

## Bell and Hydro May Claim the Full Value of a Damaged Pole

By Odette Jobin-Laberge

The Court of Appeal has just put an end to the controversy prevailing at the Court of Quebec with respect to the method of assessing damages to a pole on the Bell or Hydro network.

In *Janacek v. Bell Canada and Hydro-Québec*, 500-09-006628-986, March 19, 2001, the Court presided by Justices Proulx, Dussault and Forget, declared as a policy matter, thus validating Justice Verdy, that the replacement of a new pole in a network of some 700,000 poles does not increase its value and consequently no depreciation should be taken into account.

**"If the line is made up of poles with a life expectancy of 19 years, it will be replaced when the time comes, including the new pole. Therefore, the fact of being new earlier will not bring anything to Bell. If a building has 700,000 steps in its staircases, how much value do we add to the staircase if only one step is replaced? None or an infinitesimal value and therefore, negligible.**

[...]



**"Changing a single pole will not rejuvenate a whole line, even less so the network. When the time comes, Bell will have to replace the line, in whole or in part, notwithstanding the difference in the age of each pole. There is therefore no enrichment resulting from the installation of one pole.**

**"Normally, a single pole is not replaced unless it is an emergency. The evidence does not show if the line in question will be replaced shortly, due to the depreciation of the poles or to other elements, or if the whole line is also 9 years old on average. In either case, we cannot presume that Bell will gain some benefit before or after the 19 years."**

However, by establishing this policy matter, Justice Verdy had granted Bell Canada more than what it had sought. Bell had acknowledged a depreciation of \$131.00 on the pole but denied Defendant any depreciation on the related costs (labour, materials, transportation, incidentals, etc.). The Court of Appeal therefore overturned the judgment in this respect since it was rendered *ultra petita*.

We must therefore anticipate that Bell and Hydro will no longer calculate the depreciation of the pole even when they file a claim against the author of damages or its insurers.

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