board determined that the proposed rate schedule would produce more revenue than required, and consequently reduced the rates proposed for residential service in Groups 1 and 3. Bell was also required to furnish the Board with complete financial statements each month of the year for its information,

and keep it closely and continually in touch with the company's operations and in a position to judge ~~as to~~ the actual effect of the rates which were being approved.

Commissioner Oliver (dissenting) would have rejected the rate increase on the grounds that the rates approved by the Board in 1921 were not only adequate but ample to meet the proper requirements of the company as of that date, and that since 1921 there had been a continuous expansion of the company's business accompanied by increasing profits and decreasing costs of food, labour, materials and money. In relation to Bell's contract for service with A.T.&T., he stated that he was unable to find that Bell should be authorized to levy increased tolls upon its subscribers in order that so large a proportion of its net revenue might be transferred to A.T.&T., who owned 32% of Bell stock, without more definite evidence of value received. Furthermore, Bell's relationship with Northern Electric should be revised before a rate increase were granted. Commissioner Lawrence concurred in this dissent.

Municipality of Point Grey v. British Columbia Telephone Company, 34 C.R.C. 175, 18 J.O.R.R. 214, 1928-29 Ann.Rep. B.R.C. Canada 17 (Board of Railway Comm'rs for Canada, McKeown, McLean, Vien, and Oliver, CC., April 24, 1928)

In an earlier decision on this case (3 C.T.R. 000 and 3 C.T.R. 000) the Board had refused to interfere with the exchange area alteration and resulting tariff increase proposed by B.C. Telephone. In this case some residents of the Point Grey exchange sought to have that decision reviewed, cancelled or rescinded. The alteration had created the Point Grey exchange out of the Bayview Exchange which included a residential "panhandle" area but did not include a golf club. The residents took the procedural objection that B.C. Telephone had not satisfied the onus on it to justify the increased charge to this new exchange for calls to Vancouver and for increased rates. While the Board acknowledged that such an onus did exist, it stated that the information could be presented at any time in the proceedings from an applicant or one resisting an increase, a telephone company can rely on the evidence of an expert of those resisting an increase and the "whole record can be scanned to see if justification exists for the increase."

Concerning the issue of alleged unreasonableness and discrimination in rates, the Board reiterated that it did not have jurisdiction to preside over the boundary changes but it does examine the "reasonableness and fairness" of rates sought for new districts. The Board conceded that "extreme irregularity and capricious alignment may involve unjust discrimination" but the Board's jurisdiction applies to the rates set up not to the realignment. The Board noted that the golf club was not in competition with Point Grey so it is not discriminatory for the club to stay in the Bayview exchange and that B.C. Telephone agreed to leave the "panhandle" in the Bayview exchange. The Board concluded that this removed any reasonable ground of objection since no argument was made that rates were unreasonably high relative to surrounding exchanges. Oliver, C, in a dissenting option reiterated the position taken in his dissent to the earlier decision dissenting opinion reiterated the position taken in his dissent to the earlier decision that there had been no evidence adduced of changes in conditions warranting imposition of increased tolls.

Township of York v. Bell Telephone Company, 34 C.R.C. 170, 18 J.O.R.R. 72, 1928-29 Ann.Rep. B.R.C. Canada 17 (Board of Railway Comm'rs for Canada, McKeown and McLean, CC., April 24, 1928)

In this case the Township of York sought an order directing Bell to revise its tariff rates and tolls to provide all telephone subscribers in the township connection with each other and the city of Toronto at the same rate as the city or alternatively to abolish or reduce the toll between township subscribers. The Toronto base had been extended to cover most of York Township but the Western exchange had been extended over Mount Dennis, part of the township. The objection was raised that some subscribers in the township had to pay more than others to call Toronto (either by toll or direct line), that a toll was charged for calls between subscribers in each exchange living in the township and that subscribers now in the Toronto exchange had to pay an additional charge to be listed in the Weston directory. The Board noted that Bell made a "substantial concession" by permitting calls between the exchanges to public services (Waterworks, Relief Offices, Police Offices and Disposal Dept.) without toll charge. In its decision the Board noted that the demarcation line between exchanges must be drawn somewhere and that no proof of discrimination or unfair treatment had been advanced. The Board stated its jurisdiction was confined to rates and not to the divisions of telephone service or base area alterations unless discrimination is alleged, because to do otherwise would interfere with internal management.

Canadian Pacific Railway Company and Great North Western Telegraph Company v. City of Toronto, 35 C.R.C. 27, 18 J.O.R.R. 425, 1928-29 Ann.Rep. B.R.C. Canada 22 (Board of Railway Comm'rs for Canada, McKeown, Chief C., December 11, 1928)

Pursuant to the permission of the city of Toronto, the two applicant companies were constructing underground ducts for the use of wires and cables and applied to the Board for permission to also place pneumatic tubes in the same ducts after the city objected to their right to do so. The Board held that the words "any other means of communication" in C.P.R.'s charter and "other apparatus" in Great North Western Telegraph Co.'s charter empowered the companies to construct and maintain ducts for underground pneumatic tubes. As the sole purpose of the incorporation of the two companies was the transmission of telegraph messages for the public the transmission by pneumatic force was an inseparable part of the companies' work. The Board also held that it was able under section 36 and 373 of the Railway Act to authorize the construction without the city's consent.

R. v. Canadian Pacific Railway Company, [1929] 2 D.L.R. 641, 35 C.R.C. 248 (Exchequer Court of Canada, Audette, J., March 21, 1929)

In this case the Attorney General of Canada brought on behalf of the Crown an action for possession of the land occupied by the C.P.R. telegraph poles on the C.N.R. right of way, removal of all telegraph poles and wires erected there, damages for trespass and a declaration. It was held by the Court that the Crown was equitably estopped by its acts and conduct from taking the action for trespass against C.P.R. C.P.R. obtained an equitable right, an implied licence of occupation, to stay on the property because the consent and cooperation of high officers of the Canadian Government Railway and of the Prime Minister (also Minister of Railways and Canada) had been given. C.P.R.'s rights were only challenged "after years of its overt acts of occupation and enjoyment" and after the Crown acquiesed by conduct over a long period of time. The licence that C.P.R. had was not irrevocable, however, because that would be tantamount to alienation of property of the Crown.

Canadian Pacific Railway Company v. The King, [1930] S.C.R. 574, [1930] 4 D.L.R. 161, 37 C.R.C. 178 (Supreme Court of Canada, Anglin, C.J.C., Duff, Newcombe, Rinfret and Lamont, JJ., June 11, 1930)

This was an appeal from the trial judgement, 4 C.T.R. 000, that held C.P.R.'s telegraph poles were on the right of way of the Intercolonial Railway which formed part of the Canadian Government Railways system. C.P.R. appealed on the grounds that it had an irrevocable licence and the Crown cross-appealed contending that there was no licence at all or in the alternative, that the licence had been revoked. In this judgement the court considered the three sections of the telegraph lines separately, as each depended on different factual situations.

1. It was held that for the "Main Line" the defence of leave and licence failed and nothing arose to give any equity to C.P.R. There was no mistake of title, no misleading conduct by the government, no invitation or encouragement, no acquiescence or tolerance. The Prime Minister's letter on which C.P.R. relied heavily was merely a conditional promise to allow a few poles on the right of way and did not justify transplanting the whole line and the condition of accepting responsibility for any action that might be taken against the government for granting C.P.R. this concession was never fulfilled.

2. It was held that as to the "Branch Line" no agreement was proved giving C.P.R. leave to use the right of way, and even if there was an agreement it had expired except to the extent that according to its terms C.P.R. was not required to remove its poles and wires; therefore, C.P.R. was merely a licensee whose leave was terminated or exhausted.

3. It was held that as to the "Westville Line" C.P.R. used the government right of way by consent, the parties having planned to negotiate a contract with adequate sanctions to regulate their rights and obligations. C.P.R. then built its lines with nothing more definite agreed upon and had ever since maintained and operated it without any notice or warning of the government's intention to withdraw the licence. The majority agreed with the trial judge that the licence for this line was revocable but held it could not be terminated in the circumstances without a demand or notice and could only be reasonably revoked. Anglin, C.J.C., dissented as to the dismissal of the action with respect to this line holding that failure to give notice of revocation was not necessarily fatal to the action; on the contrary, the bringing of the action for an irrevocable licence by C.P.R. should be sufficient notice, subject only to the question of costs and a reasonable time being allowed to C.P.R. to remove its poles and wires.

In relation to all three lines, it was held that apart

from the above considerations the contracts C.P.R. alleged were ineffective as they did not comply with sections 7 and 15 of the Railways and Canals Act, 1927 which contemplated that any concessions that might be authorized respecting railway land should be contracted for by the Crown, represented by the Minister, and C.P.R. knew or was presumed to have known the statutory requirements. The telephone rights claimed by C.P.R. in perpetuity with respect to these railway lands could not be acquired for C.P.R.'s accommodation by the mere laches, acquiescence or tolerance of the executive officers and employees charged under the Minister with the administration or working of the railway. C.P.R. brought about the present situation deliberately and must have realized the facts of the case, the risks they would encounter by placing their lines on the government railway and the desirability of obtaining permanent concessions and with this background, no doctrine of estoppel arose. As for any contract which could have given them permission, C.P.R. neglected entirely the terms and statutory requirements of form and sanction.

Editorial Note: This decision was partially reversed by the Judicial Committee of the Privy Council. See below at 5 C.T.R. 000.

Jankelson v. Canadian National Telegraphs, [1931] 2 D.L.R. 86, [1931] 1 W.W.R. 337, 38 C.R.C. 119 (Alberta Court of Appeal, Harvey, C.J.A., Clarke, Mitchell and Lunney, JJ.A., February 6, 1931)

The plaintiff telephoned a telegraphic message to the Canadian National Telegraphs whose employee wrote it on the usual form, on the back of which were conditions limiting the company's liability. As these conditions were not communicated or known to the plaintiff, the trial judge awarded the plaintiff damages when his message was not transmitted or delivered. The court dismissed the appeal holding that the Board's General Order 162, 2 C.T.R. 000, came under the Railway Act, 1927 section 348(2) which did not prescribe limitations but merely determined the extent to which the liability of the company could be limited leaving it to the company to make the limitation.

Canadian Pacific Railways v. The King, [1931] A.C. 414, [1931] 1 W.W.R. 673, 38 C.R.C. 1 (House of Lords, Judicial Committee of the Privy Council, Viscount Dunedin, Lord Blanesburgh, Lord Atkin, Lord Thankerton, and Lord Russell of Killowen, February 19, 1931)

Special leave was granted to appeal to the Privy Council from a judgement of the Supreme Court of Canada, 4 C.T.R. 000, regarding the removal of C.P.R. telegraph poles and wires from the lands of the Intercolonial Railway which formed part of the Canadian Government RAilways system. Their Lordships considered the evidence in relation to each of the three sections of C.P.R.'s line.

1. On the basis of the evidence and documents in relation to the "Main Line" it was established that the line was built on Crown property without leave or licence and C.P.R. was a trespasser. However, it was held that C.P.R. was not a trespasser at the date of the suit but was on the property with the leave and licence of the Crown because of the length of time during which occupation by C.P.R. was known to and acquiesced in by the Crown, and because of the Crown's claim for rent, facts which the Supreme Court of Canada ignored.

2. In regard to the "Branch Line", it was held that although C.P.R. had no right to place the lines on the property before the stipulated agreement it had executed was signed by the Crown, the action should be treated as having taken place with the leave and licence of the Crown. Since it was impossible to establish either that an agreement binding the Crown was executed or (if any was executed) what its terms were, the occupation continued to be that of a licensee only.

3. In regard to the "Westville Line", it was held that C.P.R. was allowed to construct its line on Crown property pending negotiations and though no agreement was even negotiated by either party, C.P.R. was thereby leave and licence of the Crown.

Their Lordships held that C.P.R.'s licence was revocable as there was no encouragement or agreement respecting the "Main Line" and regarding the other two lines the occupation was permitted only on the understanding that an agreement would define the parties' rights and C.P.R. must be taken to have erected the lines subject to permission being withdrawn if no agreement was effected. Upon the same facts no equitable estoppel arose creating an irrevocable licence.

It was held that what, if any restrictions existing on the power of a licensor to determine a revocable licence depended on the circumstances of each case. The general proposition was that a licensee was entitled a reasonable notice of revocation. In the present case, because of the public interest involved in a termination of C.P.R.'s telegraph line, sufficient notice had to be given to enable other arrangements to be made for the continuance of the lines and therefore the institution of the proceedings did not revoke the licence. In the result, the appeal succeeded in so far as it established that C.P.R. was not at the present time a trespasser but failed in so far as it sought to establish that its licence was irrevocable.

Rex. v. Pimmett, [1931] O.R. 705 (Ontario Court of Appeal, Latchford, C.M., Riddell, Masten, Orde and Fisher, JJ.A., June 26, 1931)

In this decision, the Ontario Court of Appeal allowed the appeal of the accused, who had been convicted of unlawfully committing damage by cutting down a telephone pole belonging to the South Monaghan Telephone Co. The pole was part of a line to a summer hotel which had been erected across the property of the accused, but which had not been in use for years. The Court held that the company had no easement for the extension of wires over the property of the accused, and was hence a mere trespasser. The accused acted in what he thought was the exercise of a right, and could not therefore be said to have acted without colour of right, as stated in the information and conviction.

City of Hamilton v. Bell Telephone Company, 21 J.O.R.R. 219 (Board of Railway Comm'rs for Canada, Order No.47197, August 11, 1931)

In this order the Board directed that Bell remove its conduits and cables from the bridge over the Desjardins Canal in Hamilton and from a portion of York Street and rearrange and relocate its plant on York St. and across a new bridge that the city was building. Bell was directed to perform all temporary measures necessary for the efficient continuation of telephone service while this work was being done. All work was to be done in strict compliance with a plan filed with the Board. That part of the application by the city requesting that Bell be ordered to pay any additional costs incurred during the building of the new bridge as a result of the rearrangement of conduits, plant and cable was dismissed by the Board. The city of Hamilton was directed by the Board to pay 50% of the labour, cost and expense including haulage, engineering and supervision incurred by Bell as a result of this order, such amounts to be paid in monthly installments.

Bell Telephone Company et al. v. Canadian National Railways, [1932] S.C.R. 222, [1932] 2 D.L.R. 753, 39 C.R.C. 186 (Supreme Court of Canada, Anglin, C.J.C., Duff, Newcombe, Rinfret and Lamont, JJ., March 1, 1932)

In this decision, the Supreme Court dismissed an appeal by Bell Telephone and certain other utility companies regarding the jurisdiction of the Board of Railway Commissioners. The Board had in four separate cases authorized railway companies within its jurisdiction to construct subways or other structures in connection with their highway corssings; at the same time, the appellants had been directed to move those of their utilities as were affected by the construction or changes so authorized. The Court held that the order requiring the appellants to move their utilities was within the jurisdiction of the Board, as expressed in sections 255, 256, 257 and more particularly 39 of the Railway Act. The primary concern of Parliament in this legislation was public welfare, not the benefit of railways, With that object in view, almost unlimited powers were given the Board to ensure the protection, safety and convenience of the public. Its discretion as to the expediency of measures ordered concerning the construction of highway crossings was conclusive. The appellants fell within the class of companies or persons interested or affected by the Board's orders, within the meaning of section 39. Thus the Board could competently order the appellants to move their utilities without previous compensation. There were no sections of the Railway Act which "otherwise expressly provided" that the Board could not order a subway or any other work contemplated by sections 256 and 257 to be constructed in whole or in part by a person other than a railway company. In addition, the orders given did not constitute a taking of property by the railway company.

The Court further rejected the contention that the applications had not been brought in conformity with the rules binding upon the Board, in that the appellants had not been accorded the hearing to which they were entitled. Although the view of the Court was that this was a question of practice and procedure rather than jurisdiction, it was pointed out that the appellants had in fact had an opportunity, of which they had availed themselves, to file their submissions in writing. Since the applications leading to these orders were not complaints, the Board was not required to hear them in open Court.

Editorial Note: This decision was affirmed by Re the Judicial Committee of the Privy Council. See 5 C.T.R. 000.

(May 15, 1933)

Canadian National Railways et al. v. Bell Telephone Company et al., 40 C.R.C. 29 (Board of Railway Comm'rs for Canada, Fullerton, McLean, Norris, Stone, Stoneman and LaBelle, CC., May 25, 1932)

An application was made by C.N.R. to have the Board settle the question of contribution to the cost and maintenance of a subway to be constructed under the railway tracks at St. Clair Avenue. The main question considered was as to the liability of Bell Telephone and certain other public utilities affected by the construction to remove their facilities at their own expense. The Board's jurisdiction to order the removal of utilities, at first questioned by the companies, was upheld by the Supreme Court of Canada in Bell Telephone Co. v. C.N.R., 5 C.T.R. 000. The companies argued that previous Board decisions requiring companies to bear the cost of removing their utilities were perfunctory and did not consider the companies' rights; that as the companies neither contributed to the danger grade separation sought to be removed for the public interest nor benefitted by such work and that as their conduits, poles and wires were interests in land, on ordinary principles of justice they should not be taken or injuriously affected without compensation. The Board argued with the company's contention that their utilities constituted lands. Both in England and Canada where railways, in exercise of their statutory power, carry out work requiring removal of utilities they are required to compensate the owner of such utilities. In the present case however, the work was not being done "for the purposes of the undertaking" of the railway in exercise of its statutory power but in compliance with a Board order made for "the protection, safety and convenience of the public" and the Board's duty under section 39 of the Railway Act, 1927 was to establish what, if any, amount the companies should contribute to such works. This section gives the Board authority to order compensation to persons interested or affected by the works in question. The universal principle of law is that where private property is taken or injuriously affected, in carrying out works authorized by Parliament, the owner must be compensated. Although the Board agreed with this principle and rejected the argument that "You (the companies) are in the highways, you have paid nothing for the privilege; it is in the public interests that you should move without compensation", it felt bound to follow its numerous decisions during the past twenty years holding that companies should move their utilities at their own expense. In addition, many subways were built or were being built relying on the Board's adherence to this ruling and this matter was not one of strict law but of a reasonable exercise of discretion.

The appeal from the fourth order challenged the jurisdiction of the Board to order the City of Hamilton to close portions of their streets. The objection was a highly technical one, since the City of Hamilton had agreed with the respondent railway company that the portions of the streets in question should be closed, and had joined with the railway company in requesting the Board to order that they be closed. The Privy Council stated that the grade separation agreement that led to the request dealt with existing highway crossings in the city in the interest of the protection, safety and convenience of the public, and thus fell within the purview of section 257 as the kind of problem with which the Board was empowered to deal. Technically, it might not be empowered to order a municipality to perform the administrative act of officially declaring a portion of a street to be closed, but it could sanction the construction of railway works which would have the incidental effect of physically blocking the street. It was held that the Board could order the closing of a portion of a highway crossed by an existing level crossing where this was incidental to a general scheme of rearrangement of level crossings in connection with an alteration of the railway, and where the public authority having charge of the highways not only consented, but was a party to the application to the Board.

Bell Telephone Co. v. Fort William, 41 O.W.N. 241 (Ontario Court of Appeal, Latchford, C.J., Riddell and Fisher, JJ.A., June 22, 1932)

The plaintiff company appealed an assessment levied under the Assessment Act, R.S.O. 1927, c.238 on its receipts from a long distance business. The "business" arose as the result of a contract between the company and the City of Fort William whereby the former connedted its wires with the city telephone system to provide long distance service, receiving payments in return. Otherwise, Bell carried on no other business in the city. The appeal was allowed on the grounds that the company did not carry on business in the city.

Bell Telephone Company et al. v. Canadian National Railways and City of Hamilton, 40 C.R.C. 215 (Board of Railway Comm'rs for Canada, Fullerton, McLean and Norris, January 30, 1933)

This application for compensation arose out of the decision by the City of Hamilton and the CNR to reconstruct a number of bridges and carry out a large amount of excavation in order to erect a new CNR station in Hamilton. Bell Telephone and a number of other utility companies were applying to be compensated by either Hamilton or the CNR for the expenses incurred by them in the alteration of their facilities necessary because of the new construction. The Board held that Bell could not recover for expenses incurred as a result of the bridge reconstruction. The right to carry a wire across a bridge did not constitute an interest in land, nor was it conferred by the Bell charter. Any legal rights conferred by section 3 of the charter were subject to section 372 of the Railway Act which, among other things, required Board approval before any lines could be placed along or across a railway, by any company other than the railway company owning or controlling the railway. A previous agreement whereby the Grand Trunk Railway Co. consented to Bell's crossing at a specified street was founded on no consideration, and hence merely created a revocable licence.

However, the Board held that Bell was entitled to recover for the loss of its line caused by the excavation work in widening the cut. The proportionate liability as between the City of Hamilton and the CNR had already been agreed upon by them.

Bell Telephone Company et al. v. Canadian National Railways et al., [1934] A.C. 563, 41 C.R.C. 168, [1934] 1 D.L.R. 310 (House of Lords, Judicial Committee of the Privy Council, Lord Atkin, Lord Tomlin, Lord Thankerton, Lord Russell of Killowen and Lord MacMillan, May 15, 1933)

An appeal from a decision of the Supreme Court, 4 C.T.R. 000, confirming the jurisdiction of the Board of Railway Commissioners to order the appellants to move their utilities was dismissed by the Privy Council. The disputed orders had been made in conjunction with a series of four orders authorizing certain railway companies to construct subways or other structures at their highway crossings. In this appeal, the Privy Council rejected the appellants' argument that section 256 of the Railway Act, under which two of the orders were purported to have been made, had been entirely displaced by the provisions of the Canadian National Montreal Terminals Act. This argument was held to be founded on a misconception of the purpose, province and effect of the Terminals Act, by which Parliament gave general authorization to the C.N.R. to construct various kinds of works. The authorization was not exhaustive, however, in that no provision was made for detailed plans, books of reference or any of the usual machinery essential for carrying out a statutory enterprise which involved interference with public and private rights. These were left, as was in consonance with the usual private legislation procedure in Canada in connection with railway bills, to be worked out by the already existing statutory machinery available for the purpose, the Railway Board.

The Privy Council further rejected the argument that sections 256, 257 and 39 of the Railway Act had no application at all to the C.N.R. by reason of the terms of the general charter of the company, the Canadian National Railways Act. Sub-section (6) of section 17 of the C.N.R. Act stated an exception upon an exception which was tantamount to an express enactment that the provisions of the Railway Act relating to the making and filing of highway and railway crossing plans were to apply to the C.N.R. The Act, while intending to arm the C.N.R. generally with the very drastic powers which the Expropriation Act confers on the Minister of Public Works, was careful to secure that the company should remain subject to the Railway Act regarding the making and filing of highway and railway crossing plans, including sections 252 to 260. In addition, it was not necessary for the respondent railway companies to resort to the statutory provisions applicable to the compulsory acquisition of land because they had not acquired anything.

In the appeal from the third order, the Privy Council

rejected the argument that section 257 of the Railway Act was inapplicable to this particular case inasmuch as here the respondents were themselves the applicants, whereas the section contemplates action either by the Railway Board or by some third party. It was held that as the Railway Board could act in the matter of its own motion, there was nothing incompetent in its being set in motion by an application by the Railway Company.

Toronto v. Bell Telephone Co. et al., 44 C.R.C. 101
(Supreme Court of Canada, Lamont, J., September 19, 1935)

The City of Toronto applied to the Supreme Court of Canada under s.52(2) of the Railway Act, R.S.C. 1927, c.170 for leave to appeal an orderof the Board of Railway Commissioners directing that the city reimburse certain public utilities for expenses incurred and paid by them in the removal and replacement of their facilities necessitated by railway construction. Leave to appeal was dismissed with costs.

Quebec-Montmorency Chamber of Commerce v. Bell Telephone Co., 46 C.R.C. 203, 26 J.O.R.R. 423 (Board of Railway Comm'rs for Canada, Guthrie, McLean and Garceau, CC., February 1, 1937)

The Quebec-Montmorency Chamber of Commerce applied to the Board to have the Quebec rate base area extended to include all territory within a ten-mile radius of Quebec City and to have long distance charges for calls between the Loretteville exchange and Quebec City eliminated as a result. At the time of the application, Loretteville subscribers paid a ten cent toll to call Quebec City. The Loretteville subscribers contended that other communities more distant from Quebec than they were could call the Quebec exchange without paying a toll and that their business with Quebec City would increase while business expenses would be reduced if the extension were granted. The Board rejected the application on the ground that exchange area establishment, redivision and readjustment are matters of internal management and are outside the purview of the Board's jurisdiction unless the rates are unreasonable or unjustly discriminatory. This position was consistent with the Board's policy in a number of earlier decisions. Concerning the fact that some more distant exchanges did not pay tolls to call Quebec City, the Board pointed out that Loretteville had individual and two-party lines while these other communities had rural party lines which were clearly inferior and yet cost the subscribers more each month. As a result the Board stated that the situations were not comparable and the allegation of discrimination was not substantiated. Loretteville subscribers did not wish to revert to rural party service, the Board added. The Board also rejected the second contention of the Loretteville subscribers by stating that tolls between exchanges had been assessed to be a reasonable basis of operation by the Board and that Loretteville subscribers were in no different position than many other areas serviced by Bell in Ontario and Quebec.

Although the foregoing concluded the issue, some of the observations made by the Board were instructive. The Board indicated that telephone company policy with respect to exchange areas was founded on the basic principle that an exchange area is not set out by examining distance alone but by discovering an area where there is practically a continuous development of residences or business places. It was the company's general policy not to extend exchanges to include outlying developed communities if there was an intervening distance of no development because to so extend them would cause plant, equipment, line and operating costs to rise sharply and cause local exchange rates to increase.

The Board analysed the number of calls required to be

made by Loretteville exchange subscribers in order for them to benefit from the proposed change and observed that, based on the number of calls placed in the last year, that only 24% of the subscribers would benefit while 76% would pay more for local service and the ability to call Quebec toll free. Furthermore, the Board noted that the exchange area extension would move Quebec City from exchange area group four to three because of the increased number of stations so that thousands of subscribers in Quebec City would pay increased rates to benefit 1/4 of the Loretteville subscribers. Also other communities would be affected if a ten mile diameter were imposed and their feelings on the matter had not been canvassed.

The Board stated it must avoid exercising discretion in a manner which would create maladjustments, unjust discrimination or undue preference and that this particular situation must be considered in light of the whole rate structure. Long distance tolls between exchanges have existed for many years and no evidence was adduced to show that the underlying principles of this policy were unsound. If the application were approved, the Board could not see how other communities similarly situated could be refused if they made similar applications which were really designed to obtain reduced rates.

Bell Telephone Co. v. Ottawa, 46 C.R.C. 165, 27 J.O.R.R. 29 (Board of Railway Comm'rs for Canada, Guthrie, McLean, Garceau, Stoneman, and Stone, CC., March 31, 1937)

An application by Bell Telephone to construct its telephone lines in the City of Ottawa had been approved earlier by the Board. This dispute arose over the proposals made by the City as to the terms and conditions of the construction. The City contended that section 373 of the Railway Act, 1927 enabled the Board to impose any conditions upon the construction as it thought fit and proper, whereas Bell Telephone contended that such powers were over-ridden by its Special Act, 1880 (Can.), c.67 as amended by 1882 (Can.), c.95. The Board held that it was a recognized principle of statutory interpretation that the provisions in a General Act of Parliament do not alter or repeal the provisions of a Special Act previously enacted without explicit language and nothing in the Railway Act indicated an intention to override Bell's Special Act. The introductory words of section 373(1) by statutory interpretation, did not apply to telephone companies. However, the effect of amendments to s-s.2 made s-ss.2, 3, 4 and 5 applicable to all telegraph and telephone companies and the only limitations on the powers of the Board to impose terms and conditions on the construction was that such terms could not conflict or be inconsistent with the provisions of the company's Special Act.

Though the Board had broad powers to impose terms in respect of these applications, it did not wish to infringe the company's rights and accordingly disallowed certain of the conditions submitted by the City as being unreasonable and unnecessary.

Bell Telephone Co. et al. v. Canadian National Railway Co., 46 C.R.C. 329 (Board of Railway Comm'rs for Canada, Guthrie, Stoneman and Garceau, CC., April 24, 1937)

Similar applications were made by Montreal Light, Heat and Power Consolidated and Bell Telephone to be reimbursed for expenses incurred in moving their facilities made necessary by the terminal work of C.N.R.. The jurisdiction of the Board to order utility companies to remove their plants was upheld by the Supreme Court of Canada, 5 C.T.R.000 and the Privy Council 5 C.T.R.000. The established principle of the Board was that in an application for grade separation where the relocation of the utility was necessary mainly for the convenience or improved facility of the railway, the railway was required to pay the expenses of the affected utility; whereas, if the paramount reason of the relocation was the protection, safety and convenience of the public using the crossing any necessary removal was at the expense of the utility. The Board held that in the present case the primary consideration of the railway had been for the readjustment and improvement of its terminal facilities and that each company should be reimbursed for its necessary relocation expenses.

Garceau, D.C.C., dissented on the grounds that utility companies should be reimbursed for the relocation expenses in any event because when private property was required for public purposes compensation to the owner was necessary.

Re Bell Telephone Co., Construction and Erection of Lines in Ottawa, 27 J.O.R.R. 88 (Board of Railway Comm'rs for Canada, Order No.54256, May 5, 1937)

A previous order authorizing Bell Telephone to construct telephone lines in certain areas in the City of Ottawa was amended as to the location of some buried cables at Bell's request.

The Board replied that if this omission was in any way important it would direct that the order be amended. The public utilities contended that since they did not contribute to the danger they should not have to bear the cost of the removal of plant and equipment. The Board replied that its policy has always been that the utilities should bear such cost even when they did not cause or contribute to the danger. The Board then approved the application, ordering the utility companies to make the removal and directing they they bear the cost of such removal.

In a strong dissent, Garceau, C. stated that utility companies have "property ownership" in that portion of the highway on which poles and wires or equipment have been laid or planted and that there have been no judicial decisions determining that utility companies are different from private individuals with respect to compensation for "injurious affection" to property. Garceau then asserted that given the above, the discretion exercisable by the Board under section 39 of the Railway Act concerning the apportioning of cost should be exercised judicially, not arbitrarily. On the facts of this case, the utility companies did not contribute to the danger and would derive no benefit from the work which C.N.R. did cause a dangerous situation and C.N.R. and the municipalities would benefit so that the utility companies should not have to bear the cost of the removal.

Canadian National Railway Co. v. Bell Telephone Co. et al., 47 C.R.C. 240, 27 J.O.R.R. 300 (Board of Railway Comm'rs for Canada, Guthrie, Garceau and Stoneman, CC., October 8, 1937)

By an order of the Board, the Town of New Toronto was authorized to construct a subway under the C.N.R. tracks at 18th St. in New Toronto. The cost of the project was to be borne by the Town of New Toronto, the Township of Etobicoke, the C.N.R. and the federal government in proportions set by the Board. The construction would involve the removal of public utility plants. Neither Bell nor the Hydro Power Commission were represented at the hearings which considered this matter. The Board based its approval on the grounds that the subway was needed for the protection, safety and convenience of the public. The municipalities also had urged that the project would ease their unemployment situation and that it would result in an improvement to municipal streets. The Board regarded these issues as incidental to the main issue of public safety. In this present application C.N.R. sought an order from the Board compelling the utility companies to remove their lines and equipment from 18th St. so that the subway work could proceed. Bell and the Hydro Power Commission stated that they had no objections to making the removal but that they should be reimbursed for all outlays made. The Board considered the following arguments by the utility companies. The utility companies argued that they were not notified about or represented at the Board's hearing when the above orders were made and that, therefore, they were not bound by the Board's findings. The Board noted that under section 257 of the Railway Act, the Board must, as a preliminary matter, consider if the public interest requires that an order be made. The only parties who are interested in this matter are the municipalities, the public in general and the railway company crossing the highway involved. The plant and equipment of the utility companies were not an element of danger at the crossing and they became interested only after the preliminary issue had been resolved. It has been the Board's practice not to notify utility companies to appear at the preliminary hearing but to notify them before any order is made for the removal of their plant. The Board then held that notification of utility companies is not necessary for an application under section 257 if the only question to be decided is whether an order should be made for the protection, safety and convenience of the public. The utility companies contended that unemployment relief and road improvement were the real motives behind the making of the orders but the Board rejected this stating that its concern was public protection, safety and convenience. The utility companies argued that in the record of the proceedings and in the Board's order no reference was made to protection, safety and convenience of the public.

Canadian National Railway Co. v. Bell Telephone Co. et al., 47 C.R.C. 253, 27 J.O.R.R. 314 (Board of Railway Comm'rs for Canada, Guthrie, Stoneman and Garceau, CC., October 9, 1937)

This was an application by the CNR to have the Board order Bell and other public utility companies to remove their plants and equipment from the Victoria Park Ave. subway site at their own expense. The Board stated that where the facts were similar to CNR v. Bell Telephone Co. et al. (18th St. case), above at 4 C.T.R. 000, the reasoning of that case would apply. It was noted by the Board that there were some distinctions between that case and the present case to which it addressed itself. This first distinction pointed out by Bell was that its lines did not cross the CNR tracks at Victoria Park, although they had at 18th Street. In rejecting this distinction the Board observed that the poles were located where levels had to be altered and construction work done and Bell was "interested or affected" whether or not its lines actually crossed over the tracks. A second distinction was a statement in the judgement of this case that the order was made for the protection, safety and convenience of the public while the original 18th St. decision had not contained such a statement. The Board stated the distinction was not material. A third distinction was that the Board had previously made an order that the Victoria Park Ave. crossing was "protected to the satisfaction of the Board". In response the Board noted that under section 309(c) of the Railway Act if a person or animal is struck by a train and injured at a level crossing, then a speed limit of ten m.p.h. is imposed unless or until the Board is satisfied that the crossing is protected to the Board's satisfaction. Having been satisfied that the railway was not at fault, the Board, as a matter of routine, issued the above-mentioned order but it was only directed at having the speed limit increased. Another alleged distinction was that the Township of Scarborough had applied to the Board because the crossing was inconvenient, not dangerous, but the Board stated that parts of the document clearly indicated it was an application for protection under section 257 of the Railway Act. Finally, Bell noted that an original estimate of the work cost for the subway included a figure for, among other things, the replacement of telephone wires. The Board replied that these were only preliminary estimates of the cost of the whole work and they did not constitute anything conclusive or binding on the Board. As a result the Board approved the application and ordered the removal of the lines and equipment at the expense of the public utility companies.

In this decision, Garceau, C. again dissented. The Commissioner added the following reasoning to his dissent in

the 18th St. case. ~~Garceau~~ Garceau, C. stated that utilities were not "interested" parties as set out in the apportionment because they were private companies with certain statutory obligations which the Board did not have the jurisdiction to expand. The duty of protection should fall on a party creating a danger or benefitting from the protection afforded by a particular work rather than on the utility companies. The Board's order apportioning the cost of the subway was made under section 259 of the Railway Act after an initial application under section 257. An order under section 259 can only be made against a party who could have made an application under section 257, criteria which the public utilities in this case did not satisfy. In addition, the Commissioner noted that seizure of property without compensation may be objectionable by a federally appointed agency, particularly given the fact that the Railway Act specifically allowed for payment of compensation. As a result Garceau would have ordered reimbursement to the utility companies.

Mainville v. Bell Telephone Co., 47 C.R.C. 279, 27 J.O.R.R. 352 (Board of Railway Comm'rs for Canada, Guthrie, McLean, Stone and Garceau, CC., October 26, 1937)

The complainant, a salesman of electrical goods, conducted his business throughout the province of Quebec. He had no official business telephone but received five or six business calls a month on his house telephone. He claimed that his home was not his office but a declaration made to obtain a Retail Tax Registration Certificate indicated that it was. Bell began to charge the complainant the commercial rate and he objected because his business calls were so infrequent. The Board held that where a business was conducted from a home with no business telephone, the subscriber was properly charged the business rate regardless of the frequency of use for business communications, following Boyly v. Bell Telephone Co., 1 C.T.R. 000, and Norman v. Bell Telephone phone Co., 1 C.T.R. 000, Garceau, C. added that since the complainant did not have his or his firm's name listed in the telephone directory that there was a presumption that the telephone was not intended to be used for business purposes. The declaration annulled the presumption and hence the commercial rate was appropriate. The Commissioner added that if the complainant registered as a peddler with no fixed business address, then he would be entitled to ordinary household rates.

Vancouver Federated Ratepayers et al. v. British Columbia Telephone Co., 47 C.R.C. 294, 27 J.O.R.R. 452, 468 (Board of Railway Comm'rs for Canada, Stone and Stoneman, CC., December 31, 1937)

The B.C. Telephone Vancouver Exchange area was enlarged to include certain suburban exchanges with the result that some of the incorporated areas had to pay a higher flat rate but no longer had to pay an interexchange toll to call Vancouver or the other suburban exchanges. The higher flat rates were needed because of the increased annual cost to run the enlarged exchange area. Certain subscribers complained that the new flat rate was unreasonable because they had to pay substantially more for the same service they received previously. The Board dismissed the complaint after holding that the revised rates were not unreasonable and in fact yielded a lower revenue than the company had received under its former rates which the Board had already found to be reasonable. The Board also noted that the effective rates for some subscribers were reduced. Attached to the decision of the Board were appendices giving examples of subscribers who signed a petition opposing the new flat rate but who receive decreases under it.

Weston, Ont. v. Bell Telephone Co., 48 C.R.C. 145, 78 J.O.R.R. 179 (The Board of Transport Comm'rs for Canada, Guthrie, Stoneman and Stone, CC., July 20, 1938)

The Town of Weston complained about proposed changes in Bell Telephone's rates for foreign exchange service. This service allowed certain subscribers within suburban exchanges to have complete Toronto or Montreal city service for a commuted or abated charge over and above the city exchange tolls in lieu of long distance message tolls for each call. The Board dismissed the application holding that the new method of computing the charge, based on air line distances, would remove anomolies and unjust discrimination that existed before the revision and secure uniform treatment in all suburban exchanges contiguous to Toronto and Montreal. The Board accepted the principle used in formulating the new method, that is, that the cost of service was not based on the cost of providing each specific service or the cost in each of the different exchanges but on the total cost of the service to the company. Section 345 of the Railway Act allowed railways to issue commuted or reduced passenger rates and gave the Board no initial jurisdiction or discretion unless discrimination or undue preference was shown. It was held that this section applied to telephone and telegraph companies and that they too could establish reduced message rates. Therefore in this case the foreign exchange service was held to be a commuted long distance toll charge or a commutation telephone rate within the provisions of section 345 over which the Board had no initial jurisdiction. The Board deleted several provisions in the tariff as they did not relate to the question of a commuted toll charge in the form of foreign exchange service.

Mimico v. Bell Telephone Co., 48 C.R.C. 180, 28 J.O.R.R. 247 (The Board of Transport Comm'rs for Canada, Guthrie, Stoneman and Stone, CC., August 18, 1938)

The Town of Mimico applied to be made part of the Toronto local exchange area at the same rates and charges as subscribers in Toronto pay, that is, eliminating the extra charge now made under zone or foreign exchange service or long distance toll charge. Following a long line of cases commencing with Tinkess v. Bell Telephone Co., the Board held it could not direct Bell to extend its Toronto base rate area to include Mimico as the establishment, redivision and readjustment of exchange areas of a telephone company were matters of internal management of the company with which the Board had no jurisdiction to interfere. The Board could only intervene if the rates were unreasonable in themselves or if there was unjust discrimination. Neither the Toronto local exchange rates nor the New Toronto local exchange rates were attacked and no unjust discrimination was established. The submissions made regarding foreign exchange service were governed by the Board's judgement in Weston v. Bell Telephone Co., 6 C.T.R. 000.

Twp. of Etobicoke v. Bell Telephone Co., 38 C.R.C. 222, 28 J.O.R.R. 258 (The Board of Transport Comm'rs for Canada, Guthrie, Stoneman and Stone, CC., September 10, 1938)

A complaint by the Township of Etobicoke concerning rates from the Islington District to Toronto was dismissed by the Board. The Bell Telephone Co. had removed three districts from the Islington base rate area and placed them in the Toronto exchange area. A fourth district had remained within the base rate boundary, resulting in higher charges for calls to Toronto. The applicant alleged that this readjustment of exchange boundaries had split up what was in essence one community, with its interests, business, social and recreative, in Toronto. This dissimilarity of treatment was said to constitute unreasonable and unjust discrimination against the subscribers in District 4.

After a comparison of the number of subscribers in each district who subscribed for the local Islington service as against the Toronto service, the Board concluded that within the Islington Exchange area, District 4, the service that best conformed to the requirements of the subscribers was the service then in effect. The small number of calls made by these subscribers did not evidence the existence of a community of interest between them and the whole of the Toronto exchange. The Board then pointed out that municipal limits did not control the establishment of telephone exchange boundaries, in that these boundaries did not determine the community of interest which would give rise to a demand on the part of the residents of the locality in question for a service which would enable them to communicate with other persons in that locality. Finally the Board reiterated that the establishment, redivision and readjustment of exchange areas of a telephone company were matters of internal management of the company's business, with which the Board had no jurisdiction to interfere, following the Tinkess, 3 C.T.R. 000, line of decisions. Furthermore, the discrimination in rates as within districts could not be said to be unreasonable or unjust, because of the dissimilarity of circumstances and conditions as between these districts.

Canadian National Railway Co. v. Bell Telephone Company et al., 51 C.R.T.C. 10 (Supreme Court of Canada, Duff, C.J.C., Rinfret, Crocket, Davis and Kerwin, JJ., May 12, 1939)

By the order now under appeal it was directed, according to long established principles, that C.N.R. should reimburse Bell Telephone for the expenses incurred in the removal and replacement of their facilities necessitated by C.N.R.'s grade separation works authorized by the Board. The decision was based on the fact that the works were primarily not for the public safety but the improvement of terminal facilities of C.N.R. in Montreal. Leave to appeal to the Supreme Court of Canada was granted by the Board under section 52(3) of the Railway Act, 1927 on questions which were in its opinion questions of law; namely, whether in a given case the Board had properly appreciated its own rule of practice or the facts upon which that rule was based. It was held that within the meaning of section 52 (3) these were not questions of law since there were no statutory rules or principles of law prescribing the considerations by which the Board was to exercise its administrative discretion regarding the allocation of costs under section 39(2). Also in view of section 44, which established that the Board's determinations were final and conclusive on questions of facts, and since the Board was not bound by ordinary rules of evidence, it would be inconsistent to allow the court to review the Board's decision. Therefore the appeal was dismissed as there was no rule or principle inconsistent with the findings and decision of the Board to which the questions related.

Lacroix v. Bell Telephone Co., 59 C.R.T.C. 1, 30 J.O.R.R. 43, 29 J.O.R.R. 262 (The Board of Transport Comm'rs for Canada, Wardrope, Stoneman and Garceau, CC., March 15, 1940)

Wilfred Lacroix, M.P. applied for an order granting all subscribers of Bell Telephone in the provinces of Ontario and Quebec a 25% reduction in rates. Therates were not attacked as being unreasonable per se and no charge of discriminattion was made rather it was contended that Bell was in a sufficiently sound financial position to afford such a reduction. This contention was based on figures taken from the company's annual reports from 1930 to 1937. Based on Bell Telephone's submissions and the evidence the Board held that the applicant's facts were erroneous, based on a misunderstanding and misinterpretation of the records and that therefore the conclusions were valueless. It was held that in order to derive any conclusion from annual reports of a public utility one must be able to present a detailed analysis of the existing trends developed through a sound knowledge of corporate accounting. The application was dismissed as no arguments or facts were advanced to justify a reduction in Bell's rate. Garceau, O.C.C. would have required Bell to comply with the Board's request for more specific information before granting a hearing and furthermore would have not allowed Bell to produce evidence until the requested data was furnished.

Phillips et al. v. Bell Telephone Co., 52 C.R.T.C. 49, 30 J.O.R.R. 405 (The Board of Transport Comm'rs for Canada, Cross, Wardrope and Stoneman, CC., November 1, 1940)

A complaint by a number of subscribers that Bell Telephone rates for the Toronto Island were discriminatory was dismissed by the Board. The Board refused to direct the inclusion of the Island in the Base Rate area, because it did not represent practically a continuous and substantial development of the Base Rate area in the form of residences or business places. After considering the circumstances and conditions of the Island, including its location, number of subscribers, and extent of service, the Board concluded that they were not similar to the circumstances and conditions prevailing within the areas contained in the Base Rate Area, and rejected the contention that the rate discrimination was unreasonable.

It was reiterated that not all discrimination was forbidden by the Railway Act; the discrimination must be shown to be undue, unfair or unjust. In this case, the applicants had failed to establish that Bell's practice of charging a base rate plus an extra exchange mileage charge to the residents of Toronto Island constituted unjust or unreasonable discrimination.

Kohen v. Bell Telephone Company, 52 C.R.T.C. 3, 30 J.O.R.R. 409 (The Board of Transport Comm'rs for Canada, Cross Wardrope and Stoneman, CC., November 1, 1940)

In this decision, the Board dismissed a complaint from a subscriber who was required to pay a $10 charge for Foreign Exchange Service into Toronto because she lived seven-eights of a mile outside the Toronto exchange area. There were three types of service for residential telephone communication between New Toronto and the Toronto Exchange: the standard long distance toll charge of 10 cents per call, the Suburban Zone Service at $4.50 per month for up to 45 calls, and the Foreign Exchange Service at $10.00 per month plus the Toronto Exchange rate for unlimiting calling. The Board held that there was no evidence that the tolls were unfair, unjust or unreasonable, that they constituted unjust discrimination in any way, or that they are contrary to the provisions of the Railway Act in any respect. It was impossible to fix rates which would blend or flow gradually from one area to another; there must be a terminating boundary somewhere, and the applicant's rates could not be altered just because she lived near the boundary.

Bell Telephone Co. et al. v. Canadian National Railway Co., 52 C.R.T.C. 374, 31 J.O.R.R. 171 (The Board of Transport Comm'rs for Canada, Cross, Wardrope and Stoneman, CC., May 16, 1941)

Bell Telephone and other utility companies applied for a review of a previous order that had required C.N.R. to construct a subway under its tracks and in addition required the utilities to remove their facilities at their own expense. The Board reaffirmed its general principle that where a railway level crossing was being altered for the protection, safety and convenience of the public, any expense caused to utility companies in moving their facilities should be borne by them; where such construction was to improve railway facilities or for the convenience of the railway, then the companies would be compensated for their expense. The applicants attacked the above principle however, the Board held it should not depart from such a long established principle. In the alternative the applicants argued that the paramount considerations in the construction were for railway and highway improvement and unemployment relief and that the apportionment of costs were the result of an agreement between the railway and interested municipalities which the Board merely ratified. The Board held that although the above considerations could be inferred, the primary consideration was the protection of the public because of several serious accidents that had occurred at the crossing. The applicants contended that previous Board order declaring the crossing sufficiently protected made it unreasonable to hold that the construction of a subway, a short time later, was for the public protection. The Board held it could subsequently order additional protection or, as here, eliminate the crossing entirely and that the paramount consideration for such an order could be the protection of the public in spite of a previous declaration that the crossing was protected satisfactorily.

Bell Telephone Co. v. Trenton, 53 C.R.T.C. 372, 31 J.O.R.R. 333 (The Board of Transport Comm'rs for Canada, Cross, Stone and MacPherson, CC., September 11, 1941)

Bell applied to the Board for an order under section 373(3) of the Railway Act for authority to exercise its statutory powers to construct telephone lines in Trenton. The Bell Charter, 1880, had been amended in 1882 to include section 3 which provided that Bell could construct, erect and maintain lines over the public highways etc. provided that Bell not interfere with the public right of usage, that the work could be overseen by a municipal engineer and that the surface of the streets be restored to their former condition at the expense of Bell. Also by an amendment to the Bell Charter in 1882, the works authorized by the Charter were declared to be for the general advantage of Canada. Bell had telephone lines existing in Trenton but needed to do some reconstruction and extension of facilities. Initially consent was given by Trenton for the work but this was rescinded. Negotiations continued between Bell and Trenton but agreement could not be reached over the conditions with respect to construction that Trenton sought to impose. Bell then made this application under section 373(3) for leave of the Board to exercise its statutory powers despite the refusal of Trenton to give its consent. Bell took this action because section 373(2) of the Railway Act provided that the legal consent of the municipality must be obtained for such construction but that if consent was refused on terms imposed which were unacceptable to the telephone company then that company could apply to the Board for leave to exercise its statutory powers. Section 373(4) provided that the Board could grant all or part of the application or refuse to grant it and could affix terms and limitations it deemed expedient having regard for all the proper interests in the matter.

The construction was proposed on two routes. Bell sought to lay an underground cable beneath Dundas St., a main thoroughfare in Trenton, while the Town sought to have the cable go under Quinte St. The Quinte St. route would require that some of the cable pass under private property. The municipality suggested that an order could be made subject to permission being obtained from the property owners. The Board stated that it did not have the authority to order Bell to locate conduits or telephone lines on private property and that it would not grant an order subject to permission being obtained because this would be too uncertain. Addressing itself to the broader issue of the degree of control the town could exercise over the location of telephone lines and the opening up of streets, the Board cited the Privy Council determination into Toronto v. Bell, 1 C.T.R. 000, which held that under section 3 of the Bell Charter the municipality could only have a voice concerning the position of the poles in the streets selected by Bell and whether the wires should go overhead or underground. The Board then authorized Bell to lay its cable under Dundas St.

The conditions which the municipality sought to impose on its consent to the construction were applicable to the Dundas route discussed above and to another proposed route along Sidney St. As a result the Board considered both sets of conditions together. The main issues which arose were: (1) was section 373 of the Railway Act applicable to Bell and if so to what extent, (2) was the Railway Act or the Bell Charter to prevail if they conflicted and (3) how, if at all, was the Board limited in imposition of terms and conditions under section 373(4). The Board observed that it had been determined in Bell v. Ottawa, 4 C.T.R. 000 that sections 373 (2), (3), (4) and (5) of the Railway Act applied to Bell for all purposes but that some terms in section 373(1) conflicted with the Bell Charter and that in such situations Bell could not be compelled by the Board to subject itself to provisions that conflict with that Charter. Concerning the Board's power over the imposition of terms and conditions, the Board stated that it could not deny or prohibit rights granted to Bell under its Charter and that any terms or conditions imposed must be fair and reasonable and must be imposed only to achieve regulation, not prevention or prohibition.

Given the foregoing analysis, the Board proceeded to examine the conditions Trenton sought to impose. A condition that Bell be responsible for all damage which resulted from its construction was disregarded by the Board because it was broader than the liability provided for under section 373(1)(g) of the Railway Act and the Board also questioned whether it could impose a condition that would increase Bell's liability beyond that imposed by statute or the common law. A condition that Bell replace the streets as it found them and maintain them was rejected by the Board because the Bell Charter provided for replacement but not maintenance and, in the opinion of the Board, the Charter sufficiently dealt with the matter. A condition that Bell carry on its work continuously until completion was accepted by the Board but modified to state as "...continuously as weather conditions permit". A condition that Bell not interfere with the public right of travelling was found to be unnecessary by the Board because the Charter dealt sufficiently with the matter. A condition providing for supervision of construction by a municipally-appointed officer or engineer was disregarded by the Board who found it to be unnecessary given provisions in the Bell Charter.

Bell applied to the Board for permission to cut and trim trees interfering with its lines without further notice to the owners thereof. The Board granted permission to trim but only if Bell gave notice as provided for under section 373(1)(d) of the Railway Act.

The Board also added as a general statement that nothing in the order was intended to convey permission to Bell to construct lines across or under the CNR or CPR tracks, or on poles of the Trenton Public Utilities Commission or on private property without consent of the appropriate company, body or person.

Canadian National Railway Co. v. Nova Scotia Power Commission, 54 C.R.T.C. 46, 31 J.O.R.R. 511, 519 (The Board of Transport Comm'rs for Canada, Cross. Wardrope and Stone, CC., February 13, 1942)

The Nova Scotia Power Commission constructed a power line near and across C.N.R. tracks without the consent of the Board or the company under section 372 of the Railway Act, 1927 which caused inductive interference with the company's private telephone system on the same route. The Board held that the Commission's power lines were "near" the company's telephone line within the meaning of section 372, that the Commission was not the Crown or the agent or servant of the Crown but in any event would be subject to the relevant sections of the Act and that it was not relevant that no interference would have occurred if C.N.R.'s lines were of a modern type. The Board doubted it had the power to order the transposition of the line or the payment by the Commission to C.N.R. of the cost of modernizing the telephone line to end interference, accordingly, the Board merely declared that the Commission had violated the Act and forbid it from maintaining the line.

Re Wartime Regulation of Telephone Service, 53 C.R.T.C. 406 (The Wartime Prices and Trade Board, D. Gordon, Chairman, April 7, 1942)

By this order the Wartime Prices and Trade Board assumed strict regulatory control of all telephone service in the country. The Administrator of Services appointed by the Board could order telephone service supplied or denied to anyone, compel production of records of telephone companies and oversee all administrative decisions of those companies. Official priorities were also established as to who should obtain telephone service.

Bossin v. Bell Telephone Company, 55 C.R.T.C. 196, 32 J.O.R.R. 415 (The Board of Transport Comm'rs for Canada, Cross, Wardrope and MacPherson, CC., December 7, 1942)

and the Police Commissioner of Ontario

On application by a subscriber for telephone service, made on Bell Telephone's standard forms which become contracts after the establishment of service, Bell furnished the requested service. Bell disconnected the service because of letters it received from the Deputy Attorney-General of Ontario alleging the telephone facilities were being used illegally. There was not sufficient information to justify laying charges against the subscriber and the letters were merely requests to Bell, there being no statutory authority to order itself had no knowledge of unlawful activity beyond the receipt of the letters. The Board held that the disconnection constituted breaches of Bell's contracts for furnishing service and telephones. By section 35 of the Railway Act, 1927 the Board had power to deal with breaches of contract involving the obligations of the company respecting the use and operation of its lines. Therefore the Board ordered the service restored.

the service disconnected. Bell

Thompson v. British Columbia Telephone Co. and Wessels, [1943] 56 C.R.T.C. 118, 3 W.W.R. 31, 59 B.C.R. 248 (British Columbia Court of Appeal, Sloan, O'Holloran and Fisher, JJ.A., June 15, 1943)

In this appeal from an order dissolving an injunction restraining B.C. Telephone from cutting off or transferring a telephone number from the Plaintiff or from his premises pending the trial of the action, it was held that the court should not interfere unless a prima facie case for specific performance was established. Based on the material before the court, including the company's regulations, there was no prima facie case to support the Plaintiff's claim of title to the telephone number but on the contrary, showed that the Defendant had no property right in the number and could not assign his contract with the company or any rights under it to the Plaintiff.

Rex v. Montreal Telegraph Co. and Great North Western Telegraph Co., 58 C.R.T.C. 252 (Supreme Court of Canada, Rinfret, C.J.C., Kerwin, Hudson, Taschereau and Estey, JJ., June 20, 1945)

Under the agreement of 1881 under which the Great North Western Telegraph Company operated the system owned by Montreal Telegraph for an annual charge, Montreal Telegraph did not operate or work a telegraph company for the use of the public for the purpose of the Quebec Corporation Tax Act. Neither was Great North Western an agent of Montreal Telegraph; rather it replaced Montreal entirely in the company's operations. The receipt of remuneration by Montreal did not mean that it was carrying on a business.

In a dispute in warranty between the two telegraph companies as to whether Great Northern should have its costs against Montreal, held that neither party should recover costs against the other.

Bell Telephone Company v. Harwich Township, 59 C.R.T.C. 47 (Ontario Court of Appeal, Henderson, Laidlaw and McRuer, JJ.A., November 14, 1945)

The Harwich Twp. Council was undertaking drainage repair work but found that Bell telephone lines were too low to permit the operation of ordinary excavating equipment. In a by-law the Council assessed Bell for the cost of raising or moving the lines during excavation after Bell had refused to do the work at its own expense. The assessment was made under section 8(20) of the Municipal Drainage Act. Bell challenged the validity of the by-law. At first instance Coughlin, Co. Ct. J., cited section 3 of the Bell Charter which set out certain powers and the 1882 amendment to the charter which declared works authorized by the Charter to be for the general advantage of Canada. It was pointed out that the line did not interfere with the public right of travelling on or using the highway. Coughlin, J. stated that the main issue was the power of a provincial legislature with respect to works declared by parliament to be for the general advantage of Canada. The court held that the impositionby by-law of a rate in default of Bell altering (even temporarily) the height of cables was an indirect interference with the physical structure of an authorized Dominion work and as such beyond the power of the provincial legislature to delegate to Harwich Twp. Council. As a result the court quashed the by-law.

This decision was appealed to the Ontario Court of Appeal who unanimously upheld the lower court finding but did not address itself to the constitutional issue. Henderson and Laidlaw, JJA., based their determination on the applicability of section 8(20) of the Municipal Drainage Act, finding that since Bell did not own lands or roads in the township and did not receive any benefits from the drainage reconstruction, the assessment of Bell was improper and the by-law adopting it was quashed. McRuer, J.A. concurred in the result but differed on the reasoning. His Lordship stated that section 8(20) may be applicable to a utility even when it owns no lands or roads in the municipality with respect to new drains but not to repairs to existing drains for which the utility had not been assessed previously.

Bell Telephone Co. v. Middlesex County, [1947] 6 C.R.T.C. 1, S.C.R. 1, [1947] 1 D.L.R. 248 (Supreme Court of Canada, Rinfret, C.J.C., Kerwin, Hudson, Taschereau and Rand, JJ., October 1, 1946)

Bell Telephone, being unable to obtain an unqualified consent from the County of Middlesex to construct underground telephone lines across certain highways, applied to the Board for permission to do so. The Board issued the order subject to the condition that the municipality be allowed to apply to the Board to order a change in the location of the works because of municipal improvements, if a dispute developed between the company and it. Bell contended that the Board had no jurisdiction to deal with the application because neither the legal consent of the municipality involved, nor the Board's authorization was required for construction "under highways". The Board stated it had no inherent jurisdiction, only the powers and authority given to it by statute. Subsection 2 of section 373 of the Railway Act, 1927 only required the legal consent of the municipality for construction "upon, along or across highways" and subsections 3 and 4 only gave the Board jurisdiction to hear anddeal with such an application, thatis, there was no reference to its jurisdiction to deal with construction "under highways". The majority held that the word "across" meant from side to side and did not include "under" and this was made clear not only from the dictionary definition but from the content of subsection 2 and the legislative history. Moreover Bell's charter specifically empowered it to construct lines "along side of and across or under any public highway". Therefore the Board held there was no doubt about Bell's right to construct its lines under the highways or that Bell did not need the legal consent of the municipality or the authorization of the Board which it was without jurisdiction to give. In addition Bell's previous application for the consent of the municipality and the Board's authorization did not prevent it from relying on its powers under its charter. Therefore it was held that the Board had no jurisdiction to make the order in question. Hudson, J. dissented on the grounds that the word "across" was wide enough to cover a crossing at any level and that the word "highway" included not merely the surface of the road but the "area of user". Therefore Parliament contemplated a crossing above or below the surface and the Board had jurisdiction to issue the order in question. Rand, J. would set the order aside on the grounds of the majority and also because the order added the provisions of subsection 6, which only empowered the Board to order changes within cities and towns, to new construction outside of cities and towns.

La Ligne Téléphonique des Cultivateurs de la Province de Québec v. Bell Telephone Co., 60 C.R.T.C. 227, 36 J.O.R.R. 273 (The Board of Transport Comm'rs for Canada, Cross, Sylvestre and MacPherson, CC., November 18, 1946)

A local telephone company requested the Board to order Bell Telephone to provide a connection for an additional telephone line between St. Simon and St. Hyacinthe. Bell opposed the request on the grounds that the need for a new circuit arose from the large excess of calls into St. Hyacinthe over the number of calls out from St. Hyacinthe; this excess had occurred because the subscribers of the connecting company were charged a flat annual amount instead of standard rates, as provided for in the traffic agreement between Bell and the connecting company. Both companies indicated a desire to revise their traffic agreement to take into account the preference of the connecting company for this method of billing its subscribers. In its decision, the Board approved the application and ordered Bell to provide the additional telephone line. However, the Board also held that Bell was entitled to additional compensation of 2 1/2 cents per message for all messages originated by the connecting company in excess of the messages originated by Bell. The terms of a new Traffic Agreement were determined, but the Board pointed out that any such agreement would have to be submitted for its approval before becoming operative.

Re Telegraph Rates Between Canada, United States and Mexico, 60 C.R.T.C. 260, 37 J.O.R.R. 13 (The Board of Transport Comm'rs for Canada, March 25, 1947)

The Federal Communications Commission had authorized an increase in the flat rate for telegraph messages by 20%, the elimination of the "night message" classification and an average increase of 4.6% in money order premium charges for the Western Union Telegraph Co. but deferred implementation of the changes until Canadian connecting carriers received permission from the Board to make similar amendments with respect to southbound traffic. CN Telegraph and CPR then made this application to the Board to have similar revisions to their service rates. The Board indicated that the rate for southbound telegraph traffic into the United States had been set in the past at the same rate as northbound telegraph traffic from the U.S. as a matter of policy, justified on the grounds that the quality of service is the same in either direction and the number of messages going each way is approximately the same. Furthermore the Board pointed out that joint through rates were necessary to handle messages between the U.S. and Canada expeditiously and that if Western Union were to withdraw from participation in through rates with Canada, the effect could be much more serious than a 20% rate increase. If a combination of local rates was charged rather than the international rate, the cost of telegraph transmission to the U.S. would increase by more than 20%. The Board approved the application and granted a 20% increase in international rates while eliminating the "night message" classification. The Board indicated, however, that money order premium charges are not telegraphic tolls within the Railway Act and therefore no action can be taken by the Board on this portion of the application.

Re Bell Telephone Co., Revision of Long Distance Rates and Application for a Surcharge, 39 J.O.R.R. 255 (The Board of Transport Comm'rs for Canada, Archibald, Sylvestre and Patterson, CC., December 9, 1949)

In this order the Board declined to proceed with Bell Telephone's application for an interim increase in rates, but made arrangements for the case to be heard shortly. If the proceedings lasted an unduly long time the application for an interim increase could be renewed.

Re B.C. Telephone Co., Interim Rate Increase, 40 J.O.R.R. 113 (Board of Transport Comm'rs for Canada, Order No.74538, May 29, 1950)

In this order the Board approved an interim increase in B.C. Telephone Co.'s exchange rentals and charges for service, and approved a subsequent amendment to the order. The rates approved were approximately 93% of those proposed.

Editorial Note: For the final determination of this application, see below at 7 C.T.R. 000.

Bell Telephone Co. v. Township of Granby, 65 C.R.T.C. 269, 40 J.O.R.R. 123 (The Board of Transport Comm'rs for Canada, Chase and Patterson, CC., May 30, 1950)

In 1936 Bell Telephone erected telephone lines with the Township of Granby's consent, along the sides of a road as it then physically was in the township. In 1945 the township agreed to the reconstruction of the lines in the same location; however, shortly afterward, the township proceeded to widen and straighten the road and required Bell to relocate its poles. The Board ordered it to pay a portion of the cost of relocating the poles since, although the poles had been encroaching upon the legal limits of the road, they had been placed there in good faith with no expectation that the road would be widened in the near future by either party.

Re B.C. Telephone C., Increase in Rates and Charges, 67 C.R.T.C. 7 (Board of Transport Comm'rs for Canada, Sylvestre, MacPherson and Chase, CC., September 21, 1950)

The last general tariff increase for B.C. Telephone had been granted in 1921. B.C. Telephone brought this application seeking approval of certain changes in rates and charges of the company which were designed to enable the company to earn sufficient revenue to meet its needs, and of a change in the grouping of exchange rentals in order to reflect the relative value of service by number of telephones per exchange. The Board outlined the evidence that had been adduced at the hearing and then proceeded to give its evaluation of it. The Board observed that B.C. Telephone's total operating revenue had increased progressively since 1939 and particularly after W.W.II but that operating expenses had increased at an even greater rate, reflecting increased cost of materials and wages. The "net operating income" of B.C. Telephone which was the difference between total operating revenue and total operating expense less taxes and which amount combined with "other income" provided the funds to meet fixed charges, dividends and to provide a reasonable surplus, had declined from 23.16% of total revenue in 1939 to 12.62% in 1949. Some additional statistics were provided to emphasize B.C. Telephone's difficulties.

The Board examined the rate of return of B.C. Telephone and determined that historical cost was the appropriate base for rate of return and not present fair value or "prudent capital investment" as had been suggested at the hearing. Historical cost was defined by the Board to be an estimate of original cost based on prices prevailing at the dates when various items of property were acquired. In essence historical cost was an estimate of average cost.

In recent years B.C. Telephone's actual depreciation costs had been increasing as a result of expansion of the telephone plant at the then current high cost levels, higher depreciation rates and because of computation of depreciation in 1949 on the basis of an appraisal value calculated in 1927 plus additions at cost rather than on the basis of historical cost which had been used in 1948. B.C. Telephone sought approval for a composite rate of 4.24% to be used in determining the depreciation accrual. The Board indicated disapproval over the methods employed by B.C. Telephone to determine rates of depreciation. The estimates had been based upon the judgement of B.C. Telephone's chief engineer and no analysis of records of retired plant items possessing similar characteristics to those of existing plant items so as to measure the remaining life expectancies of the existing plant had been made. The Board directed B.C. Telephone to develop a depreciation ratio based on its own actual experience and referred B.C. Telephone to the directions the Board had given Bell Telephone at 3 C.T.R. 000. The Board, however, accepted the composite rate of 4.24% because the rate had not been challenged by expert testimony and the Board could not say that the rate was unreasonable. It was also held by the

Board that historical cost and not appraised value was the proper basis for depreciation and that B.C. Telephone's depreciation expense was overstated as a result of using the improper method.

B.C. Telephone had elected to place the handling of telephone directory advertising with a separately incorporated company. The objection raised to this method was that if B.C. Telephone handled the advertising itself, the company could avail itself of greater profit. The Board pointed out that the matter was one of contract and not within the Board's jurisdiction to regulate. The Board observed that a telephone company could not be required by the Board to carry an advertising appendix to its directory, nor could the Board regulate the rates for advertising contained therein or the quantum of advertising to be rendered at a given price. The Board concluded that the method by which B.C. Telephone conducted its arrangements for securing advertising was entirely a management function and that the current arrangement was a proper exercise of managerial discretion. In reaching its decision the Board adopted its own reasoning in Seaport Agencies Ltd. v. B.C. Telephone Co., 3 C.T.R. 000.

B.C. Telephone had a service contract with Anglo-Canadian Telephone and the issue concerned the fact the B.C. Telephone paid more to Anglo-Canadian than Anglo-Canadian paid to its affiliates who actually provided the service to B.C. Telephone. The Board found that a request to disallow the contract expenses for ratemaking purposes was beyond its jurisdiction to grant. The contract was a bona fide means whereby B.C. Telephone obtained "valuable patent rights and expert service" the Board noted. The Board also pointed out that payments for technical and expert advice on a professional fee basis could easily exceed payment provided for by the service contract. As a result the Board allowed the payments made under the contract to be included for ratemaking purposes, regarding them as legitimate and necessary expenditures for the services rendered and consequently properly chargeable to the operating expenses of the company. In taking this position the Board adopted its own reasoning in Bell Telephone v. Montreal, Toronto, Ottawa et al., 3 C.T.R. 000.

The responsibility for purchasing B.C. Telephone supplies, custody of the stocks of supplies, repair shop work, installation of equipment and other matters had been vested by contract in Canadian (B.C.) Telephone Supplies Ltd., a subsidiary of Anglo-Canadian Telephone. Under the contract B.C. Telephone paid a 5% commission on all purchases made for the company (although it reserved the right to exclude any purchase from the arrangement), a charge for repair shop work and supervision, a charge for depreciation, carrying charges and return on investment in tools and equipment to the extent of 25% of the value of such tools and equipment and a charge of 2% of the average value of the supplies on hand as a guarantee against inventory losses. The Board remarked that the bulk of the revenue of the supply company was derived from this

supply contract and the expense incurred by B.C. Telephone under the contract was excessive. The Board indicated that it was not empowered to deal with the rate of return or indirect benefits to an affiliated company behond satisfying itself that a reasonable payment was made for the service required and the Board added that it had no jurisdiction to direct B.C. Telephone to withdraw from the contract and establish its own facilities. The Board did state that rates for telephone service must be fair and reasonable and that the excessive additional costs to B.C. Telephone resulting from this contract should not be taken into consideration as an item of expense to be borne by the subscribers. The Board directed the amount it determined to be excessive to be deducted from the requirements of the company.

The issue was raised whether the "other income" component which was comprised of interest on temporary investments, miscellaneous interest and premiums on U.S. funds should be included as part of revenue for the purpose of establishing a reasonable level of rates for subscribers and other telephone service. The Board held that such income should be included as it was available to pay fixed charges.

The capital structure of B.C. Telephone had changed from 33% debt and 67% common stock in 1927 to 64% debt, 20% preferred stock and 16% common stock in 1949. The issue was whether the capital structure of B.C. Telephone was properly balanced. The Board found that approximately two-thirds of the capital structure required payment of relatively low interest (3 1/8 - 4%) while the remainder required high dividend payments (4 3/4 - 8%). The Board found that the interest and dividend requirements were not unreasonable. The Board pointed out that a utility must be able to attract new capital on favourable terms and this new capital is largely secured by the sale of securities which must be as attractive as other current investments being offered. To handicap a utility in its ability to attract capital would ultimately increase the cost of service to subscribers and if the capital were not obtained the quality and adequacy of service would deteriorate the Board observed. Examining the dividend rate of 8% the Board noted that with lower interest rates generally prevailing the stock could be sold at a value over par thereby satisfying capital requirements while issuing a lesser number of shares than would be issued if a lower dividend were offered thereby reducing the volume of the floating supply of stock. The Board also commented that B.C. Telephone had "practically" a single shareholder and that the last sale had been for $125 per share (par value $100).

The Board held that B.C. Telephone was entitled to maintain a reasonable surplus and rejected the argument that a surplus was not required because the company had no competition and was assured of reasonable rates by approval of the Board. The Board recognized that B.C. Telephone had a legitimate deficiency of revenue relative to expenses and that

this deficiency would be coupled with the applicable income tax in order to determine an appropriate rate structure.

The Board observed that the main burden of the revenue deficiency had to fall on the exchange rentals. It was noted by the Board that the rates for exchange service had been arranged on a group basis (ten) according to the number of telephones in service in each exchange area and that such a structure was based on the "well-established" principle that rates should be based on the value of service to the subscriber; the greater the number of telephones, the better the service. The Board also stated that rates should be reasonable for the utility as well as for the user. The factors which ensure reasonableness were "...never found in a precise formula and to a large extent represent the exercise of good judgement" the Board pointed out. The Board then dismissed as containing "no merit" a complaint that under the above system the larger groups subsidize the smaller groups.

B.C. Telephone had in the past charged more per month to subscribers who had hand sets because they were more costly to produce than the wall set. The hand set became cheaper to produce and B.C. Telephone now sought a flat rental charge for exchange service regardless of the type of instrument supplied. The Board accepted B.C. Telephone's request on this point stating that although the differential principle based on cost may have been appropriate earlier, its abolition was the proper course to take.

The Board found the B.C. Telephone's proposed charges for extension service were "moderate and not unreasonable" given that extensions were an added convenience but often a necessary one. The Board also approved interexchange tolls for "short-haul toll service".

Concerning complaints made to the Board about quality of service, the Board stated that it was not empowered to deal with them. The Board did consider the proposition that it not permit an increase in rates until the quality of B.C. Telephone service had improved. The Board commented that it saw "no logic" in the complaint. The Board acknowledged that there was an overloading of circuits due to the increased post war demand for telephone service, the population increase and the inability of B.C. Telephone to provide for normal expansion in the war years. Wages and material costs had increased and much capital was needed to pay for expensive new facilities. In order to get this capital there must be an adequate rate of return. If the improvement must precede the revenue increase, there could be no improvement the Board concluded.

In the result, therefore, the Board approved B.C. Telephone's application although requiring small alterations concerning the depreciation base and costs under a supply contract.

Bell Telephone Co. v. Cities of Toronto, Montreal, Ottawa et al. (General Rate Increase), 67 C.R.T.C. 1, 40 J.O.R.R. 314 (The Board of Transport Commissioners for Canada, Wardrope and Sylvestre, CC., November 15, 1950)

This lengthy and detailed decision constitutes the second major Bell Telephone rate case. Bell had submitted an application for a general rate increase of 20.6%, basing their request on increased operating expenses and an increasing demand by the public for improved telephone service which necessitated a large construction programme. The application was opposed by a number of parties, including the Cities of Toronto, Montreal, Hamilton, Ottawa and Quebec. An interim order had been made by the Board granting Bell part of the increase requested. In this final judgement, the Board awarded Bell substantially all its requests, reiterating many of the principles established in its 1927 decision, 4 C.T.R. 000. The Board stated at the outset the broad principles which were to govern the determination of rates. Under efficient management, tolls and charges should be such that they would normally provide all reasonable and normal expenses including taxes and also a sufficient amount for reasonable dividends and surplus to maintain the credit of the company so that as and when advisable new capital could be attracted to meet new demands for service or for the modernizing of existing facilities. After examining the Company's operating revenues and expenses since 1939, the Board concluded that while substantial increases in revenues had occurred they had not kept pace with increases in operating expenses, as a result of the greatly increased costs of materials and wages. Hence the ratio of net operating income to total operating revenues had been steadily decreasing since 1939.

The first issue examined by the Board was the depreciation rate used by the Company. The composite rate of 4.3% had been relatively stable since 1939, and was based on an application of Life Span, Mortality, Turnover and Comparison methods of depreciation to various classes of property. The respondents contended that these methods resulted in the Company's finding a shorter life than the respondents believed proper, and suggested that a "wide band" method, which would reduce the depreciation reserve by 10%, would be more accurate. After considering the arguments presented, the Board concluded that the difference in the two sides concerned the manner in which managerial judgement should enter into the determination of a proper depreciation rate. The respondents would have controlled this judgement to a very great degree by studies made on the wide band basis of what was called a recent period. However the Board accepted the Company's use of past experience and its knowledge of circumstances that might develop in the future as the main basis for judgement, and approved the use of the composite depreciation rate of 4.3%.

Although from 1945 to 1949, current maintenance charges increased by 120% while the capital plant of the Company in-

creased by only 80%, the Board held that current maintenance costs were reasonable. Reduced costs due to increased labour productivity had been more than offset by rising costs of labour.

The Board also considered once again the service agreement between Bell and A.T.&T., who at this time owned 12% of Bell. Although the respondents contended that the contract had not been made at arm's length and was improvident for Bell, the Board concluded that no evidence had been presented that was not available in 1927, and reiterated the former judgement that the function of the Board was one of corrective regulation, not of business arrangement. There was not sufficient evidence of indiscrete or improvident use of management's discretionary powers for the Board to intervene. Complaints concerning Bell's supply contract with Northern Electric were also dismissed. As in 1927, the request of the respondents to extend the inquiry into the affairs of Northern Electric was refused, since the Board did not have jurisdiction over that company. The chief concern of the Board in this matter was that the prices paid by Bell under the contract were reasonable and proper. Prices charged to Bell were in fact lower than those charged to the general public; hence they could not be said to be unreasonable.

The Board went on to consider and dismiss a number of additional complaints raised by the respondents. The first of these was the respondents' contention that the employees' pension plan was unreasonably liberal and expensive and that the regular annual accruals were excessive. After pointing out that no alternative pension scheme had been presented against which the liberality of the Company's plan could be measured, the Board concluded that the scheme was very satisfactory to both the employees and those called upon to finance it. Complaints against the size of commercial expenses were also dismissed by the Board. While there might be some elements of overzealous expense in some or all of the items enunciated, the evidence did not indicate wherein any needless excess lay. As there was nothing to indicate that any of these services or activities of the Company were completely unessential, the Board accepted the judgement and experience of management that these expenses were necessary. The proposed construction programme was attacked as unnecessarily excessive, but the Board concluded that the Company's proposals were necessary in order to provide to the public that modern and efficient means of telephonic technique to which it was entitled. However, in a discussion of a number of departures by the Company from standard F.C.C. accounting practices, the Board pointed out that any short run tendency to increase costs of construction should not be reflected in the resulting rates to the subscribers. A debt ratio of 40% was approved by the Board as submitted by the Company. In doing so, the Board observed that it was concerned not with the question of what was or was not an appropriate debt ratio, but whether or not the Board should, for the purpose of determining fair and reasonable rates, include as an allowable item of expense the cost associated with the

financial proposals advanced by the Company. A continuation of the dividend of the equivalent of $2 per share which the Board had permitted in 1927 was again approved despite complaints that it was excessive.

After concluding that the Company's estimated revenues for rate-making purposes would be deficient by more than 25 million dollars, the Board went on to consider the rate structure proposed by the Company to meet this deficiency. As in 1927, the Board refused to consider any proposal that different localities should be charged different rates; rates were to be established on a company-wide basis. The proposed grouping of exchanges was the same as that approved in 1927, except that the numbers of the rate groups were reversed, and a tenth group added to take in local service areas with more than 250,000 telephones. The Board reiterated its approval of the grouping system as providing a system-wide rate structure primarily based upon the value of the service to the subscriber, citing specifically the recently decided B.C. Telephone rate increase decision, 7 C.T.R. 000. Objections to the inclusion of extension telephones in the count of total telephones for the purpose of grouping were dismissed, since extension telephones increased the value of the service received. However the Board refused to approve the introduction of a non-optional Metropolitan Area Service, designed to supersede optional suburban zone service, foreign exchange service and extended area service in the Toronto, Montreal, Quebec, Ottawa, Hamilton and Windsor metropolitan areas. In rejecting the proposal, the Board stated that it would not be appropriate to consider approving the proposed rate basis without some indication that a substantial majority of the suburban subscribers were agreeable to the introduction of the plan. The Board was also concerned that the service might amount to unjust discrimination in favour of city subscribers who could phone any suburb in the metropolitan area, while suburban subscribers would only be able to call adjoining suburbs on a toll-free basis.

Finally, rates proposed for toll and private line service were approved as submitted, but the Board refused to allow Bell to give monthly discounts for desk and wall sets as a temporary measure until the supply of hand sets was sufficient to meet all demands. Instead the Board adopted its position in the B.C. case, cited above, that discounts based on instrument differentials should not be permitted. The five-cent charge for calls from pay stations was maintained.

Editorial Note: The proposed Metropolitan Area Service was subsequently approved, following a referendum among suburban subscribers in the City of Montreal. See 7 C.T.R. 000.

Peter: There is no mention of the precise relationship between Bell and Northern Electric, except to say that it was "close".

Re B.C. Telephone Co., Interim Increase in Tolls, 68 C.R.T.C. 15, 41 J.O.R.R. 174 (Board of Transport Comm'rs for Canada, Sylvestre, MacPherson and Chase, CC., July 6, 1951)

Upon receiving evidence that the British Columbia Telephone Company had incurred increases in expenses for wages and taxes subsequent to its recent rate increase, 7 C.T.R. 000, the Board granted the Company an interim increase in long distance tolls of 12.42% as applied for, and of 10% in exchange service tolls, reduced from the 12.5% proposed increase. The Board also pointed out that those who had objected to holding the interim hearing in Ottawa rather than Vancouver would have an opportunity to make representations at the final hearings, which were to be held in Vancouver.

Re Bell Telephone Company, Traffic Agreements, 68 C.R.T.C. 23, 41 J.O.R.R. 247 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre and MacPherson, CC., September 25, 1951)

In this decision, the Board approved an application by Bell Telephone Co. to revise its connecting agreements with independent telephone companies by applying a system of weighting connecting company mileage according to the number of telephones of the connecting company. The old agreements had provided for the charging of Bell rates for all joint communications and the division of the joint revenue in two parts: (1) commissions, or two fixed amounts, one going to the system that originated the call, and the other going to the company performing the toll operation; and (2) a "pro-rate" of the remainder based on the proportion of the toll-line of each company to the total length of the line used. The effect of the introduction of a weighting system would be to increase the pro-rate share of joint revenue accruing to the connecting companies. In a previous judgement, the Board had refused Bell permission to introduce such a system, but in the present decision, permission was granted in recognition of the higher relative costs of the facilities of the independent companies due to a lower density of traffic. While the Board was not concerned with the financial position of the independent companies, it was in the public interest that Bell rates be maintained on joint long distance calls. It appeared that if the local companies were unable to obtain extra revenue through a weighting scheme they would be forced to impose additional or "other line" charges on joint calls which would be likely to create operating difficulties and tariff complications. It was also noted that Bell received similar treatment to the scheme proposed in its arrangements with the American Telephone system. Thus the weighting system was approved for both all outstanding connecting agreements and for the standard form of such agreements. After a discussion of the Board policy of approving standard forms in general and specific agreements made with these forms as well, the Board concluded that the practice be continued.

Re Bell Telephone Co., Interim Increase in Rates and Charges, 68 C.R.T.C. 127, 41 J.O.R.R. 289 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre and Chase, CC., November 13, 1951)

An application by the Bell Telephone Co. for an interim increase in rates was approved by the Board, due to unexpected increases in labour costs, pension costs and income taxes which had occurred since the recent Bell rate case, 7 C.T.R. 000. However the Board felt that these increased expenses should be met as far as possible from all sources of revenue, and refused to allow Bell to restrict the rate increases to services which produced only 58% of the total revenue. Finally, the regrouping of exchanges was not relevant to this application, as the Board had provided machinery for the periodic consideration of this issue in a recent circular, 7 C.T.R. 000.

Re Bell Telephone Company, Extended Area Service, 67 C.R.T.C. 289, 41 J.O.R.R. 184, 209, 282, 324 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre and MacPherson, CC., December 5, 1951)

In this series of supplemental judgements the Board, following its judgement on Extended Area Service for the Montreal area, approved implementation of Extended Area Service for Ottawa, Toronto, Quebec and Windsor. The percentage of subscribers in these areas who approved of the new service were 90.6, 81.7, 79.1, and 80.7 respectively. It appeared, however, that the arrangement might be detrimental to subscribers in those urban areas whose exchanges had not yet become sufficiently large to be included in the highest rate group because the inclusion of the suburban telephones would increase the size of the urban exchange and hasten its transfer to a higher monthly rate group. Therefore the Board informed Bell Telephone that in future applications for changes in base rate area grouping the count of telephones should not include those that were in suburbs that received Extended Area Service.

Re B.C. Telephone Co., Increase in Tolls, 68 C.R.T.C. 261, 41 J.O.R.R. 351 (Board of Transport Comm'rs for Canada, Sylvestre and MacPherson, CC., January 4, 1952)

In this decision, the Board approved an application by the B.C. Telephone Co. for an increase in rates in order to meet certain increases in wages and taxes which had taken place since the recent B.C. Telephone Co. rate case, 7 C.T.R. 000. In doing so, the Board confirmed and extended a previously granted interim increase, 7 C.T.R. 000, adding to it a further increase to meet additional wage costs which had been unspecified at the time of the interim decision. An objection that the increased taxes should be paid by the shareholders in the form of a lessened return on investment rather than by the subscribers was dismissed by the Board. Income taxes were a legitimate cost of doing business which must be provided for in the determination of just and reasonable rates. Finally, the Company was correct in not including the regrouping of exchanges in this application as the Board had provided machinery for periodic consideration of this question in a recently issued circular, 7 C.T.R. 000.

Re Bell Telephone Co., Changes in Exchange Rate Groups, 71 C.R.T.C. 280, 41 J.O.R.R. 393 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre and MacPherson, CC., February 13, 1952)

In its 1950 judgement on Bell Telephone rates, 5 C.T.R. 000, the Board authorized rate groups to be applied to different exchanges, rates increasing according to the number of telephones within each exchange. Rates were increased with the size of the exchange on the rationale that a subscriber to a large exchange received a more valuable service than one in a small exchange. By circular 267 the Board required Bell Telephone to submit information twice-yearly on exchanges that had increased or decreased to 5% above or below the group limit to which they had been assigned. In this decision the Board considered fifty-two reports of exchanges all exceeding by 5% or more the upper limits of their groups. The Board observed that there were no conditions indicating why regrouping of these exchanges should be deferred. Objections were made to the regrouping but they were either general objections "for no stated reason", or about quality of service or about the effect of the increase on the cost of living, all matters which the Board stated were not relevant to the basis on which group rates were established. The Board specifically noted it was not charged with the responsibility of dealing with complaints about the adequacy of service. The exchanges reported were ordered to different exchange groups by the Board.

Re Bell Telephone Co., Rate Increase, 68 C.R.T.C. 359, 42 J.O.R.R. 1 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre and MacPherson, CC., February 19, 1952)

This was the final determination of a rate increase application by Bell Telephone made on August 31, 1951. The Board had granted an interim rate increase of 5% on all services, including toll (long distance) charges, pending further investigation. Bell had not applied for a toll increase because it feared a reduction in long distance traffic but rather sought that the increase apply to certain contracts and other services. The Board in the interim decision determined that the increase should be imposed to the fullest extent possible on all sources of revenue, asserting that toll charges, at least as per the quantum of the interim increase, could bear their share of the burden. Bell filed a new and higher schedule of rates, prior to the final hearing because the corporation tax had been increased by 2%, the interim Board order did not provide the full rates sought by Bell for 1952 and the Board Circular number 267 would not permit immediate regrouping of certain exchanges. In the course of the final hearing arguments had been advanced asserted that the Board should take into account the forecasts that wage and material costs might continue to increase, that the pension fund was to be reevaluated and that corporation tax decreases could be possible in the future. The Board rejected this argument stating that "future possibilities" would not be considered by the Board although if changes did occur rates would be reconsidered in light of the then existing circumstances.

Concerning the capitalization of construction cost items (pensions, employee benefits, general services, licences, insurance, accidents and damages, benefits and medical department expenses) the Board permitted a ratio of construction pay-roll to total pay-roll of 18.8% as the amount to be capitalized, involving allowance for depreciation thereon and for a return on additional capital. The Board also authorized an adjustment to estimated depreciation expense based on actual depreciation.

The Board observed that interest and dividend payments amounted to 13% of Bell's total revenue requirements. The Board found that Bell's estimated debt ratio of 40% for 1952 was reasonable, enabling the utility to have a strong "financial structure", and therefore considered Bell's financial requirements on that basis.

In 1950 the Board had stated that a surplus of 43 cents per share was reasonable, 5 C.T.R. 000. Bell had applied at

this final hearing for a surplus of 56 cents. The Board would not permit Bell the increased surplus, stating it could see no urgent reasons for increasing the surplus per share beyond 43 cents. The Board also asserted that the increased surplus would be inconsistent with the Board's policy of setting a level of rates to provide in the long run for a surplus which was reasonable in light of amounts allowed in the past.

The Board concluded that the previously authorized increases in message toll rates (long distance) and in public and semi-public coin box charges would remain. All other charges proposed by Bell were to be modified in light of the findings at these hearings. Tariff schedules were attached to the decision.

Re B.C. Telephone Co., Extended Area Service, 69 C.R.T.C. 65, 225, 42, J.O.R.R. 69, 71 (Board of Transport Comm'rs for Canada, Kearney, Sylvestre and MacPherson, CC., May 15, 1952 and September 13, 1952)

In the following two judgements, the British Columbia Telephone Company had conducted plebiscites in certain suburban exchanges of Vancouver and Victoria to determine if the subscribers approved of a proposed scheme for extended area service which would give them an enlarged free calling area for higher rates. A substantial majority of those who voted were in favour of the proposal but a large proportion of the subscribers did not vote. However, since failure to vote could not be taken as an indication of disapproval the Board was satisfied that a substantial majority of the subscribers approved the scheme and it was therefore approved.

Editorial Note: The plebiscites conducted by B.C. Tel were in accordance with the policy laid down in the recent Bell rate case, 7 C.T.R. 000, that before the Board would approve the introduction of what was then called Metropolitan Area Service, it would have to be satisfied that a substantial majority of the subscribers approved of the scheme.

Re B.C. Telephone Co., Interim Increase in Tolls, 69 C.R.T.C. 270, 42 J.O.R.R. 251 (Board of Transport Comm'rs for Canada, Kearney, Sylvestre and MacPherson, CC., December 4, 1952)

British Columbia Telephone asked for an immediate interim increase in tolls because of the urgency of its rapidly deteriorating financial position. The Board granted 65.5% of the proposed increase, which it considered adequate to meet the most urgent needs of the Company, such as increased wage costs, taxes and fixed charges, but the balance which was to provide for the dividend on a proposed stock issue was reserved for consideration at the final hearing.

B.C. Telephone Co. v. Province of British Columbia et al., 70 C.R.T.C. 56, 93, 43 J.O.R.R. 32, 58 (Board of Transport Comm'rs for Canada, Kearney, MacPherson and Matthews, CC., March 24, 1953)

An increase in B.C. Telephone Co. rates that had been authorized as an interim increase in the Board's recent judgement (8 C.T.R. 000) was approved. The application was opposed by the Province of British Columbia and various affected areas within the province who claimed that the amount of surplus requested by the Company was excessive or that, if it was not excessive, part of it could be realized by means other than through a rate increase. The Board reduced the proposed revenues by $110,000, accepting the argument that part of the surplus required could be provided by capitalization of interest during construction, but held that the original figure of surplus was permissible to ensure the successful raising of money and to maintain the confidence of the investing public. Other estimates as to the requirements of the applicant for dividends and for its supply, service and directory contracts were approved after a voluntary reduction in the rate of commission paid by the Company to an affiliate pursuant to a directory advertising contract. In all, 88% of the Company's revenue requests were granted. The Board issued an oral summary of its reasons for decision before handing down the full judgement.

Re Bell Telephone Co., Extended Area Service, 70 C.R.T.C. 168, 40 J.O.R.R. 159 (The Board of Transport Comm'rs for Canada, Sylvestre and MacPherson, CC., August 14, 1953)

In this supplemental judgment the Board, citing the terms of its decisions in the Montreal case (CTR 000) and the Ottawa, Toronto, Quebec and Windsor cases (CTR 000), approved extended area service for five exchanges surrounding Hamilton. Because the service was non-optional and would result in the payment of the higher Hamilton rates by subscribers in the surrounding exchanges, a plebiscite was required. It was shown that a majority favoured the plan, and approval was therefore given, subject to exchange regrouping.

Re Bell Telephone Co., Extended Area Service, 71 C.R.T.C. 318 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre, MacPherson, and Chase, CC., March 12, 1954)

The Board approved the amendment of two exchange areas so as to provide, in each case, free calling privileges with Montreal and contiguous regions. In both instances, a survey of the affected subscribers was conducted and returned very positive results.

Union Telephone Co. Ltd. v. Bell Telephone Co. of Canada, 71 C.R.T.C. 81 (The Board of Transport Comm'rs for Canada, Wardrope, C., June 7, 1954)

The applicant, a company supplying local service through a number of circuits, each with about 16 subscribers, which circuits are serviced by interconnection with the Bell system, applied for compensation from Bell for the use of its physical facilities and its collection services in the rendering of long-distance service. The Board pointed out that, in that long-distance charges are calculated from toll station to toll station, the applicant's subscribers were in the same position as Bell's own local exchange subscribers; no extra charge is made for the transmission along local circuits. In addition, the Board held that, inasmuch as the applicant pays for interconnection at a lower rate than Bell's own subscribers, there should be no compensation for the collections made. To allow such compensation would probably force Bell to raise its rates for interconnection, thereby in effect penalizing those subscribers of Union who do not use the long-distance service.

Bell Telephone Co. v. Town of Riverside et al., 71 C.R.T.C. 286 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre and Chase, CC., July 7, 1954)

Bell Telephone had submitted reports as required by circular 267 that demonstrated that certain exchanges should be assigned to a higher rate group. Objections to the proposed reassignment were raised by some of the municipalities affected based on three considerations: (1) the existence of high unemployment in an area; (2) high mileage charges paid by the subscribers in a certain area; (3) the assertion that growth of an exchange provides higher revenues and rates should therefore decrease as an exchange gets larger.

The Board held: (1) that high unemployment, while deplorable, is not a factor to deny transfer of an exchange to a higher group; (2) that mileage charges are applied for service provided beyond the limits of the exchange and have no relation to the factor of rate grouping; (3) that the division of the rate structure into rate groups is intended to recognize that greater value of interconnection with a larger number of telephones. In summary, none of the objections raised were relevant to the issue of unjust discrimination which was the only factor to be considered by the Board in a rate group change. In fact, unjust discrimination would result in this case if the application were not granted.

Re Bell Telephone Co., Construction of Lines in Maskinongé, 44 J.O.R.R. 301 (The Board of Transport Comm'rs for Canada, Sylvestre and Chase, CC., November 1, 1954)

The municipality had objected to the construction of new poles on its streets for aesthetic reasons and because they would hinder snow removal. The Board granted Bell's application to use the streets in the manner requested, particularly in view of the fact that telephone service is an essential one, but suggested that the company make a special effort to minimize interference with adjacent property.

United Sterl-a-fone Corp. Ltd. v. Bell Telephone Co., 72 C.R.T.C. 204 (Ontario Supreme Court, Smiley, J., November 10, 1954)

The plaintiff company sought a declaration that its sterilizing instrument for telephones did not contravene the Board regulation prohibiting the use of devices in conjunction with company equipment without approval. The plaintiff's argument that the regulation should not be construed so as to forbid the use of devices in the nature of public health services was rejected and evidence on the instrument's effectiveness was not considered. Moreover, the court held that the application of the regulation did not require proof of actual interference with telephone service; it was enough if the device was "associated with" the telephone equipment.

The defendant's counterclaim for exemplary damages was rejected, because no malice or wilful intention to violate an agreement was shown. Since the plaintiff company had indicated that the particular device in issue would no longer be manufactured, the defendant's counterclaim for an injunction was dismissed.

Re Bell Telephone Co., Extended Area Service, 44 J.O.R.R. 1, 72 C.R.T.C. 111 (The Board of Transport Comm'rs for Canada, Wardrope, Sylvestre, Chase and Matthews, CC., January 31, 1955)

The applicant company submitted a plan by which eight existing suburban exchange areas near Toronto would be reduced to four, thereby extending the free calling area. These new exchanges would also have free calling with Toronto and with each adjacent exchange. Also part of the plan was a proposal to provide extended area service to certain more distant exchanges.

The Board approved the plan on being satisfied that a majority of affected subscribers were in favour of it. In view of the great advantages to subscribers, the Board held that the substantial rate increases for some of the outlying exchanges and moderate increases for the Toronto exchange area were not unreasonable or unjustly discriminatory. The rate increases were required to meet revenue losses and costs of implementing the plan, and the Board noted that extended area service rates traditionally depend on distances covered. The restrictions on calling non-adjacent exchanges were clearly justified by evidence of a low number of calls and high expense.

Re Bell Telephone Co., Changes in Exchange Rate Groups, 46 J.O.R.R. 241, 74 C.R.T.C. 53 (The Board of Transport Comm'rs for Canada, Sylvestre and Knowles, CC., August 9, 1956)

The London and Trois Rivieres exchanges had objected to an order allowing the Bell Telephone Company to transfer certain areas into higher rate groups. To the first objection, that extension telephones and telephones beyond municipal boundaries should not be included in the count, the Board responded that both services increased the value of service generally and were properly included. Moreover, whether providing extension services was more or less costly to the Company was irrelevant to the value of the service to the subscriber. To the second objection, that progressive increases in the sizes of groups resulted in unfairness, the Board held the method was essential in order to minimize the number of regroupings and pointed out that the 5% tolerance limit avoid constant regrouping as economic conditions fluctuated. In the result, the objections were dismissed, on the general ground that no unjust discrimination had arisen in the original order.

Bell Telephone Co. v. Chicoutimi, 75 C.R.T.C. 12, 47 J.O.R.R. 87 (The Board of Transport Comm'rs for Canada, Sylvestre, C., April 2, 1957)

In an application by the Bell Telephone Co. for leave to erect and maintain facilities in the city streets, the city sought to have the Board's approval made subject to the condition that costs of future removal of the facilities necessitated by street improvements would be borne by the company. The Board rejected this request, holding that it had the power to order an appropriate apportionment of expenses when the situation arose and that to make the order in advance would be an unjustified departure from previous practice.

The Board also rejected a company request to have the installation conditions of s.3 of its Act of Incorporation applied instead of the provisions of the Railway Act, citing an earlier decision as authority.

Re Revision of Telegraph Rate Structure, 76 C.R.T.C. 105, 47 J.O.R.R. 253 (The Board of Transport Comm'rs for Canada, Shephard, Sylvestre and MacPherson, CC., September 3, 1957)

The Board approved an application by the CNR and the CPR to charge telegraph tolls on the basis of direct airline mileage in accordance with a "grid" scheme within Canada. The evidence showed that this scheme would reduce existing anomalies in the rate structure and would provide a 13% increase in revenues which was justified by rising wages. Initial objections from the Maritimes Transportation Commission were settled through negotiation and the application was approved after full publicity.

Re Bell Telephone Co., Extended Area Service, 76 C.R.T.C. 128, 47 J.O.R.R. 289 (The Boa-d of Transport Comm'rs for Canada, Shephard, Wardrope and MacPherson, CC., October 15, 1957)

The applicant company sought approval of its plan to provide the subscribers of a new exchange with free calling privileges to Montreal. Over 90% of the subscribers of the area that was to constitute the new exchange voted in favour of the plan, expressing a willingness to pay Montreal rates, and the Board gave its approval to the new tariff.

Re Bell Telephone Co., Rates Increase, 76 C.R.T.C. 267, 47 J.O.R.R. 439 (The Board of Transport Comm'rs for Canada, Shephard, Sylvestre and Chase, CC., January 10, 1958)

The applicant company applied for a rate increase, using as the basis of its submission an estimated $24,200,000 revenue deficiency for the year 1958. There was formal opposition from a number of municipalities and labour groups and the Board also considered a number of written submissions from persons not represented at the hearing.

From the various arguments and counter-arguments, a number of issues emerged as significant. The Board agreed with the company that a debt ratio of 40% was proper in the circumstances. Despite vigorous opposition, the company was allowed to charge deferred taxes against income for rate-making purposes, although the Board noted that this practice must always depend on particular circumstances. Allegations that Bell's relationship with Northern Electric had resulted in inflated prices were not shown by the evidence and, in fact, the opposite appeared to be the case. The company's pension plan was ruled a proper expense and the general rate structure was approved. The Board did reject the company's argument for increased earnings per share, ruling that the current level was satisfactory and the expense of increased wages was rejected as relating only to the future. In the result, the Board authorized a rate increase based on an estimated deficiency of $10,318,000.

Editorial Note: An appeal to the Governor-in-Council by the municipalities opposing the Bell Telephone Co. toll increase was allowed. The Board was directed that as a principle of rate-making policy, credits to tax equalization reserves were not to be regarded as necessary expenses or requirements in determining rates and charges. (Order in Council P.C. 1958-602, April 29, 1958)

Re Order No.93265, 47 J.O.R.R. 492 (Canada, Governor in Council, Order in Council, P.C. 1958-305, January 24, 1958)

In this brief order, a previous order of the Board of Transport Commissioners was varied to provide time for the determination of an appeal made by certain Ontario municipalities to the Governor-in-Council.

Re Order No.93265, 48 J.O.R.R. 4 (Canada, Governor in Council, Order in Council, P.C. 1958-305, February 18, 1958)

In this brief order, a previous order of the Board of Transport Commissioners for Canada was varied so as to provide further time for the determination of an appeal by the governments of British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, P.E.I. and Newfoundland to the Governor-in-Council.

Re Costs of Public Utilities in Railway-Highway Grade Separations, 76 C.R.T.C. 130 (The Board of Transport Comm'rs for Canada, Shephard, Sylvestre and Chase, CC., March 19, 1958)

This consideration of the proper allocation of the costs of moving facilities of public utilities because of separation of grades at railway-highway crossings was undertaken by the Board of Transport Commissioners in 1955 at the request of the Minister of Transport. The established practice of the Board was based on the following principle: if the separation was mainly for the greater convenience of the railway or the highway authority the applicant was required to pay the expenses of the public utility; if the main reason for the project was the protection, safety and convenience of the public, the public utility companies were required to pay their own relocation expenses. Because the utilities did not contribute to hazards at crossings, nor did they benefit from any change, and because most projects were now for the increased free-flow of traffic, rather than for public safety, the Board felt that the utilities were entitled to greater relief. Accordingly, the Board would hereafter allow the utilities to recoup from the Railway Grade Crossing Fund the same percentage of their costs as the Board ordered to be contributed from the Fund toward other costs of the project. However, this principle would not apply in cases where the maximum limit upon contributions from the Fund by s.265 of the Railway Act came into plan, as the result would be to place too great a burden upon the municipalities or the railways. To rectify this, a change in the Railway Act would be recommended.

Re Order No.93265, 48 J.O.R.R. 95 (Canada, Governor in Council, Order in Council, P.C. 1958-601, April 29, 1958)

In this order of the Governor-in-Council, Order No.93401 of the Board of Transport Commissioners authorizing revision of the tariffs of the Bell Telephone Company of Canada for exchange and long distance services and equipment was rescinded, and the Board was directed to disregard credits to tax equalization reserves as necessary expenses or requirements in ~~discrim~~ determining rates and charges.

Re Bell Telephone Co., Extended Area Service, Montreal Area, 77 C.R.T.C. 201, 48 J.O.R.R. 255 (The Board of Transport Comm'rs for Canada, Shephard, Wardrope, MacPherson, Chase and Knowles, CC., July 11, 1958)

The Bell Telephone Co. asked the Board for approval of a projected extension of the local service areas of certain suburban Montreal exchanges and to abolish long distance charges between these places and Montreal. To balance the loss in revenue which would result, Bell planned a programme of increased monthly rates in these areas, with additional surcharges in the most far-flung regions. A majority of affected subscribers approved the plan, and a municipality situated beyond its limits petitioned to be included in the extended area service. It was decided that since the proposal satisfied all reasonable demands for a broadened range of service, was generally approved by customers, and had no elements of unjust discrimination about it, approval should be given. It was also decided that the fixing of exchange areas was a matter for managerial discretion, and only came under review by the Board in cases of alleged unjust discrimination.

Re B.C. Telephone Co. Increase in Rates, 77 C.R.T.C. 303, 48 J.O.R.R. 225 (Board of Transport Comm'rs for Canada, Shephard and Chase, CC., July 18, 1958)

In this decision, the Board approved a rate increase for the B.C. Telephone Co. sufficient to meet approximately one-third of the revenue requests of the Company. The Company had estimated a deficiency of $3,996,000 based on evidence that rising costs, including a new wage structure about to come into effect, had left insufficient revenues either to provide for the issue of dividends, or to attract the capital necessary for expansion. Upon examination of the evidence, the Board determined that the deficiency should be adjusted downward to $1,300,000, and rates increased accordingly.

In coming to this determination, the Board declined to use the "reconstructed year" approach proposed by the Company and based its estimate upon past experience rather than future projections. The Board refused to interfere with management's decisions with respect to the Company's directory advertising contract, pointing out that this matter had been the subject of investigation in the two previous rate cases of 1950 (7 C.T.R. 000) and 1953 (8 C.T.R. 000). Share issue expense was for this particular case to be considered as a charge against earnings not against surplus. The Board reiterated its 1953 conclusion that interest should be capitalized during construction, rejecting the Company's contention that this would be improper for rate-making purposes where the level of rate was based on a fiscal requirements formula. A sum of $1,500,000 was allowed as a reasonable permissive annual surplus; this figure was substantially less than that requested by the Company, and somewhat more than that proposed by the respondents.

The Board permitted a revenue increase of approximately 5% in toll service and 2% in exchange service, reducing substantially the proportion of the increase to be allocated to exchange services. Other more specific tariff proposals, including the introduction of a charge for collect calls, were approved by the Board.

Re B.C. Telephone Co., Revisions of Message-Toll and Exchange Service Tariff, 48 J.O.R.R. 241 (The Board of Transport Comm'rs for Canada, Order No.94987, July 18, 1958)

In this judgment the Board considered objections lodged by a number of municipalities against changes in rate groups after the company had filed reports on the number of telephones in service in various areas. The objections included arguments that the company did not need an increase in rates, that maintaining present rates would help the recession, the pay telephones and extension telephones should not be included in the count and that regrouping would increase the cost of living. The Board held that its sole function in regard to rate grouping was to prevent unjust discrimination and since none of the objections were relevant to that issue, an order was issued directing the company to make the required transfers.

LeChance v. Bell Telephone Company, 77 C.R.T.C. 294, 48 J.O.R.R. 29 (The Board of Transport Comm'rs for Canada, Sylvestre, MacPherson and Chase, CC., August 26, 1958)

The complainant sought an order requiring the Bell Telephone Co. to provide him with service, arguing that there was unjust discrimination because the company served his neighbour. Bell's objection that the provision of such service would require it to invade the territory of a small rural telephone company was dismissed and a second objection that it was not giving general service in the area was not dealt with. However, the evidence showed that the neighbour's line came from a different road than the one on which the complainant's property fronted and that property did not front upon a road upon which Bell had constructed a main or branch telephone line. Therefore, although Bell discriminated against the complainant in serving his neighbour while not serving him, the Board had no power to remove discrimination of that nature and dismissed the petition.

Re Bell Telephone Co., Rate Increase, 78 C.R.T.C. 1, 48 J.O.R.R. 391 (The Board of Transport Comm'rs for Canada, Shephard, MacPherson and Chase, CC., October 10, 1958)

The essence of the application at hand was a request for approval of higher rates due to higher wages and a change in the company's method of depreciation calculation for tax purposes. The Board begins by considering interlocutory-type motions and setting down rules of procedure for intervenors; in that the principle at issue was significant, intervenors were allowed to participate.

The main issue was whether it was improvident, as the intervenors alleged, for the company to set up a depreciation system which did not take advantage of deferrals allowed by law. The Board concluded that, while not precluded from examining the inner management decisions of the company, in this case such a decision would not have been made without good reason, so that the experts and advisors of the company should be heeded.

The decision concludes by reviewing the net income per share, in past times and as under the new increase, and by outlining the relevant amendments to the rate structure, the details of which are included via an appendix.

Hence the company's application is granted.

Re Order No.95930, 48 J.O.R.R. 463 (Canada, Governor in Council, Order In Council, P.C. 1958-1625, November 27, 1958)

Petitions to the Governor General in Council to rescind an order of the Board of Transport Commissioners relating to the Bell Telephone Co. were dismissed after hearings.

Re B.C. Telephone Co. Supplemental Rate Increase, 48 J.O.R.R. 555, 79 C.R.T.C. (Board of Transport Comm'rs for Canada, Shephard and MacPherson, CC., December 24, 1958)

In this judgement, the Board approved a rate increase for the B.C. Telephone Co. to supplement the recent increase granted (10 C.T.R. 000). The application had arisen because a policy decision of the Company to claim as capital cost allowance for income tax purposes the amount charged in the Company's books for depreciation would reduce the revenues to be derived from the present rate structure below that anticipated in the Board's earlier decision. After reviewing recent changes in the Income Tax Act and the Order-in-Council which led to the Company's policy decision, the Board stated that it would not interfere with that decision, rejecting the respondent's contention that the subscribers were entitled to the benefit of the immediate tax reductions possible through the claiming of maximum capital cost allowance. A financial witness called by the Company had testified that institutional investors were of the firm opinion that the Company had no alternative but to claim capital cost allowance for income tax purposes equal to the charges for depreciation on the straight line basis and to pay taxes accordingly. The Board stated that due weight must be given to the views of institutional investors, as the Company's ability to finance its construction programme was important not only to the Company but to the subscribers.

The Board also rejected the respondent's contention that the amount in the income taxes deferred account should be considered as surplus, adding that it was not possible at this time to adjudicate on what the final disposition of the balance should be.

Rate increases sufficient to obtain increased revenues of $5,225,000 were authorized by the Board. This represented an overall increase of 12% instead of the 13% sought. The revised tariffs would yield a revenue increase of 16% in local service, and 5% in long distance service. In adjusting the proposed tariff only slightly, the Board rejected respondent's suggestion that long distance service should be called upon to bear the greater part of the burden of the rate increase.

Re Increase in Telegraph Tolls, 79 C.R.T.C. 138, 49 J.O.R.R. 280 (The Board of Transport Comm'rs for Canada, Kerr, Griffin and Knowles, CC., August 12, 1959)

An application made jointly by the CPR and the CNR to increase the telegraph rates in order to: offset the recent wage level increases, restore the rates to a reasonable level in comparison with those charged in the U.S. and with the cost of other services, and to provide a higher rate of return on investment, was approved. The Board held that the commercial communications activities of the Companies should not be required to be subsidized by their other activities, that they should carry the full wages and expenses necessary to provide the service and that the activities should return a reasonable measure of profit. The application was not opposed at the hearing, reasons were given.

The public hearing was held on April 21, 1959. The Order (file no.10041.88) was issued on August 12, 1959.

C.P.R. and C.N.R. v. Commercial Telegrapher's Union et al., 81 C.R.T.C. 355, 51 J.O.R.R. 28 (The Board of Transport Comm'rs for Canada, Griffin, Woodard and Irwin, CC., January 16, 1961)

The Board considered an application for approval of an arrangement whereby a joint telegraph office would be established in Fort William, joining the C.P.R. and the C.N.R. offices, at considerable savings to both. The respondent labour organizations argued that the combination was not fair and reasonable, and would result in a deteriorated service and change in employment conditions. The Board held that fairness and reasonability under the CN-CP Act only refers to equity in the arrangement between the two companies, and that there was no evidence that service would deteriorate. It was also pointed out that the Act provides for compensation of employees for changed status. Therefore, the arrangement was approved.

Canadian National Railway Co. v. North-West Telephone Co., C.R.T.C. 260 (Supreme Court of Canada, Kerwin, C.J.C., Taschereau, Cartwright, Fauteaux, Abbott, Martland and Ritchie, JJ., January 24, 1961)

An appeal by the Canadian National Railway Company from an order of the Exchequer Court dismissing a motion for an interlocutory injunction was dismissed by the Supreme Court of Canada. The respondent had served in the court below a notice that a preliminary objection would be taken that the Exchequer Court had no jurisdiction to entertain the action. The preliminary objection was sustained and the appellants appealed, claiming that under s.17 of the Exchequer Court Act the Exchequer Court had "exclusive original jurisdiction in all cases which ... the claim arises out of a contract entered into by or on behalf of the Crown". The Court considered s.18 of the old Exchequer Court Act before it was replaced by s.17 in 1949, and came to the conclusion that there was no intention to confer exclusive jurisdiction upon claims by the Crown arising out of contract - thereby excluding the jurisdiction of Provincial Courts, or to restrict the privilege of the Crown to choose its own Court. Therefore, the appeal was dismissed.

Re C.P.R. and C.N.R., Establishment of Joint Telegraph Office in Fort William, 51 J.O.R.R. 191 (The Board of Transport Comm'rs for Canada, Order No.104137, March 30, 1961)

This is an order made pursuant to a hearing of Jan. 16, 1961, granting permission to C.N.R. ~~and~~ C.P.R. to establish a joint telegraph office in Fort William, Ont.

This decision was subsequently appealed to the Governor General in Council (dated April 28, 1961).

Commercial Telegraphers' Union v. C.P.R. and C.N.R., 81 C.R.T.C. 359 (Canada, Governor in Council, Order in Council P.C. 1961-638, April 28, 1961)

In an appeal to the Governor General in Council of a decision by the Board to allow C.N.R. and C.P.R. to establish a joint telegraph office at Fort William, Ont., it was held that the Board will only be overturned where it has proceeded upon a wrong principle, or where it has otherwise erred. Neither was the case here.

Re Bell Telephone Co., Revisions in Message-Toll Rates, 82 C.R.T.C. 293, 51 J.O.R.R. 441 (The Board of Transport Comm'rs for Canada, Kerr, Griffin, Woodard, Irwin and Knowles, CC., September 14, 1961)

The applicant company sought a revision of its long-distance rates, the effect of which would be to encourage the use of automated station-to-station facilities. The proposal involved an increase in initial charges for short-haul long-distance calls, decreases in long-haul station-to-station calls and increases in long-haul person-to-person calls. The company argued that the resulting shift of traffic from person-to-person to station-to-station service would lead to no change in overall revenue but would pass on to subscribers the benefits of technological innovation. The Board approved the increased differential between person-to-person and station-to-station calls, but rejected the increased initial charges, noting that if the predicted shift in calls did not occur, the company would receive an unjustified increase in revenue.

The objections of certain connecting companies that their revenues would suffer were dismissed. The Board held that these companies had voluntarily agreed to accept the Bell rates as adopted from time to time.

Knowles C., dissenting, would have referred the entire proposal back to the company. He was of the opinion that the increases in person-to-person rates were unreasonable, being of a penal nature, designed to force a shift to station-to-station calls.

Re Bell Telephone Co., Changes in Exchange Rate Groups, 51 J.O.R.R. 449 (The Board of Transport Comm'rs for Canada, Kerr, Griffin, Dumontier, Knowles, Woodard and Irwin, CC., September 15, 1961)

This decision by the Board concerns a proposal by Bell Telephone Co. of Canada to regroup several exchange areas. Eighteen submissions were received by the Board, fourteen of which were opposed to the proposal on various grounds: that extension telephones which do not extend the range of calling available to subscribers are used in the tabulation of the number of phones; that because of local unemployment an increase in rates would render prohibitive the rental of a telephone; and that the increase in number of telephones furnishes substantial additional revenue which fully offsets the Company's expenditures in providing the extended service. Furthermore, the Conseil Central des Syndicats Catholiques de Quebec, Inc. maintained that any claim that each subscriber can call more people, making the service more valuable, is ridiculous. Rather than allowing the Company to impose its will by raising rates to increase profits, the C.C.S.C. called for a nationalization of the Bell Company. In their decision, the Board referred to a previous judgment of February 13, 1952 (41 J.O.R.R. 393; 71 C.R.T.C. 280) which states the considerations involved in the determination of rate groupings. The need to distribute the rate burden according to relative value of service was reiterated by Bell, but the Board based its findings solely on the question of unjust discrimination. Upon the premise that the objections raised were not dealing with unjust discrimination, the Board was obliged to rule them irrelevant to the matter at issue. Hence, the proposed rate grouping changes were approved.

Re B.C. Telephone Co., Extended Area Service, Vancouver Area, 84 C.R.T.C. 148, 52 J.O.R.R. 455 (Board of Transport Comm'rs for Canada, Kerr, Woodard, Irwin and Kirk, CC., August 7, 1962)

In this decision, the Board approved a proposed extension of toll-free calling privileges available to customers of the B.C. Telephone Co. in certain of its exchanges in the Greater Vancouver area. The Board noted that the provision of extended-area service was essentially a matter lying within the discretionary powers of the Company, but added that its approval was necessary because the linking of exchanges necessarily involved the matter of the charges to be made for the service provided. In this case, the charge would consist of an increased flat rate and a specified surcharge over this flat rate. After consideration of all the features involved in the Company's plan, and in view of its acceptance in a plebiscite conducted by the Company by a majority of the customers affected, the Board stated that it found nothing unreasonable or unjustly discriminatory in the proposed charges.

Re Bell Telephone Co., Extended Area Service, 84 C.R.T.C. 300 (The Board of Transport Comm'rs for Canada, Kerr, Dumontier, Woodard, Irwin and Kirk, CC., March 19, 1963)

The applicant company sought approval for an extension of toll-free calling privileges to five exchanges in the Montreal area and an increase in rates to offset the loss of message-toll revenue. The increase would also recognize the increased value of the service to the affected subscribers and the increased cost to the company. In approving the proposal, the Board noted that the plan had been endorsed by a substantial majority of customers in the five areas.

Bell Telephone Co. v. Municipality of Metropolitan Toronto, 85 C.R.T.C. 1 (The Board of Transport Comm'rs for Canada, Griffin, Dumontier and Irwin, CC., March 25, 1963)

The action arose when the Bell Telephone Co. and the Municipality of Metropolitan Toronto failed to agree on the amount and allocation of costs in the relocation of telephone facilities necessitated by road construction. The Board rejected the municipality's argument that the matter should be determined in accordance with the Public Service Works on Highways Act to provide uniformity with other utilities. The Board held that it had discretionary power under the Railway Act to make an apportionment. Without ruling upon the company's submission that its facilities amounted to an interest in land, the Board ordered the municipality to pay to Bell the sacrificed life value of the plant with the balance of the cost of relocation to be paid by the company.

Re Bell Telephone Co., Relocation of Facilities in Toronto, 53 J.O.R.R. 154 (The Board of Transport Comm'rs for Canada, Order No.110804, March 25, 1963)

In this brief order, the Board apportioned the cost of relocating certain telephone facilities between the Municipality of Metropolitan Toronto and the Bell Telephone Co.

McKenna v. Bell Telephone Company, 85 C.R.T.C. 157 (The Board of Transport Comm'rs for Canada, Kerr, Griffin and Kirk, CC., May 1, 1963)

The applicant sought an order requiring the Bell Telephone Co. to provide him with service. His residence was on a road which formed the boundary between an area served by Bell (the North side of the road) and an area served by the Metcalfe Rural Telephone Co. (the South side, where the applicant's house was situated). The Board held that the sole question was whether the applicant could bring himself within the requirements of s.2 of the Bell Telephone Act which required the company to furnish a telephone to anyone within a territory in which general service was given, provided certain conditions were met. Although Bell had traffic agreement with the Metcalfe Co. not to compete, this could not supersede the statute. Thus, since the applicant came within its provisions, Bell was ordered to serve him.

Griffin, C., dissenting, would have respected the traffic agreement boundaries and held that the applicant was not a person living within a territory in which general service was furnished by Bell.

Re Bell Telephone Co., Extended Area Service, Toronto, 85 C.R.T.C. 171 (The Board of Transport Comm'rs for Canada, Kerr, Griffin and Kirk, CC., July 22, 1963)

The Bell Telephone Co. sought approval of a scheme for enlargement of the extended area service available for exchanges around Toronto as well as approval of the accompanying rate structure. The proposed scheme would greatly expand the toll-free calling areas for three groups of exchanges and the company proposed an increase in rates to reflect the greater value of the service as well as to offset the loss of long-distance revenue and defray the additional construction expenses. There was evidence that a substantial majority of the subscribers affected by the new rates had approved the proposed scheme, which was approved by the Board.

Industrial ~~Line~~ Wire and Cable Co. v. Bell Telephone Co., 85 C.R.T.C. 190 (The Board of Transport Comm'rs for Canada, Kerr, Griffin and Kirk, CC., July 31, 1963)

The applicant, Industrial Wire and Cable Co. had initiated a proceeding in which it sought a declaration that the Bell Telephone Co. should not be permitted to hold shares in Northern Electric Co. or, alternatively, that the financial affairs of Northern should be subject to the Board's scrutiny. In this motion, Industrial sought leave to make certain amendments to its application, which the Board granted. Industrial also sought an adjournment sine die of the second part of its application on the grounds that it would become irrelevant if success were achieved in the first part. The requested adjournment was granted. Finally, the Board ordered Bell to supply certain particulars to its answer which had been requested by Industrial.

Metcalfe Telephones Ltd. v. Walter J. McKenna & Bell Telephone Company of Canada Limited, [1964] S.C.R. 202 (Supreme Court of Canada, Abbott, J., December 16, 1963)

The Metcalfe company appealed an order of the Board of Transport Commissioners by which Bell was required to provide the respondent subscriber with telephone service. The order was set aside on the grounds that the Board was without jurisdiction. The respondent lived outside Bell's service area and the Board was empowered to order service by a company only "within the...territory within which general service is given" by that company.

Industrial Wire and Cable Co. v. Bell Telephone Company, 85 C.R.T.C. 221 (The Board of Transport Comm'rs for Canada, Kerr, C., January 13, 1964)

The applicant company challenged the Bell Telephone Company's right to be a shareholder of Northern Electric Co. because Bell's special Act only allowed to own shares in a "company possessing, as proprietor, any line of telegraph or telephonic communication". There was evidence that Northern owned a pair of wires 19,000 feet in length connected to switchboards owned by Bell and used for one way communication from Northern's offices to Bell's headquarters in Montreal. The Board rejected the applicant's contention that the "line of telephonic communication" contemplated by Bell's special Act did not include a private line of the nature of the one relied on by the respondent and that Bell's ownership of 90% of the shares in Northern Electric was legal. It was also observed that dividends earned by Bell from its Northern investment were included in Bell's total revenue.

Re Bell Telephone Co., Construction of Lines in Drummondville, 54 J.O.R.R. 249 (The Board of Transport Comm'rs for Canada, Dumontier and Irwin, CC., March 17, 1964)

In this decision, the Board refused to allow the municipality of Drummondville to impose certain terms and conditions on the Bell Telephone Company's erection of telephone poles on streets in the city. They held that to make Bell responsible for all damage resulting from the work was unreasonable after the work had been carried out to the satisfaction of the City, and that any requirement that the work be to the satisfaction of the City Engineer is unnecessary given the requirements of section (3) of the Special Act. They also maintained that any condition that the City not be required to pay any amount of the cost of relocating the works as a consequence of street widening concerns a matter that should be dealt with in the future as special situations arise. In addition, the Board disclaimed any jurisdiction to declare the City not liable for any damages to the work caused involuntarily by itself.

Northern Telephone Co. and Town of Kenora v. Bell Telephone Co., 54 J.O.R.R. 437 (The Board of Transport Comm'rs for Canada, Griffin, Dumontier and Kirk, CC., June 3, 1964)

The application by Northern Telephone and the Town of Kenora for interconnection with the Bell Telephone System at Fort William was refused by the Board. Northern Telephone based the toll facilities of the Kenora Municipal Telephone system which interconnected with Bell for traffic to eastern Canada and with the Manitoba Telephone system for western Canada, but as a consequence of the interplay of interests between the telephone systems the interconnection agreements with both Bell and M.T.S. had been terminated. The application if granted would have allowed Northern Telephone to carry all long-haul traffic from Kenora to Fort William for interchange to both eastern and western Canada. This would have given substantially higher revenues to Northern Telephone and caused a loss of revenues to Bell who had, since 1952, handled long distance traffic from Kenora to eastern Canada. In refusing the application held: neither Kenora nor Northern Telephone has a proprietory interest in long-haul traffic originating in its area.

The fact that the interconnection between Bell and Atikokan is at Fort William had no bearing on the location of the function of the interconnection point between Bell and Kenora.

The fact that Northern Telephone is prepared to offer a greater participation in revenue to Kenora is not a ground for substituting it for the existing carrier.

The fact that Northern's unrevised revenue would enable it to reduce its rates to its own subscribers is of no consequence. Either Northern's rates were proper or they were not.

The proposed arrangement would route traffic to western Canada via the trans-Canada system to Winnipeg over a distance of 620 miles compared to 121 miles under previous arrangements.

Re C.N.R. and C.P.R., Telegraph Rate Increase, 55 J.O.R.R. 367 (The Board of Transport Comm'rs for Canada, Order No.118129, July 30, 1965)

The C.N.R. and C.P.R. were authorized to increase their rates by 10¢ per message on all domestic telegraph message rates, and by 20% on money transfer charges; no reasons given.

Re Bell Telephone Co., Replacement of "Employees' Stock Plan" by "Employees' Savings Plan", 56 J.O.R.R. 213 (The Board of Transport Comm'rs for Canada, Griffin, Dumontier and Irwin, CC., February 18, 1966)

The Board approved, with slight modification, the terms of a transition from the Employees' Stock Plan to a new plan, the Employees' Savings Plan, for the Bell Telephone Company.

Re Bell Telephone Co., Rate Increase, 56 J.O.R.R. 310 (The Board of Transport Comm'rs for Canada, Kerr, Griffin, Dumontier, Woodard, Irwin and Kir, CC., March 29, 1966)

The Board, in accordance with section 380 of the Railway Act, approved interim increases of 2% and 5% in two appendices of the basis of settlement.

Re Bell Telephone Company, Review of Rates, 56 J.O.R.R. 535 (Board of Transport Comm'rs for Canada, Kerr, Griffin and Dumontier, CC., May 4, 1966).

This lengthy review of Bell Telephone Co. affairs constitutes the first such public review instituted at the Board's own initiative, and is similar in form and content to the contemporaneous review of B.C. Telephone Co. affairs. As with the B.C. Tel, previous reviews of Bell had occured only upon application by the company for a general increase in its rates and charges, particularly during the nine-year period 1950 through 1958. The terms of reference of this review as well confined it to a consideration of the capital investment, revenue, expenses, debt charges, dividend payments and retained earnings of the company, and the permissible level of the company's earnings and the basis on which such permissive level may be authorized for telephone rate purposes. Again, the propriety of existing rates was expressly excluded as a subject of consideration.

In reaching its conclusions as to this maximum permissive level of earnings, the Board considered anew a number of issues that had arisen in earlier rate application hearings. The company's pension plan was found to be reasonable and proper as to the cost the subscriber was called upon to pay through his rates. After noting that the company's pension plan should obviously be reasonably comparable with that of other unregulated companies, if it was to attract and retain the calibre of personnel it needed to operate efficiently, the Board stated that it had seen no evidence that the company's plan was unduly liberal, nor any persuasive evidence that a contributory plan would necessarily result in a lower overall cost. The form of pension plan lay in any event within the reasonable zone wherein the functions of management should not be usurped.

Neither the company's current depreciation rate, nor its service contract with the American Telephone and Telegraph Co. were questioned by the respondents, and both were found by the Board to represent reasonable and proper costs to the subscribers.

The Board also found the company's debt ratio of approximately 40% to be fair and reasonable for ratemaking purposes, alluding to its several previous judgements on the question. A proposal by the respondents to adjust the company's capital structure over a period of years through the

issuance of debt capital only until a debt ratio of about 50% was attained, in order to achieve savings in the cost of capital through the resulting reductions in corporate income taxes, was rejected by the Board, which was not convinced that the company could, if it wished, effect the placement of substantial sums of debt capital in the market at an interest cost not very materially in excess of that attaching to its current issues of debt capital.

Finally, the Board considered the supply contract between Bell and its subsidiary, the Northern Electric Company. After relating Northern's overall rate of return over recent years to that of certain other companies, the Board concluded that it was not unreasonable. The Board had accepted the respondents' suggestion to request Bell to furnish the Board with a breakdown of Northern's return or capital devoted to Bell business and on capital devoted to non-Bell business, but had found that Northern's return on capital devoted to Bell business was lower than that devoted to non-Bell business and that it was reasonable. This was considered to be further evidence that the general level of prices paid by Bell to Northern Electric was not unreasonable at this time. The Board stated that it would continue to examine, from year to year, Northern's return on capital devoted to Bell and non-Bell business.

In addition, the Board declined to accept respondents' contention, based largely upon a recent decision of the California Public Utilities Commission, that Northern's return on Bell business should be restricted to the same level as the return allowed to Bell on its utility operations. While noting that the California Commission was the only regulatory body in the U.S. which had restricted the earnings of an affiliated manufacturing supplier to the level of the utility under regulation, the Board stated that in its opinion, the risks of and uncertainties inherent in a manufacturing operation were different from those encountered in the operations of a utility, and there was little to justify the proposition that the rate of return of a manufacturer supplying goods and services to Bell should be restricted to the rate of return found reasonable for a public utility.

The Board concluded its review by finding that in the light of all the evidence presented, in the light of the experience of the past eight years, and in the light of current and immediately foreseeable conditions, the overall rate of return on the company's total average capital outstanding should lie within a range of from 6.2% to 6.6%. Thus the company's rate structure as a whole was found to be just and reasonable in that it did not produce earnings resulting in a return for the company on its total average capitalization greater that 6.6%. If the company's earnings should exceed

this maximum, it would be required to reduce rates in order to bring the company's earnings back within the permissable range. However, the Board stressed throughout that this range was not to be taken as an entitlement to a specific return, nor a rigid limitation; the Board's findings in the circumstances and conditions of a particular time, including the probable future trend of those circumstances and conditions, were not necessarily applicable to future times when circumstances and conditions might be altogether different. Furthermore, in finding the company's rate structure to be reasonable, the Board commented that comparisons of this rate structure with that of other companies in Canada or the United States have little probative or persuasive value, unless it could be demonstrated that the facts and circumstances underlying each rate structure were comparable.

Re B.C. Telephone Company, Review of Rates, 56 J.O.R.R. 369 (Board of Transport Comm'rs for Canada, Griffin, Irwin and Kirk, CC., May 4, 1966)

This lengthy review of B.C. Telephone Company affairs constitutes the first such public review instituted at the Board's own initiative. Previous reviews had occurred only upon application by the Company for a general increase in its rates and charges, particularly during the nine-year period 1950 through 1958. The terms of reference of this review confined it to a consideration of the capital investment, revenues and expenses, debt charges, dividend payments and retained earnings of the Company, and the permissive level of the Company's earnings and the basis on which such permissive level may be authorized for telephone rate purposes. The property of existing rates was expressly excluded as a subject of consideration, and a motion by the respondent, B.C. Federation of Labour, to expand the scope of the review to deal with this question was denied by the Board.

In reaching its conclusions as to this maximum permissive level of earnings, the Board considered anew a number of issues that had arisen in earlier rate application hearings. Although recent additions to surplus had been greater than the $1.5 million allowed by the Board in 1958, the Board did not find that there had been an excess accumulation of surplus. It was stressed that the Board's findings take place at a particular point in time in the light of all the facts and circumstances obtaining at that time, taking into consideration the immediate probable future trends; they do not necessarily apply to future times when circumstances and conditions may be different. The Board accepted the Company's evidence that the average percentage relationship between the annual additions to surplus and average invested capital after 1958 had not exceeded the percentage relationship between the dollar amount of $1.5 million used in the Board's 1958 computations and the Company's invested capital at the time the computations were made. There was no discussion by the Board of the Company's two dividend increases during this period, the Board taking the view that any increase in dividend rate would reduce the amount available for surplus, but would not result in a greater burden on subscribers. Because of this finding that there was no excess accumulation of surplus, the Board did not deal with respondent's contention that some part of the unfunded liability of the Company pension plan should be charged against any such excess.

With respect to depreciation, the Board refused to grant a motion by the respondent, the Attorney-General of the Province of British Columbia, that the Board retain an outside firm of depreciation experts to conduct a careful study of

the Company's depreciation practices and rates, and that this firm give evidence as to its findings, subject to cross-examination. No such outside study had been made since 1953, when the Company retained consultants for this purpose. In denying this motion, the Board stated that the determination of the appropriate depreciation rate was in the final analysis a matter of judgement. Unless there were clear and compelling reasons for it to do so, the Board should not substitute its judgement, or that of a third party, for the judgement of the Company's management. The Board did not feel that the Company's present composite rate was sufficiently greater than the broad, general experience of the telephone industry in Canada to warrant granting the motion.

The Board affirmed briefly its finding in the 1950 rate hearing that the issue of certain preferred shares in 1927 against an appraisal write-up of $4 million had been completely cleared from the Company's books by 1949, and that such shares now represented tangible assets in use in the business and thus were entitled to a return.

After considering the approach of a number of regulatory bodies in Canada and the U.S., to the question of who should bear the expense of the Company's charitable donations, the Board concluded that such donations are allowable expenses for the Company, provided that they are reasonable and proper in amount and reasonable and proper as to the recipient. The Board added however that over a five-year period, the Company's charitable donations should not exceed an average of one per cent of net operating income. Assistant Chief Commissioner Griffin dissented from this finding, expressing the opinion that charitable donations should not be allowed as expenses for rate-making purposes, and thus become a charge to the subscribers, but should be borne by the Company's shareholders.

The Board reiterated its position taken in 1958 that share-issue expense was a legitimate and proper cost to be charged against earnings for rate-making purposes, rejecting respondent's contention that this method had proved impractical and that the only equitable system for meeting the irregular and varying charges of share-issue expense was one of amortization over a proper period of time. A specific expense incurred in respect of the redemption of certain preferred shares in 1965 was to be treated in the same fashion, and not by amortizing the expense or by dividing it between subscribers and shareholders.

Objections by all parties concerned to an Order-in-Council requiring the Board not to consider credits to tax equalization reserves for rate-making purposes were noted by the Board without comment.

Finally, the Board considered payments to affiliates of the Company pursuant to supply and service contracts. After noting that neither the Board nor the Company had the power to compel these affiliates to furnish information to the Board but observing that in the United States, information with respect to manufacturing subsidiaries had been furnished to regulatory bodies and the courts in connection with rate proceedings involving a General Telephone operating telephone company, the Board formally requested further information from the Company concerning two affiliated suppliers in order to make such tests as would satisfy the Board further as to the reasonableness of the general level of the prices paid to them. The Board then stated that its findings with respect to the permissive level of earnings would accordingly be subject to the qualification that the Board be satisfied with the results of such tests. No request was made with respect to the construction, service or directory advertising contacts with other affiliates of the General Telephone System.

With respect to the permissive level of earnings for the Company, the Board stated that such a level should lie within a range of from 6.2% to 6.6% of the Company's total average capitalization, but emphasized that this level was based upon evidence before the Board at this time, and was not necessarily applicable to future times. The Company's rate structure as a whole was therefore just and reasonable in that it did not produce earnings resulting in a return for the Company on its total average capitalization greater than 6.6%. Since the Company had earned 6.6% on its total capital outstanding for the year 1965, it had reached the maximum of the permissible range found by the Board to be just and reasonable at this time. If the Company's earnings should exceed this maximum, it would be required to reduce rates in order to bring the Company's earnings back within the permissible range. No comment was made by the Board with respect to the validity of either the "comparable-earnings" test or the disputed "capital-attraction" test, as possible bases for measuring the permissive level of earnings.

Re Industrial Wire and Cable Company Limited, 56 J.O.R.R. 1143 (Canada, Governor in Council, Order in Council, P.C. 1966-1519, August 10, 1966)

The Governor General in Council dismissed a petition of the Industrial Wire and Cable Co. to reverse an order of the Board of Transport Commissioners, C.T.R. 000, dismissing its application for a declaration that the Bell Telephone Company's purchases of shares in Northern Electric were contrary to the provisions of Bell's special Act. Leave to refer the matter to the Supreme Court of Canada was also refused.

Re B.C. Telephone Co. Acquisition of Okanagan Telephone Co. Shares, 56 J.O.R.R. 1361 (Board of Transport Comm'rs for Canada, Order No.122872, December 6, 1966)

In this order, the Board gave its approval to certain agreements whereby the B.C. Telephone proposed to acquire the Okanagan Telephone Co. by purchasing the common shares of the company from the general body of shareholders at a price of $27.30 per share.

Re B.C. Telephone Co. Acquisition of Okanagan Telephone Co. Shares, 57 J.O.R.R. 25 (Board of Transport Comm'rs for Canada, Order No.123294, January 24, 1967)

An agreement between the B.C. Telephone Co. and Pemberton Securities Ltd. specifying the terms by which the company was to purchase shares of the Okanagan Telephone Co. acquired by Pemberton Securities was approved by the Board.

Re Bell Telephone Company, 48 J.O.R.R. 1 (Canadian Transport Commission, Railway Transport Committee, File C.955.176, January 23, 1968)

The C.T.C. considered that, in light of a report from Bell prognosticating that earnings for 1967 and the first half of 1968 would result in a rate of earnings on capitalization greater than the normal allowable yardstick, Bell's telephone rates ought to be accordingly reduced. However, it was decided that conditions and circumstances had so changed and were likely to so change that the yardstick was no longer wholly accurate; hence current rates were sustained.

Bell made submissions in favour of maintaining current rates.

Re Reciprocal Abandonment of Telegraph Offices by C.N.R. and C.P.R., 58 J.O.R.R. 5 (Canadian Transport Commission, Railway Transport Committee, Jones, Darting, Dumontier, Griffin, Irwin, Kirk and Woodard, CC., January 24, 1968)

The Commission considered and approved an application by C.N.R. and C.P.R. to shut down a number of joint telegraph offices where a lack of volume made the operation inefficient, to be replaced by areas of operations exclusive to each company. The change would not increase cost nor decrease service to the public. In its decision, the Commission outlined the criteria that it was empowered to analyze by the terms and restrictions of its enabling statute, the Railway Act. It also analyzed the events leading to and reasons for its decision not to hold a public hearing on the application.

An order implementing the decision followed on February 16, 1968.

Re Bell Canada, Increase in Rates, 59 J.O.R.R. 727 (Canadian Transport Commission, Railway Transport Committee, Taschereau, Kirk and Lafferty, CC., September 25, 1969)

This application for a rate increase by Bell Canada was the first such application since 1958. After a thorough examination of financial and other considerations, the Committee approved revisions in Bell's tariff which would result in additional revenues of approximately $27.5 million, instead of the $83.6 million sought by the Company. The Committee was not prepared to accept Bell's assumptionof a 40% debt ratio, and instead considered a more realistic ratio to be 47.1%. The rate of return on total capital of 7.3% that would accrue to the Company did not necessarily reflect the Committee's view of what the permissive level of earnings of Bell should be in the future. It was not necessary to fix a permissive level at this time.

The Committee was satisfied that the rate of return earned by Northern Electric on its Bell business was still lower than the rate of return earned by Northern on its non-Bell business. Despite objections by intervenors to Bell's deferred tax accounting procedures, the Committee did not consider that it would be appropriate to order Bell to change its accounting methods at this time. However, Bell was instructed to undertake a study of the feasibility of carrying out cost and revenue separations between regulated and unregulated services, and the methods and procedures appropriate for determining such separations. A report of this study was to be filed with the Commission within twelve months.

A proposed charge of fifty cents per month for each service where the customer requires that the telephone number be not included in the telephone directory nor be made accessible through information service operators was approved. However a charge for operator intervention which varied with distance and time consumed was replaced with a flat rate charge. Increases in specified service charges were also derived, as was a proposed restructure of exchange groups.

The Committee noted objections to the present method of rate grouping according to total telephones, and suggested that there was a distinction between extensions which are a supplemental convenience to a single main line and those which are a necessary part of private branch exchanges and Centrex. Its present view was that it would be reasonable to add the extensions connected to P.B.X. and Centrex to any count of main telephones, but no finding on this point was made. Instead, the Company was ordered to undertake a study of the

matter within the level of the present rate structure as expeditiously as possible and report in sufficient detail to facilitate further consideration.

Proposed changes in the rates and charges for guest room telephone facilities supplied to hotels were denied. There was obviously some virtue in hotels being recompensed for the work and risk involved in collecting Bell's charges, but payment of a commission to a customer appeared to be contrary to Sections 436 and 437 of the Railway Act. Bell was directed to report to the Commission on the studies it was undertaking in relation to certain aspects of telephone rates and services within four months.

Re Bell Canada, Revision of Tariffs (Canadian Transport Commission, Railway Transport Committee, Order No.R-7773, January 21, 1970)

In this order, the Committee varied its order of September 25, 1969 to permit Bell to increase its tariffs in order to obtain the amount of revenue authorized in the earlier decision.

Re Bell Canada, Report on Study of Feasibility of Cost and Revenue Separations Between Regulated and Unregulated Services (September 8, 1970)

This study was filed with the Commission by Bell Canada pursuant to the Railway Transport Committee's order of September 25, 1969. The study summarizes the economic theory relating to cost separations and outlines some of the problems of cost separations in the telecommunication industry. It concludes that it is not feasible to carry out cost separations between regulated and unregulated services which would give reliable information as to all actual costs, primarily as a consequence of the difficulty in allocating common costs. However it would be feasible, by using the incremental cost approach based on cost causation, to arrive at approximations of the incremental costs of unregulated services for the purpose of determining whether unregulated services were subsidized by regulated services. Furthermore, while it is feasible to obtain the revenues from unregulated services as an accounting measurement, no method is known for measuring the effects on costs or revenues of dependencies and interdependencies between services.

The study went on to apply the incremental cost approach based on cost causation to study unregulated services carried on by Bell in 1969. Services examined included Yellow Pages Directory advertising, large special assemblies and contracts such as television and radio contracts, and other unregulated services such as Teletypewriter, Telpak and Private Line. Costs examined include circuits, customer equipment, switching equipment, plant maintenance, overhead administrative expense, depreciation, cost of capital and income taxes. The study concluded that unregulated services were not subsidized by regulated services.

Editorial Note: An amendment to the Railway Act in 1970, 18-19 Eliz. II, c.20, made tolls charged by private wire services of federally regulated undertakings such as Bell subject to approval of the Commission.

Re Bell Canada, Increase in Rates (Canadian Transport Commission, Railway Transport Committee, Taschereau, Cope and Lafferty, CC., December 1, 1970)

In this decision, the Committee considered an application by Bell Canada for increases in tariff rates for residence and business exchange telephone service. These services had been exempted from the Committee's decision in 1969 authorizing rate increases, but the Committee did not think it would be reasonable to refuse to entertain the present application because it followed by less than a year the 1969 decision. After noting trends in the Company's operating ratio, the Committee concluded that the rate of increase in costs in relation to the rate of growth in revenues was and would continue to be excessive in the immediate future. Reductions in construction expenses which had been encouraged in the 1969 decision had been made, and the Committee was satisfied that no further reduction could be achieved without seriously jeopardizing the quality of service and the Company's ability to meet the demand for service.

After a thorough review of the Company's requirements for new capital, the Committee was satisfied that in the absence of any increase in rates, Bell's earnings would decline as would its return on equity and total capital. The Committee could not ignore the detrimental effects this would have on the Company's ability to resort to equity financing. However, the Committee was of the opinion that a proposed change in the Employees Savings Plan, while beneficial to the subscribers in the long-run, would initially be more beneficial to the shareholders of the Company.

The Committee concluded that the requested increase of 6.25% should be authorized in all categories of exchange telephone service, except essential or basic residential and business telephone services; for these services, an increase of only 3.75% was authorized. This increase would have generated in 1970 approximately $22.5 million of additional revenue, as compared to the $30 million applied for. In all cases, the proposed minimum increase of five cents was allowed.

After a request by the intervenors, the Committee again investigated the rate of return earned by Northern Electric Company, and found that for the first time, the rate of return was higher on Bell business than on non-Bell business. The Committee stated that if the reports for 1969 or 1970 revealed a higher rate of return on Bell business than on other, full justification would be required from Bell that it could not purchase part or all of its supplies from other suppliers at cheaper prices than those charged by Northern. Furthermore, the Committee was not convinced that a careful review of

investment planning policies could not result in some savings or improvements of earnings.

The Committee noted that the question of cost and revenue separations between requlated and unregulated services had become largely meaningless as a result of a recent amendment to the Railway Act which made tolls charged for private wire services subject to approval by the Commission. In addition, the Committee had under active consideration an initial report on the subject of possible changes in the present method of rate grouping according to total telephones which had been submitted by the Company in accordance with the Committee's order in its 1969 decision.

Re Bell Canada, Revisions to Long-Distance Rate Structure
(Canadian Transport Commission, Railway Transport Committee, Jones and Woodard, CC., April 28, 1971)

In this decision, the Committee considered a proposal by Bell Canada to reduce the number of long-distance rate scales from six to three in an effort to simplify long-distance rates and thereby resolve serious peak traffic problems. The new long-distance scales would be based upon minute-pricing, instead of the old system of a charge for the initial three minutes, plus overtime. The revisions would apply to long-distance calls within Bell territory only.

Upon examination of the proposed revisions, the Committee concluded that they would be beneficial to Bell Canada and to customers both immediately and in the long-run, as a result of a reduction in additional plant investment to meet the peaking problem, and customer savings through minute-pricing, which should amount to approximately $1.4 million annually. The proposal was approved in its entirety.

Re Bell Canada, Report on the Company's Rate Groups
(Canadian Transport Commission, Railway Transport Committee, July, 1971)

This report by Bell Canada concerning its rate groups was filed with the Commission pursuant to its decision of September 25, 1969. The report was intended to apply to all the Company's exchanges except the Montreal and Toronto exchanges. Once again, the Company recommended that it be permitted to extend its use of weighting factors to determine the rate group that applies when extended area service is provided. This would bring a consistency of approach to the provision of EAS in all exchanges in Rate Groups 2 to 10 inclusive. As a result, the Rate Groups non designated as 8A, 9A and 10A would be included in Rate Groups 8, 9 and 10 respectively. The Company also recommended that Rate Group 10 apply for a total-telephone count for rate-grouping purposes of 250,001 to 750,000 telephones.

With respect to the base count, the Company recommended that the present method of determining the rate grouping by counting the total number of telephones in the exchange be continued. The Committee's suggestion in its 1969 decision that the base-count consist of main telephones plus extensions connected to P.B.X and Centrex was felt to involve a questionable judgment factor regarding which extensions should be included or excluded. If the Commission believed that a change in base-count was warranted at this time, the Company suggested the use of total telephone numbers, which were readily identifiable and could be counted. The Company was also concerned about the substantial administrative expense involved in the Commission's suggested formula. Suggestions for revisions in the rate groups based on both the Commission's and the Company's suggested formulae were made.

Re B.C. Telephone Company, Increase in Rates (Canadian Transport Commission, Railway Transport Committee, Taschereau, Magee and Lafferty, CC., July 30, 1971)

In this decision, the Committee granted the British Columbia Telephone Co. a rate increase amounting to 55% of that applied for. Two specific objections by intervenants were alluded to favourably by the Committee. Payments to affiliates pursuant to service and supply contracts were considered to be not unreasonable, but after noting from an examination of the financial records of Dominion Directory Co. and Canadian Telephones and Supplies Ltd. that most of their income derived from B.C. Tel, the Committee stated that it was not satisfied that the Company had taken all reasonable and proper steps to negotiate more favourable terms under its two contracts with these affiliates. No satisfactory explanation had been given as to whether it would not be feasible and more profitable for the Company either directly to perform the services contracted for or to establish a wholly-owned subsidiary for that purpose. In addition, the Committee was not convinced that the Company's proposed construction programme, including particularly the plans for a new head office building, had been justified by the Company. However, while the Company undoubtedly had the burden of proof as to the reasonableness of all its costs of operation, the Board was not convinced that this burden necessarily included a justification of differences between its costs and those of other companies.

The Committee stated that what was required was a rate increase that would restore the confidence of investors in debt and equity, but not one that would correct all the Company's financing problems by providing it with ideal levels of all financial criteria examined by investors. Rate increases that would provide additional revenues in 1972 of about $9,400,000 were consequently authorized. This would result in a rate of return of average invested capital of approximately 7.7%, and would represent an overall increase of 4.45%, instead of the 8.08% requested. The reductions were to be made in primary exchange services.

In reaching this decision, the Committee considered and rejected an intervenant's contention that certain non-productive investments of the Company should be disallowed for rate-making purposes. Charitable donations had not exceeded an annual average of 1% of net operating income, which was the limit set by the Board of Transport Commissioners in 1966. The Committee again refused to order an independent examination of the Company's depreciation methods, despite an admitted overcharge of depreciation by the Company in respect of service connections. Depreciation rates were constantly

under review by modern engineering methods, and the rates presently being used, when compared to those of other Canadian telephone companies, showed no indication of unreasonable depreciation charges detrimental to the subscribers. However after receiving a large number of complaints as to the quality of service provided by the Company, the Committee ordered the Company to make a thorough investigation of these complaints, and to furnish the Committee with a comprehensive report on this investigation within three months.

With respect to specific aspects of the rate structure, the Committee held that a proposed new charge to be made to all customers except hotels when a report was made of time and/or charges for a long-distance call was not unjustly discriminatory to lawyers as a group. An objection to charges for certain telephone facilities in hotels, however, was accepted by the Committee. The Company was ordered to undertake a study of hotel rates and charges, and to report to the Committee on the results of its studies within four months. Finally, a complaint concerning the rate structure in two specific exchanges was dismissed by the Committee with a reference to an earlier extended area service judgement of the Board of Transport Commissioners.

Note: Effective June 1st, 1973, B.C. Tel purchased 100% of Canadian Telephones and Supplies Ltd. from their common parent, the Anglo-Canadian Telephone Co., at a cost of $927,016.

Re Bell Canada, Rate Groupings (Canadian Transport Commission, Railway Transport Committee, Jones and Lafferty, CC., October 7, 1971)

This brief order approved the upgrading in rate grouping of certain telephone exchanges of Bell Canada, pursuant to the Commission's General Order No. T-41. In the accompanying reasons for the order, the Committee explained the operation of the General Order and its rationale. The fundamental purpose of the Commission's directions was said to be the avoidance of unjust discrimination in rates and charges as between exchanges of comparable size.

Re C.N.R. and Canadian Pacific Ltd., Revisions in Telegraph Message Rates (Canadian Transport Commission, Railway Transport Committee, Jones, Lafferty and Thomson, CC., October 7, 1971)

This order approved a joint application by Canadian National and Canadian Pacific for a new intra-Canada telegraph message rate structure which was designed to produce a revenue increase of about 15%, or $1.2 million annually, thus reducing the combined annual loss to the companies to about $5.5 million. The revised rate structure was expected to minimize pricing areas and make the rate structure more intelligible to the public.

Proposals by the companies to revise the surcharge structure applicable to the handling of telegrams to reflect the high labour costs involved were approved over the objection of the Canadian Railway Labour Association and other complainants. The essential consideration was the revenue need of the companies, which had been clearly demonstrated. Specific complaints directed against the proposed surcharge for "night instructions" were dismissed, on the basis that the surcharge was just and reasonable in all the circumstances.

An objection that the telecommunications accounts should be weighed against the overall profit of Canadian Pacific and the overall surplus of Canadian National was also dismissed. These factors were irrelevant to the question of the proposed tolls for public message service. Section 321 of the Railway Act made it clear that there was no statutory foundation for the proposition that particular telegraph and telephone should be examined in relation to revenues from the companies' other sources of income.

Notice to Interested Parties: Re Report on Bell Canada Rate Groups (Canadian Transport Commission, Railway Transport Committee, October 25, 1971)

In this notice, the Committee reviewed the concern about the present method of rate grouping employed by Bell Canada which had been expressed in its 1969 and 1970 decisions, and announced that a public hearing would be held to consider the Company's Report on Rate Groups. Parties who wished to present their views on the proposals made by Bell Canada in this Report were to submit them in writing within 45 days of this notice.

Re Bell Canada, Revisions in Long-Distance Rates (Canadian Transport Commission, Railway Transport Committee, Roberge and Thomson, CC., November 1, 1971)

Following the decision of the Committee on April 28, 1971 to approve a revised long-distance rate structure for Bell Canada operating within Bell territory, a large number of complaints were received by the Commission from the general public, principally with respect to the withdrawal of the Night Economy Plan. As a result, the Committee decided to undertake of its own motion an investigation of the effects of its order. Bell Canada subsequently filed with the Committee modifications to its long-distance rate structure designed to improve it for its subscribers, without impairing it the objectives of the original, revised rate structure. This order approved, on a six-months' extendable trial basis, the new, modified long-distance rate structure. In the accompanying reasons, the Committee explained in great detail the nature of the long-distance calling pattern and the effects on this pattern of the changes made in the long-distance rates following the Committee's previous order. The Committee noted that the effect of the previous rate structure had been to establish an undue preference in favour of a particular description of traffic, contrary to the provisions of section 321 of the Railway Act. An argument in favour of massive capital expenditures to benefit a minority of subscribers, while assigning almost all of the costs to others, could not be economically justified or meet the test of equity. The Committee concluded that the three objectives of redesigning any public-utility rate structure, achieving a fair burden of revenue requirements and optimum use of the facilities without increasing the amount of total revenue received, had all been met by the change in rate structure.

A number of complaints had been received concerning the Company's allegedly inadequate advertising of the rate changes. The Committee has no jurisdiction over the Company's advertising methods or plans, but did expect that the Company would take all reasonable and proper measures to explain in detail the new two-part economy plan which was being approved on a trial basis. Furthermore, although telephone directories are issued on an annual basis only, it would seem reasonable to provide gummed insert pages for all directories when general revisions in long-distance rates are made. Some of the complaints requested the Commission to order a retroactive

refund in those cases where the rates were increased, but the Commission had no power to make orders having retroactive effect. In addition, the Commission cannot compel a telephone company to continue a free service.

The two-part economy plan approved in this order consisted of a Late-Night Economy Plan and a Sunday-Visit Plan. Its introduction should result in further savings to customers of some $4.6 million. The major substantial difference between the new two-part economy plan and the former Night Economy Plan is that all conversation minutes will be charged for and there will be no free or non-chargeable minutes as under the former Plan. However, the rate scales have been carefully constructed so as to minimize the impact of increases in the cost of calls as compared with the cost under the former Night Economy Plan.

The Late-Night Economy Plan will be in effect seven nights per week from 11:00 p.m. to 8:00 a.m. and will offer a two-thirds discount off regular day rates. The Sunday-Visit Plan will be in effect each Sunday from 8:00 a.m. to 6:00 p.m. and will offer a three-quarters discount off regular day rates.

Attorney-General and Minister of Justice for Ontario v. Bell Canada (Canadian Transport Commission, Railway Transport Committee, Roberge, Magee and Lafferty, CC., February 21, 1972)

This decision deals with a request that the feasibility of cost separations by Bell Canada be examined either at a forthcoming hearing on an application by the Company for an increase in rates, or at a separate proceeding under Section 48 of the National Transportation Act as a necessary preliminary to the disposition of the Company's application. The request was denied. It was evident that the separation of costs referred to in this application was part of the terms of reference of the Telecommunications Cost Study which had been announced January 12, 1972, and concerned directly not only Bell Canada but all telecommunications carriers under the jurisdiction of the Committee. Even if conclusions were reached, in the course of the hearing of the Bell application, on feasible changes in Bell's accounting procedures, the Committee might not feel free to use them for rate-making purposes, unless they were concurrently applied to all telecommunications carriers.

Furthermore, the Commission is bound to exercise its jurisdiction in the present Bell Canada applications. It does not have the discretion to defer determining the rate application in the expectation of an order the Commission may prescribe at such time as the Telecommunications Cost Inquiry has reached the stage when such an order may be prescribed and issued.

In the Committee's view, however, this disposition of the Minister's application would not preclude the Minister, as a party interested, from exercising any rights given to it by statute or by the Commission's General Rules in order to establish the relevancy of any evidence or argument that such party would wish to produce or make at the hearing on the Bell Canada application.

Re Bell Canada, Increase in Rates (Canadian Transport Commission, Telecommunication Committee, Roberge, Lafferty and Carver, CC., May 19, 1972)

In this decision, the Committee approved a rate increase for Bell Canada designed to produce additional revenues of approximately $47.2 million, instead of the $78.1 million sought. A proposal to restructure the exchange rate groups by adopting the Weighting Factor Plan for total telephone count to be used for rate grouping purposes was also approved.

At the outset, the Committee dismissed an objection by the intervenors that the matters now at issue had previously been dealt with by the Railway Transport Committee. Reference was made to Section 63 of the National Transportation Act and Section 320(2) of the Railway Act. In response to another objection by certain of the intervenors concerning the lack of attention paid to regional economic disparities and to major inequalities in individual income levels, the Committee stated that the impact of rate increases on persons in a position of economic disadvantage was of great concern to the Commission, but that it was not within the Commission's discretion to adjust rates to meet the individual economic circumstances of subscribers belonging to that category. Section 321(1) of the Railway Act was referred to.

The Committee then examined in detail the particular revenue needs of the Company. Probably the most important factor in its revenue requirement was the necessity to raise the funds required to finance theCompany's construction program. While the Railway Transport Committee had in the past encouraged the Company to pursue a policy of restraint with respect to its construction program, the Committee would not wish to urge curtailment of the program if such curtailment would jeopardize the quality of service or the Company's ability to meet reasonable and normal demands for service. Having considered all the evidence on the construction program, the Committee found no basis on which to question the necessity for the Company's construction program of $525 million for 1972.

There was a possibility that Bell's estimated revenues from local and long distance services might be on the low side, although the intervenors did not prove any specific margin of error. It was pointed out that the decline in estimated Miscellaneous Operating Revenues was associated with the publication of telephone directories. The Company had divested itself of this function with the formation of Tele-Direct Limited.

With respect to operating expenses, the Committee found no justification for questioning the necessity of the

expenses as forecast, nor could it identify any specific categories of expenses that could be avoided or deferred. The Committee was satisfied that the Company's decision to change to the Equal Life Group method of calculating depreciation was arrived at quite independently from the current rate application. Pending the forthcoming cost inquiry, Bell Canada should be permitted to follow its present practice of accounting for depreciation without any disallowance for rate setting purposes.

Allegations that the Company's expenditures for research and development were excessive were dismissed by the Committee. It would surely be shortsighted to pursue a regulatory course which would prevent the Company from making the fullest possible application of technical innovation in order to improve service and reduce cost.

The Committee noted the increase in the operating ratio as a clear indication that the growth in operating revenues was no longer keeping pace with increases in operating expenses, which substantiated an additional revenue requirement by the Company at this time. The amount of additional revenues which it would be appropriate to authorize was $47.2 million. This represented a rate of return on total average capital of 7.8%. The Committee also found that it would be appropriate to set a maximum permissive rate of return for Bell of 8.2%.

The distribution of the authorized increases was then examined. An increase in 5% for contract primary exchange service was considered appropriate, instead of the 9.5% sought. Contract Auxiliary service increases were reduced from the 13.5% proposed to 6%. This included an increase of 50¢ per month for unlisted numbers which was approved in full. The proposed changes in long distance rates were so small in relation to the average cost per call that the Committee found them to be appropriate. Approximately 60% of the increases in service charges proposed by Bell were allowed. Increases were approved for Inter-Exchange and Data Services as proposed.

The Committee also examined and approved a proposal by the Company to replace the Incremental Plan for determining the total telephone count to be used for rate grouping purposes with a Weighting Factor Plan already in use in several exchanges. There was no valid alternative within the present rate structures that would justify the exclusion of extensions from the total telephone count in exchanges, and the Committee was now satisfied that the Weighting Factor Plan of total telephone count method should be used for rate grouping purposes to determine the rate groups applicable to all of Bell Canada's exchanges. In the case of Windsor and Quebec, where the unmodified application of the Weighting Factor Plan would subject the subscribers to the most substantial increases in Bell's territory, the Committee decided that the just and reasonable way to bring Windsor and Quebec into the Weighting Factor Plan was to do so in three stages. In addition, the plan was approved for the Montreal and Toronto exchanges in order that they bear their just and reasonable share of the

growth in the Company's revenue requirements. New Exchange Rate Groups 10 to 14 were created to provide for future growth.

Finally, the Committee again considered Northern Electric's return on Bell business, and concluded that the prices paid to Northern by Bell were not unreasonable, and that the general level of those prices, in relation to Northern's return on Bell business was not unreasonable. Bell's declining return on its investment in Northern Electric did not require reflection in the amount of the increases in rates to be allowed.

Re Inquiry into Telecommunications Carriers Cost and Accounting Procedures (Canadian Transport Commission, Telecommunication Committee, Lafferty, Copy and Carver, CC., September 21, 1972)

In this decision, the Committee outlined the final terms of reference for the Inquiry into Telecommunications Carriers' Costing and Accounting Procedures and their Implications. Certain preliminary issues with respect to subsidiaries and affiliates, and foreign attachments were also dealt with.

In describing the history of this proceeding, the Committee explained that the reason for the Inquiry was that the Committee wished to be apprised of the most efficient methods or techniques of accounting and costing that might feasibly be uniformly applied by telecommunications carriers under its jurisdiction. The Committee would then be in a better position to determine whether or not all tolls, filed with it as tariffs of the carriers, met with the provisions of the Railway Act. Sections 328, 329 and 330 also provided a jurisdictional basis for the Inquiry.

The Committee explained that it did not intend that its Consultants should study the rationale of, nor justification for, arrangements with supplier affiliates, nor undertake any detailed examination of the suppliers' costs. Rather, the Committee was of the opinion that its jurisdiction over the carriers' dealings with subsidiaries and affiliates was limited to the impact that they have on the carriers' revenues and expenses and consequently on their tolls.

Foreign attachments would be considered only insofar as they affect either costs or revenues. While the Committee was fully cognizant of the importance of the matter, it felt it would be premature to consider other effects of foreign attachments at the present time.

The final terms of reference for the conduct of the Inquiry are set out in Appendix 1.

Re Canadian National Telecommunications, Increase in Rates for Telephone Service for Newfoundland (Canadian Transport Commission, Telecommunication Committee, Order No.T-140, November 17, 1972)

In this order, the Committee approved a rate increase for telephone service provided by Canadian National Telecommunications in Newfoundland which would comply with the recommendations of a report by Commissioner Lafferty who had been sent to Newfoundland by the President of the Commission. After reviewing C.N.T.'s operating statement with particular reference to the depreciation reserve, Commissioner Lafferty held that the revenue requirement of some $280,000 was not unreasonable. A proposal to reduce the number of exchange rate groups from five to two, thereby conforming to the procedure of the Newfoundland Telephone Company was also approved, as was a proposal to offer four-party service in an attempt to upgrade multi-party service. The Commissioner accepted a proposed new system of charges for Extended Area Service based on a method of pro-rating the additional monthly charge for E.A.S. between two communities. Proposed rate changes were also accepted, after a comparison indicated they were lower then those of the Newfoundland Telephone Company in every category except multi-party service.

Re Bell Canada, Complaint from Transmission (Magog) Inc. (Canadian Transport Commission, Telecommunication Committee, Order No.T-201272, December 20, 1972)

Bell Canada had cut the coaxial cable leased by the Transmission (MAGOG) Inc. from Bell upon the expiry of their contract. After stating that this action was contrary to the public interest as unjust and unreasonable, the Committee ordered Bell to restore the service to the complainant until a further order by the Committee.

Re C.N.R. and Canadian Pacific Ltd., Increase in Private Wire, Telex and Broadband Exchange Tolls (Canadian Transport Commission, Telecommunication Committee, Benson, Lafferty and Gray, CC., March 27, 1973)

This application for an increase in tariffs in private wire, telex and broadband exchange services was the first such application since those services became subject to the jurisdiction of the Commission in 1970. Although both applicants had based their application on a rate of return on total average capital, the Committee held that a determination on such a rate base would not be based on fact and might be inaccurate. For the same reasons, the Committee rejected calculations based on a rate base equal to each carrier's average net investment in telecommunications. In addition, no benefit would derive from comparing the rates of return of C.N.T. and C.P.T. with those of Bell Canada and British Columbia Telephone Company because of the vastly different services which constitute the major sources of income of the two telephone carriers. Comparisons between the operations of the two applicants were also rejected because of differences in services offered and accounting procedures. The Committee expressed the hope that as a result of the Cost Inquiry, more useful comparisons between the operations of all telecommunications under the jurisdiction of the Commission would be achieved in the future.

Objections by intervenors that there was a significant duplication of expenses which could be eliminated by better arrangements between the two applicants were dismissed by the Committee. The Committee stated that it was not in a position to judge from the evidence presented whether or not any duplication of expense that may still exist could be curtailed or eliminated. It was inclined to believe that the applicants, operating largely in competitive services, would not knowingly tolerate unnecessary expenses to the detriment of potential profits.

The Committee also rejected the intervenors' argument that the increases applied for were for services that were already profitable, while no increase was proposed for Public Message Service which both carriers admitted to be unprofitable. The intervenors had not made a case that any undue or unreasonable preference or advantage existed within the provisions of Section 321 of the Railway Act. Because one class of telecommunications service is cheaper to use than another, or less profitable than another, did not necessarily

give rise to undue or unreasonable preference or advantage. Furthermore, the Committee wished to avoid a situation in which rates for Public Message Service become prohibitive.

The applicants had demonstrated a need for additional revenue in order to earn a reasonable rate of return, and had proposed increases which would provide additional revenues of around $3 million over three years. This increase was just and reasonable. Under these circumstances, competitive factors did not justify the denial of the application, but rather tended to moderate any pressure for excessive increases in rates. The application was granted in full.

Re Bell Canada, Application "A" for Increase in Rates
(Canadian Transport Commission, Telecommunication Committee, Benson, Lafferty and Carver, CC., March 30, 1973)

In this decision, the Committee approved a rate increase for Bell Canada which would produce approximately $21.5 million in increased revenues for the balance of 1973 instead of the $36 million sought, but which should allow the Company to achieve an estimated rate of return on total average capital of 7.8%. This was the rate which the Committee had found to be appropriate in its decision in 1972, and which the Company was seeking to achieve in the present application.

Bell Canada had submitted two applications for rate increases, Application A to be effective January 1, 1973, or as soon thereafter as possible, and Application B, to be effective January 1, 1974. In an earlier decision, the Committee had denied certain intervenors' requests that the applications be joined. In this decision, the Committee reiterated its view that Application A was not in effect an application for review of the Committee's 1972 decision. Nowhere in the 1972 decision had the Committee attempted to estimate the Company's revenue for 1973. Furthermore, the fact that the Company's rate of return would be an estimated 7.4%, instead of the 7.8% authorized, was sufficient to justify Application A.

The Committee had received numerous submissions from individual subscribers and organizations concerning the present application, and was aware of the concern in some quarters about the channels available to the subscriber to make his position felt in rate cases. Methods of assisting the public in preparing for hearings were being explored. The Committee was further concerned that much of the consuming public's comment on these rate applications indicated a lack of understanding of the statutory functions given to the Commission. These functions were then reviewed. The Committee stressed that while the basic responsibility of the Committee was to protect the public interest by fostering the growth of the best telecommunications services at the lowest cost to the subscribers both at this moment of time and for the foreseeable future, the legislation under which the Committee operated

provided authority to regulate the Company's tolls but did not indicate that the Committee should manage Bell Canada. In particular, the Committee has no jursidiction over the question of nationalization.

In estimating its revenues and expenses for 1973, the Company had not taken into account either increases or decreases in the amounts estimated for 1972 that appeared in later unaudited figures. This procedure was strongly challenged by the intervenors. After considering the respective arguments, the Committee concluded that the Company may have underestimated somewhat their revenues for 1973, but that no significant allowance for an overestimate of 1973 operating expenses should be made. Objections to Bell's investments in Telesat Canada were dismissed. The Committee was of the opinion that the launching and development of Telesat Canada was in the public interest as a major step forward in Canada's telecommunication network and that it was in the long-term interest of Bell Canada and its subscribers to participate therein. Complaints concerning the propriety of the Company's incurring capital expenditures based on tariff changes which had not yet been approved by the Committee were also dismissed. Estimates concerning Bell's construction program expenses were accepted. A request by several of the intervenors that Bell be ordered to pay the costs of the present hearing was denied. Bell Canada has no choice under the law but to seek approval of the Commission before putting a general rate increase into effect.

Taking into consideration the fact that proposed increased rates could not now come into effect before April 1973 and would therefore yield in 1973 less than the $36 million requested, the Committee approved the rates as filed subject to certain modifications. A proposed fifty per cent increase in most non-recurring service charges was to be implemented in two steps: half of the proposed increase was to become effective immediately, the remainder on January 1, 1974. No increases were to be made in existing installation charges if no increase was to be made in the existing service charge for the installation of connections. A provision for the counting for rate grouping purposes of certain extension phones installed during a Bargain Month was also made.

Editorial Note: The increase with respect to service charges and the effective date of the increase were subsequently altered by the Governor-in-Council.

Maritime Telegraph & Telephone Ltd. et al. v. CN/CP Telecommunications (Canadian Transport Commission, Telecommunication Committee, Roberge and Jones, CC., June 20, 1973)

This was an application by Maritime Telephone and Telegraph Company Ltd., New Brunswick Telephone Company Ltd. and the Council of Maritime Premiers that a CN/CP Special Telecommunications Tariff setting out the schedule of tolls and charges for the provision of microwave facilities and services to the Canadian Overseas Telecommunication Corporation be not approved by the Commission, on the grounds that the tolls gave undue preference to COTC. The tolls have been determined according to an agreement entered into as a result of competitive tender on which CN/CP and the intervenors entered a bid. Although CN/CP objected to the release of any portion of this agreement on the grounds of confidentiality the Committee ruled that the part of the agreement which was relevant to the investigation should be made public.

Evidence was led at the hearing to the effect that the tolls to be charged to COTC were lower than those charged to other customers, giving COTA a preference not given to other customers. The Committee held that this evidence was sufficient to establish a prima facie case that there exists a discrimination, a preference or an advantage. According to the terms of Section 321 of the Railway Act, upon the establishment of such a case, the burden of proving that the discrimination was not unjust, or that the preference was not undue or unreasonable, shifted to the Company. This burden had not been discharged by the Company. The tariff was therefore rejected.

Ottawa Cablevision Ltd. et al. v. Bell Canada (Canadian Transport Commission, Telecommunication Committee, Roberge, Lafferty and Fortier, CC., November 19, 1973)

An application by nine cable companies requesting disallowance of Bell's requirement preventing the attachment to its facilities of cables wholly-owned by the said companies, and requesting that Bell be directed to offer such facilities to the applicants, and that the Commission prescribe reasonable terms and conditions for a pole attachment agreement, was dismissed.

[19-25] Neither the Partial System Agreement, proposed by Bell, nor the Pole Attachment Agreement, proposed by the cable companies, involve attachments to the Bell system of transmission as contemplated in section 5(4) of the Bell Special Act. Such an attachment must be an attachment supplied by the subscriber or customer as an addition to or in substitution of a part of the Bell transmission system. As long as Bell provides the equipment, which is the case here, the provisions of subsection (4) do not confer jurisdiction upon the Commission to take the action requested.

[26-28] Evidence in support of the allegation that the charges are unjust and unreasonable is not sufficient to bring into play the remedial provisions of section 321 of the Railway Act. Furthermore, public interest by itself is not sufficient to give the Commission the necessary jurisdiction. The argument that the agreement is in restraint of trade does not come within any specific jurisdiction of the Commission.

[29, 30] It is not for the Commission to determine in what direction and to what degree cablevision should develop, or to express views as to the division of the telecommunication field between telephone companies and cablevision companies.

[31-43] The type of relief sought by the applicants might lie in section 317 of the Railway Act. While reserving to the applicants the right to use other avenues, the present application should be dismissed.

Re B.C. Telephone Company, Acquisition of Canadian Telephone & Supplies Ltd. (Canadian Transport Commission, Telecommunication Committee, Lafferty, Fortier and Carver, CC., December 7, 1973)

In this decision, the Committee approved an application by the B.C. Telephone Company to purchase all of the shares of Canadian Telephone and Supplies Ltd. from the companies' parent, Anglo-Canadian Telephone Company, at a proposed purchase price of $900,000. The purchase was said to have been motivated by the decision of the Committee on July 30, 1971, in which the Committee express dissatisfaction with the relationship between the Company and C.T.&S.

Although the Attorney-General for British Columbia, intervening on behalf of the Company's subscribers, had questioned the Company's decision to purchase all the shares, instead of all of the assets of C.T.&S. at a lower price, the Committee was satisfied that the money cost of the $900,000 should be offset either by dividends paid by C.T.&S. to B.C. Tel or by a reduction in the service charged paid by B.C. Tel under its agreement with C.T.&S. The purchase price was therefore a just and reasonable price for B.C. Tel, and the Committee approved the purchase, subject to further action should the transaction prove to be detrimental to the subscribers.

Centre for Public Interest Law v. Bell Canada, Re Amended Application "B" for Increase in Rates of Bell Canada (Canadian Transport Commission, Telecommunication Committee, Roberge, Lafferty and Carver, CC., December 21, 1973)

This decision dealt with a preliminary objection by the Centre of Public Interest Law that the Committee did not have jurisdiction to Bell Canada's Application B for an Increase in Rates because that application was an appeal of the Committee's decision of March 30, 1973, on Application A. After reviewing the disposition of similar motions in 1972 and in March, 1973, the Committee found that there were no basic differences in the present case from those prevailing in the earlier decisions, and that all the Committee's findings on this subject still applied to the motion in this present case. Unless an application for revision of rates was on its face frivolous or outside the jurisdiction of Commission, the Committee should deal with it.

Province of Quebec et al. v. Bell Canada, Re Amended Application "B" for Increase in Rates (Canadian Transport Commission, Telecommunication Committee, Order No.T-364, December 21, 1973)

The Committee ordered that the question of law and jurisdiction concerning Bell Canada's relationship with Northern Electric which was raised in the intervention of the Province of Quebec in Amended Application B of Bell Canada should be orally argued by the Province of Quebec, Bell and any other interested intervenors. Although the question of Bell Canada's relationship with Northern Electric has been examined and commented upon in a number of decisions on rate cases, it has been raised and examined in each case more on the basis of the facts than on the basis of an analysis of the Commission's jurisdiction.

Province of Quebec et al. v. Bell Canada, Re Amended Application "B" for Increase in Rates of Bell Canada (Canadian Transport Commission, Telecommunication Committee (Roberge, Lafferty and Carver, CC., February 6, 1974)

This decision examines in some detail the nature of the Commission's jurisdiction over the Northern Electric Company. In its intervention in Bell Canada's Application B for an Increase in Rates, the Province of Quebec had raised a question of law and jurisdiction concerning Bell Canada's relations with the Northern Electric Company and over the Northern Electric Company itself. A hearing was held to determine these preliminary points. The position of the intervenors was that in any application to the Commission for approval of rates made by Bell, the operations of Northern Electric were not only subject to scrutiny by the Commission, but that the intervenors had the right to obtain from Bell the same information and evidence concerning the operations of Northern Electric as was done in respect of Bell's own operations. This was said to flow from the fact that Northern Electric was a business forming part of Bell, that it had the attributes of a telephone company within the meaning of the Railway Act, and that it exercised powers expressly conferred on Bell by Parliament.

After reviewing the jurisdiction of the Commission in respect of telegraphs and telephones, the Committee rejected all three arguments. There was no doubt in the Committee's mind that the jurisdiction and power of the Commission, insofar as telephone operations were concerned, extended and applied only to a company as defined in Section 320 of the Railway Act. A telephone toll must be a toll for services provided by a telephone company through the facilities of a telephone system, or for any service incidental to a telephone business. In the past, the Commission and its predecessor Boards have asserted that its powers of investigation were very broad and have not in any way limited them in respect of the Bell-Northern relationship. The Committee had no great difficulty with the proposition that because of the close corporate relationship between Bell and Northern Electric the Commission must look into the operations of Northern in order to determine the justness and reasonableness of Bell's telephone rates, provided that the information sought was relevant and provided that the Commission complied with the requirements of Section 335 of the Railway Act in its request for information.

The specific grounds upon which the Province of Quebec had based its contention as to the extent of the Commission's jurisdiction or power to inquire into the operations of Northern, and to make such information available to all intervenors, were however rejected by the Committee. There was no doubt that Northern, having its own charter and its

own Board of Directors, was a corporate entity separate and distinct from Bell. The mere fact that Bell was a majority shareholder did not make Northern a business forming a part of Bell. In addition, Northern did not have the powers described in section 320(1) of the Railway Act, and hence was not a telephone company within the meaning of that Act. Finally, although Bell has the power to manufacture telephone equipment, it has no statutory obligation to do so, in contradiction with its statutory obligation to furnish telephones and service under the conditions laid out in its Special Act of 1902. Thus Northern does not exercise powers exclusively conferred on Bell by Parliament.

In summary, the Committee emphasized that any information the intervenors might seek in the current application concerning Bell-Northern business operations must be relevant, and even if found to be relevant, the Commission would have to comply with subsection 335(3) of the Railway Act, to the effect that such information shall be for the information of the Commission only, unless the Commission authorizes any part of such information to be made public in the circumstances set out in that section. While the Commission does benefit from the assistance of the intervenors, the Committee pointed out that an application for a rate increase under section 320 of the Railway Act and the interventions thereon, did not constitute a litigation between the parties which have joined issue, a litigation the outcome of which rests on the contest between the parties. Section 335 of the Railway Act sets limits beyond which the Commission could not move at its discretion.

Bell Canada v. City of Magog, P.Q. (Canadian Transport Commission, Telecommunication Committee, Lafferty and Carver, CC., June 13, 1974)

An application by Bell Canada for leave to construct certain underground conduits in the city of Magog was dismissed by the Committee on the grounds that because the Company had already constructed the underground conduits, the Committee did not have jurisdiction to entertain an application for leave to construct.

The Co-mittee explained that where consent for such construction was refused by the municipality, or where it was granted subject to terms and conditions unacceptable to the Company, the Company could construct the works subject to the unacceptable conditions thus impliedly accepting such conditions, or it could apply to the Commission for leave to construct pursuant to section 318(4) of the Railway Act. If an application for leave to construct is made, it must be accompanied by a plan sharing the proposed location of the lines. An application made after the work has been performed cannot be entertained by the Committee. Here, the Company was objecting to conditions laid down by the municipality, but because the Company had had already completed the construction, the Committee was without jurisdiction to intervene.

Madren v. Bell Canada, Re Foreign Attachments (Canadian Transport Commission, Telecommunication Committee, Order No. T-467, July 18, 1974)

An application for a interim ex parte order against Bell Canada, pursuant to Section 59 of the National Transportation Act, forbidding the removal of the applicant's telephone or discontinuation of her telephone service for 60 days, was returned as inapplicable. The dispute concerning a customer-owned answering device had been the subject of a previous ruling by the Committee. As this application had been filed after that ruling, the Committee could not now formally entertain it.

Re Rate Adjustment Formula Procedure for Telecommunication Carriers under the Jurisdiction of the Canadian Transport Commission (Canadian Transport Commission, Telecommunication Committee, Order No.T-474, August 15, 1974)

This order announces and invites comment on a rate adjustment formula which the Committee had devised to decrease the frequency of rate hearings. Only those changes in costs which were both uncontrollable and identifiable would be considered. The criteria for arriving at an acceptable formula had been simplicity, feasibility, compatibility with the existing regulatory system, consistency with basic economic principles, public acceptability and efficiency. An economy-wide index had been considered but rejected because it would add to inflation by taking into account rising costs that did not affect a particular carrier. A second approach involving a zone of reasonableness for a carrier's rate of return was also rejected, as it assumed that a revenue shortfall was a direct result of identifiable, uncontrollable changes in costs. The Committee was instead recommending a Specific-to-the-Carrier-Formula, which would take into account uncontrollable changes in costs for wages, taxes, depreciation and other expenses, but not such factors as cost of capital. A labour productivity adjustment was also proposed.