c 73 The Toronto District Heating Corporation Act, 1980

Ontario
CHAPTER 73

An Act to revise
The Toronto Hospitals Steam Corporation Act, 1968-69

Assented to December 12th, 1980

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

(a) "Board" means the board of directors of the Corporation;

(b) "City" means The Corporation of the City of Toronto;

(c) "Corporation" means the body corporate continued by subsection 1 of section 2;

(d) "Hospitals" means The Trustees of the Toronto General Hospital, The Hospital for Sick Children, Mount Sinai Hospital and Women's College Hospital;

(e) "Minister" means the Minister of Intergovernmental Affairs or such other member of the Executive Council as the Lieutenant Governor in Council designates;

(f) "Participating Institutions" means The Nightingale School of Nursing, The Queen Elizabeth Hospital and the Toronto Institute of Medical Technology;

(g) "steam" means steam or hot water;

(h) "University" means The Governing Council of the University of Toronto. 1968-69, c. 131, s. 1, amended.

PART I

TORONTO DISTRICT HEATING CORPORATION

2.—(1) The Toronto Hospitals Steam Corporation is hereby continued as a body corporate without share capital under the name "Toronto District Heating Corporation".
(2) The change in the name of the Corporation does not affect its rights or obligations, and without restricting the generality of the foregoing, nothing in this Act affects the rights of creditors of the Toronto Hospitals Steam Corporation against the property, rights and assets of the Corporation and all liens upon the property, rights and assets of the Toronto Hospitals Steam Corporation are unimpaired by this continuation and reconstitution and all debts, contracts, liabilities and duties of the Toronto Hospitals Steam Corporation are debts, contracts, liabilities and duties of the Corporation and may be enforced against it including, without limitation, the debts and obligations created by or pursuant to a certain trust deed dated as of the 15th day of December, 1972 between the Toronto Hospitals Steam Corporation and the Canada Permanent Trust Corporation.

(3) The head office of the Corporation shall be in the City of Toronto.

(4) The Corporation shall have a seal which shall be adopted by resolution or by-law. New.

3. There shall be a board of directors of the Corporation consisting of ten directors of whom,

(a) four shall be appointed by the City, at least one of whom shall be a representative of a user of steam purchased from the Corporation, other than the Hospitals, the City, the University or the Province of Ontario;

(b) two shall be appointed by the Hospitals;

(c) two shall be appointed by the Minister; and

(d) two shall be appointed by the University. 1968-69, c. 131, s. 2, part, amended.

4.—(1) Every director shall be a resident Canadian and shall, subject to subsection 2, hold office during the pleasure of his appointor, and upon the death, resignation or removal from office of any director, the appointor of such director under section 3 may appoint some other person in his place.

(2) Every director appointed by the City shall be appointed for a term of office not exceeding the term of office of the members of the council that made the appointment and shall hold office until his successor is appointed and every such director is eligible for reappointment.

(3) Five directors constitute a quorum at meetings of the Board.
(4) The directors shall elect a chairman from among the persons appointed to the Board by the City.

(5) The chairman shall preside at all meetings of the Board.

(6) The Board may appoint one of its members to be vice-chairman, and, in the case of the absence of the chairman or of there being a vacancy in the office of the chairman, the vice-chairman shall act as and have all the powers of the chairman.

(7) In the absence of the chairman and vice-chairman, the Board may appoint one of its members to act as chairman for the time being and the person so appointed shall act as and have all the powers of the chairman.

(8) The Corporation may pay the directors, or any of them, such remuneration and expenses as are from time to time recommended by the Board and approved by the City.

(9) Where there is a vacancy or vacancies in the Board, the remaining directors may exercise all the powers of the Board so long as a quorum of the Board remains in office. 1968-69, c. 131, s. 3, amended.

5. The acts of a director or of an officer are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. 1968-69, c. 131, s. 4.

6. Every director and his heirs, executors and administrators, and estate and effects, respectively, may, with the consent of the Board, from time to time and at all times, be indemnified and saved harmless out of the funds of the Corporation, from and against,

(a) any liability and all costs, charges and expenses that he sustains or incurs in respect of any action or proceeding that is proposed or commenced against him for or in respect of anything done or permitted by him in respect of the execution of the duties of his office; and

(b) all other costs, charges and expenses that he sustains or incurs in respect of the affairs of the Corporation, except such costs, charges or expenses as are occasioned by his own willful neglect or default. 1968-69, c. 131, s. 5.

7.—(1) The Board may authorize the election from among the directors of an executive committee consisting of not fewer than three members, at least one of whom is not a person appointed to the Board by the City.
(2) The Board may delegate to the executive committee any powers of the Board, subject to the restrictions, if any, imposed by the Board.

(3) An executive committee may fix its quorum at not fewer than a majority of its members and may make rules governing its proceedings. 1968-69, c. 131, s. 6. amended.

8. — (1) The Board has the management and control of the affairs of the Corporation and has power to make by-laws governing its proceedings and the calling of meetings of the Board, providing for the appointment of officers of the Corporation, specifying the powers, duties and remuneration of officers, employees and agents of the Corporation, and generally dealing with the management of the affairs of the Corporation.

(2) The Board shall at its first meeting, which shall be held within thirty days of the coming into force of this section, adopt in the name of and on behalf of the Corporation the contracts, agreements and supplemental indenture referred to in subsection 1 of section 29 as negotiated by the interim committee. 1968-69, c. 131, s. 7, amended.

9. — (1) Every director of the Corporation who is directly or indirectly interested in a contract or a proposed contract with the Corporation shall declare his interest at a meeting of the Board and, in respect of such contract or proposed contract, shall not vote or be counted in the quorum.

(2) In the case of a proposed contract, the declaration required by this section shall be made at the meeting of the Board at which the question of entering into the contract is first taken into consideration or, if the director is not at the date of that meeting interested in the proposed contract, at the next meeting of the Board held after he becomes so interested, and, in a case where the director becomes interested in a contract after it is made, the declaration shall be made at the first meeting of the Board held after he becomes so interested.

(3) For the purposes of this section, a general notice given to the Board by a director to the effect that he is interested in any other company, institution or governmental body or is a member of a specified firm and is to be regarded as interested in any contract made with such other company, institution, governmental body or firm shall be deemed to be a sufficient declaration of interest in relation to a contract so made, but no such notice is effective unless it is given at a meeting of the Board or the director takes reasonable steps to ensure that it is brought up and read at the next meeting of the Board after it is given.
(4) If a director has made a declaration of his interest in a proposed contract or contract in compliance with this section and has not voted in respect of the contract, he is not accountable to the Corporation or to any of its creditors for any profit realized from the contract, and the contract is not voidable by reason only of his holding that office or of the fiduciary relationship established thereby.

(5) A director shall be deemed not to have an interest in a contract or proposed contract by reason only of his being an appointee of a party referred to in section 3. New.


(2) Section 58 of The Public Utilities Act does not apply to the Corporation. 1968-69, c. 131, s. 9 (1, 2).

(3) Except for purposes of the Ontario Municipal Employees Retirement System, The Corporation shall be deemed not to be a local board of the City.

(4) The Corporation shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System. New.

11. A copy of any by-law, resolution or minute certified by the secretary or assistant secretary under the seal of the Corporation to be a true copy may be received in evidence in any court as prima facie proof of its making and content. 1968-69, c. 131, s. 8.

12. The objects of the Corporation are to construct, purchase or otherwise acquire, own, lease, maintain, operate, extend, replace and manage steam plants, including refuse-fired steam plants, steam distribution systems, steam condensate return systems and steam supply systems within the City of Toronto for the purpose of supplying steam to users thereof including, without limiting the generality of the foregoing, the acquisition by purchase or lease of all of the assets and undertaking of the steam utility division of the Toronto Electric Commissioners. 1968-69, c. 131, s. 10 (1), amended.

13.—(1) The powers of the Corporation include, without limiting the generality of section 12,

(a) subject to subsection 2 of section 10, the powers conferred on a company incorporated for the purpose of owning, operating or supplying a public utility under The Public Utilities Act, but,
(i) the Corporation shall notify in writing the municipality or authority on which duty to repair has been imposed and the municipality or authority having jurisdiction over any highway, public lane or public communication on, over, under or across which the Corporation proposes to put down, place, install and maintain conduits, pipes, wires, poles, rods, cables, transformers, machinery, apparatus, devices, appliances, equipment, materials, structures or works, and submit to such municipalities or authorities its plans therefor,

(ii) such conduits, pipes, wires, poles, rods, cables, transformers, machinery, apparatus, devices, appliances, equipment, materials, structures or works as the Corporation deems necessary or desirable on, over, under or across any public highway, public lane or public communication shall be put down, placed and installed in such location and manner as the municipality or authority on which duty to repair has been imposed and the municipality or authority having jurisdiction over any such highway, lane or public communication may direct any such highway, lane or public communication restored to its former state, and any dispute between the Corporation and such municipalities or authorities as to the location and manner of putting down, placing and installing shall be referred to the Ontario Municipal Board to be determined, and the decision of the Ontario Municipal Board shall be final,

(iii) the Corporation shall indemnify and save harmless the municipality or authority on which duty to repair has been imposed and the municipality or authority having jurisdiction over any such highway, lane or public communication against, from and for any and all damages, claims, losses, costs and expenses sustained or incurred by reason of the negligent use, operation, maintenance, installation, placing and putting down of the conduits, pipes, wires, poles, rods, cables, transformers, machinery, apparatus, devices, appliances, equipment, materials, structures or works by the Corporation, its agents, servants, employees, contractors and subcontractors;
(b) power to draw, make, accept, endorse, discount, execute and issue bills of exchange, promissory notes, warrants and other negotiable or transferable instruments;

(c) power to acquire by purchase, lease or otherwise and to hold and enjoy any property or interest therein whatsoever, whether real or personal, and to sell, grant, convey, assign, transfer, lease, mortgage, charge, pledge or otherwise dispose of or encumber any such property or interest or any part thereof from time to time as the occasion may require, and to acquire other property or interest therein, in addition thereto or in place thereof;

(d) power to enter into any agreement or arrangement with any person for the management in whole or in part of its undertaking;

(e) power to invest and deal with the moneys of the Corporation not immediately required for its objects in such manner as may be determined by the Board;

(f) power to pay all costs and expenses of or incidental to the continuance and organization of the Corporation, and to pay or reimburse the City for all costs and expenses incurred by it at any time prior to the date that this section comes into force in connection with the planning, design or construction of a system to integrate the steam plants and steam distribution systems owned or operated by Her Majesty in right of Ontario, the Toronto Electric Commissioners, the Corporation and the University;

(g) power to purchase steam from and trade steam with other suppliers of steam;

(h) power to carry on any other business capable of being conveniently carried on in connection with the business of the Corporation or likely to enhance the value of or make profitable any of the property or rights of the Corporation; and

(i) power to do any of the above things and all things authorized as principal, agent, contractor, trustee or otherwise, and either alone or in conjunction with others. 1968-69, c. 131, s. 11, amended.

(2) Notwithstanding section 55 of The Public Utilities Act, the Board shall conduct the business of the Corporation so that the requirements of the Hospitals for steam throughout the year for steam to hospitals R.S.O. 1970, c. 198.
their existing facilities and any new expansion of or modification to such facilities will be given priority over any other users of steam supplied by the Corporation.

(3) Nothing done under subsection 2 shall be deemed a breach of contract by the Corporation or entitle any person to rescind any contract or release any guarantor from the performance of his obligation, or render the Corporation, its servants or agents liable in any action-at-law or other legal proceedings for damages or otherwise. New.

14.—(1) The Corporation shall enter into long-term contracts for the supply of steam to the Hospitals, the Participating Institutions, the University and the Province of Ontario at such rates as may be negotiated between the parties to such contracts, which contracts may be for terms in excess of twenty years, and the long-term contracts entered into with the Hospitals and the Participating Institutions shall replace the steam supply agreements made between Toronto Hospitals Steam Corporation and each of the Hospitals and the Participating Institutions.

(2) Subject to subsections 4 and 5, the rates for steam supplied by the Corporation to its customers, other than those named in subsection 1, shall be set by the Corporation in such amounts and for such periods of time as the Corporation considers appropriate and in setting such rates the Corporation may use its discretion as to the rates to be charged to the various classes of its customers.

(3) The Corporation may fix the charges for the cost of any work or service done or furnished for the purpose of a supply of steam, and the rent of or charges for fittings, apparatus, meters or other things leased or furnished to its customers.

(4) The Corporation may provide for the collection of the rates, charges and rents referred to in subsections 1 to 3 and the times and places when and where they shall be payable, and for allowing for prepayment or punctual payment such discounts as may be considered expedient.

(5) Where the rates referred to in subsection 2 are increased by the Corporation, a customer affected thereby may appeal to the Ontario Energy Board, which may fix the amount of such rates, and the decision of the Ontario Energy Board is final and binding.

(6) A decision of the Ontario Energy Board under subsection 5 remains in effect for the period of time for which the rate was originally fixed by the Corporation, and thereafter until such time as the Corporation changes the rates under subsection 2.
(7) In fixing rates under subsection 2 or 6, the Corporation and the Ontario Energy Board shall take into account the intent that the operations of the Corporation are to be financed from the revenues of the Corporation. Neve.

15.—(1) In this section, "transfer date" when used in respect of the employees of the steam utility division of the Toronto Electric Commissioners means the date on which the Corporation assumes liability for the payment of the salaries, wages and benefits of such employees by reason of the acquisition by purchase or lease of substantially all of the assets and undertaking of the steam utility division of the Toronto Electric Commissioners.

(2) Three months prior to the transfer date, the Toronto Electric Commissioners shall designate those of its employees who are involved in the operation of the steam utility division and the Corporation shall offer employment to each such employee so designated commencing on the transfer date and at a wage or salary not less than the wage or salary being received by each such employee immediately before the transfer date.

(3) A person who accepts employment under this section is entitled as a term of his employment to continue as a member of the group life insurance plan in which he was a member with the Toronto Electric Commissioners until the effective date of a common group life insurance plan covering all eligible employees of the Corporation.

(4) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlement provided by the Toronto Electric Commissioners immediately before the transfer date until the Corporation establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the employee shall receive allowance or credit for any accrued sick leave rights or benefits.

(5) A person who accepts employment under this section is entitled as a term of his employment to retain as service credits with the Corporation service credits with the Toronto Electric Commissioners as of the date of transfer for the purpose of establishing vacation entitlement and seniority for promotion.

(6) A person who accepts employment under this section shall be deemed to continue as a member of the Ontario Municipal Employees Retirement System on his transfer date, and The Ontario Municipal Employees Retirement System Act applies to such person as a member of the System.

(7) When a person who accepts employment under this section with the Corporation is entitled immediately before his transfer
date to the benefit of any supplementary agreement between the Ontario Municipal Employees Retirement Board and the Toronto Electric Commissioners, the Corporation shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the Corporation had been a party to the agreement in the place of the Toronto Electric Commissioners.

(8) Subject to any collective agreement, nothing in this section prevents the Toronto Electric Commissioners prior to the transfer date or the Corporation after the transfer date from terminating the employment of an employee for cause.

(9) Subject to subsections 3 to 7, every person who accepts employment under this section and who is part of a bargaining unit, as recognized by the existence of a collective agreement, or agreements, between the Toronto Electric Commissioners, and a union, shall be deemed to be employed by the Corporation on the transfer date, pursuant to the terms and conditions of employment as set out in such collective agreement, or agreements, and the Corporation shall be bound by, and be deemed a party to, such collective agreement, or agreements, on the transfer date.

16.—(1) Within fifteen days of a day to be named by the order of the Minister, which day shall be prior to the coming into force of section 30, the Toronto General Hospital shall designate those of its employees who are involved in the operation of the steam plant and distribution system of the Toronto Hospitals Steam Corporation, and the interim committee referred to in subsection 1 of section 29 on behalf of the Corporation shall offer to employ each such employee so designated on the day section 30 comes into force, which day shall be known as the “transfer date”, on terms and conditions, including recognition of service and seniority credits, not less favourable than those being recognized or received by or provided to each such employee immediately before the day section 30 comes into force.

(2) Notwithstanding subsection 4 of section 10, a person who accepts employment under this section shall be deemed to continue as a member of the Hospitals of Ontario Pension Plan on his transfer date and, notwithstanding section 8 of The Ontario Municipal Employees Retirement System Act, the Corporation shall make such contributions to the Hospitals of Ontario Pension Plan as it may, from time to time, be required to make.

(3) Subject to any collective agreement, nothing in subsection 1 prevents the Toronto General Hospital prior to the day section 30 comes into force or the Corporation after that day from terminating the employment of an employee for cause.

(4) Every person who accepts employment under this section and who is part of a bargaining unit, as recognized by the existence
of a collective agreement, or agreements, between the Toronto General Hospital, and a union, shall be deemed to be employed by the Corporation on the transfer date, pursuant to the terms and conditions of employment as set out in such collective agreement, or agreements, and the Corporation shall be bound by, and be deemed a party to, such collective agreement, or agreements, on the transfer date. New.

17.—(1) Subject to the approval of the City, the Corporation may from time to time borrow or raise by way of loan such sums of money as the Corporation may consider requisite for any of the purposes of the Corporation in either or both of the following ways,

(a) by loans from the City; or

(b) by loans from any chartered bank or banks or from any other person either by way of bank overdraft or loan as the Board may determine, provided that any such overdraft or loan shall be required for current expenditures of the Corporation pending the collection of revenue and shall be payable within one year of the incurring or making thereof, and may mortgage, charge, pledge and otherwise encumber all or any part of the property of the Corporation, whether real or personal, present or future, including its book debts, rights, powers, franchises and undertakings, to secure any such loan.

(2) The purposes of the Corporation, without limiting the generality thereof, include,

(a) the carrying out of the powers of the Corporation mentioned in section 13;

(b) the payment, refunding or renewal from time to time of the whole or any part of any sum or sums of money raised by way of loan or of any debentures issued by the Corporation; and

(c) the payment of the whole or any part of any obligation, liability or indebtedness of the Corporation.

(3) The Corporation may enter into supplemental indentures amending the trust deed referred to in subsection 2 of section 2 on such terms and conditions as may be approved by the Board to reflect the continuation and reconstitution of the Corporation effected by this Act and may mortgage, charge, pledge and otherwise encumber all or any part of the property of the Corporation, whether real or personal, present or future, including its book debts, rights, powers, franchises and undertakings, to secure the
debentures issued pursuant to the trust deed and outstanding on
the date of execution of any such supplemental indenture.

(4) Notwithstanding anything herein contained, the assets of
the Corporation shall be used to pay, as they accrue due, the
principal of, premium (if any) and interest (including interest on
interest) on the debentures issued under the trust deed in priority
to any other debts or obligations of the Corporation existing at the
date any such payment on the debentures accrues due.

(5) Subsection 4 does not affect the security for any debt or
obligation of the Corporation or any lien against the Corporation
or its assets, where the security or lien is provided for under any
other Act. New.

18. The accounts and financial transactions of the Corpora-
tion shall be audited annually by the auditor of the City. New.

19. The Board shall make a financial report annually to the
City in such form and containing such information as the City
requires for each fiscal year of the Corporation within three
months after the end of that fiscal year, or for such other periods
and within such other time or times as the City requires and a copy
of each annual financial report shall be sent to each of the Hospi-
tals, the Participating Institutions, the University and the Minis-
ter. New.

PART II
POWERS OF THE CITY

20. The City is authorized and empowered to provide funds to
the Corporation to enable it to carry out its objects and the funds
advanced to the Corporation by the City shall be on such terms as
the City may from time to time determine. New.

21. The City may,

(a) design and construct a steam plant fired in part by refuse
on the lands acquired by the City from Gulf Canada
Limited on Lake Shore Boulevard East in the City of
Toronto between Cherry Street and the Don River;

(b) participate with any person, including The Municipality
of Metropolitan Toronto, the Corporation and any
ministry or agency of the Province of Ontario or, with
the approval of the Minister, the Government of Can-
ada, in the financing, ownership or operation of the
steam plant referred to in clause a; and
(c) sell, lease or otherwise dispose of the lands referred to in clause a. New.

22. Notwithstanding subsection 1 of section 293 of The Municipal Act, a by-law providing money for the purposes of section 20 or 21 does not require the assent of the electors. New.

PART III

GENERAL

23. Subject to section 24, upon the acquisition by purchase or lease of all of the assets and undertaking of the steam utility division of the Toronto Electric Commissioners, the Corporation shall assume and discharge the liabilities, debts, contractual obligations and commitments of the steam utility division of the Toronto Electric Commissioners and the Toronto Electric Commissioners shall be released therefrom. New.

24.—(1) Notwithstanding the provisions of any agreements for steam services the Toronto Electric Commissioners may have with its steam customers at the date of its transfer of its steam distribution system under section 12, all agreements which the Toronto Electric Commissioners may have with steam customers at the date of such transfer will, on the date of such transfer, cease to have any legal effect and will be unenforceable.

(2) As against the Toronto Electric Commissioners, all judgments or orders of any court dealing with the interpretation of any agreement referred to in subsection 1 shall, from the date of the transfer referred to in that subsection, be assumed by and be enforceable against the Corporation and the Corporation shall indemnify the Toronto Electric Commissioners in respect of any such judgment or order enforced against the Toronto Electric Commissioners after the date of the transfer.

(3) Subsection 1 does not affect or prejudice any right of any person arising out of any agreement referred to in subsection 1 if the cause of action arose prior to the day of the transfer of the steam distribution system referred to in that subsection and any action, litigation or other proceeding may be brought against the Toronto Electric Commissioners with respect to any such right or may be continued and finally adjudicated upon to the same extent as if this Act had not been passed and the Corporation shall assume the liability of the Toronto Electric Commissioners arising out of any such right and shall indemnify the Toronto Electric Commissioners with respect to any judgment or order arising therefrom.
Notice

(4) Notice of any action, litigation or other proceeding to which subsection 3 applies shall be served on the Corporation by the Toronto Electric Commissioners and the Corporation may be a party to any such action, litigation or other proceeding. New.

25. Nothing in this Act restricts the right of The Hospital for Sick Children to require a reconveyance to it of the steam plant site described in the trust deed referred to in subsection 2 of section 2 upon payment of an amount equal to the purchase price of approximately $475,000 if the said site is no longer used by the Corporation for the purposes of a steam plant supplying steam to the Hospitals and the Participating Institutions and, if such right is exercised, to require the Corporation, at its expense, to level the said site to grade. New.

26. The steam plant of the Corporation located on the steam plant site described in the trust deed referred to in subsection 2 of section 2 and all related equipment and facilities and any other site used to generate the supply of steam are deemed to be a hospital and persons employed thereat are deemed to be hospital employees for the purposes of The Hospital Labour Disputes Arbitration Act as long as steam generated therefrom is being supplied to the Hospitals and Participating Institutions or any of them. New.

27. The operations of the Corporation shall be deemed not to be a manufacturing business or other industrial or commercial enterprise for the purposes of section 248 of The Municipal Act. New.

28. The Lieutenant Governor in Council, upon the recommendation of the Minister, may by order authorize all such acts or things not specifically provided for in this Act that are considered necessary or advisable to carry out effectively the purposes of this Act. New.

29.—(1) Within sixty days of the coming into force of this section, the City shall appoint an interim committee composed of four persons which shall have the power on behalf of the Corporation to negotiate and settle the terms and conditions of the contracts referred to in subsection 1 of section 14, a supplemental indenture amending the trust deed as referred to in subsection 3 of section 17, and the agreements for steam services to replace the agreements referred to in section 24.

(2) The interim committee shall report to the Minister forthwith after it has settled with the other parties thereto the terms and conditions of the contracts, agreements and supplemental indenture referred to in subsection 1.
(3) The offers of employment referred to in subsection 2 of section 15 shall be made by the interim committee on behalf of the Corporation where the transfer date of the employees affected by that section is a day less than three months after the coming into force of section 30. *New.*

30. *The Toronto Hospitals Steam Corporation Act, 1968-69,* Repeal being chapter 131, is repealed.

31.---(1) This Act, except sections 2 to 15, 17 to 28 and 30, Commencement comes into force on the day it receives Royal Assent.

(2) Sections 2 to 15, 17 to 28 and 30 come into force on a day to be named by proclamation of the Lieutenant Governor.

32. The short title of this Act is *The Toronto District Heating Corporation Act, 1980.*