Probe questions business ethics of hydro deal

Hydro-Québec allegedly bullied firm to land lucrative Churchill Falls pact

BY RICHARD FOOT

The Churchill Falls hydro agreement — giving Quebec long-term access to discount-priced power from Newfoundland and Labrador — was not only a bad financial deal for Newfoundland, it was also signed under coercive conditions, which may raise "substantive questions of business ethics and law," according

gave each side the option of renewing the contract — under mutually agreeable terms and fresh negotiations — upon its expiry in 2016.

By 1968, however, after years of negotiating under such terms, Hydro-Québec suddenly declared it wanted an automatic renewal of the contract, without negotiations, for another 25 years starting in 2016. And it wanted a guaranteed price even land, it was also signed under coercive conditions, which may raise "substantive questions of business ethics and law," according to newly released research on the 1968 deal.

A new study, by Memorial University economics professor James Feehan and historian Mel Baker, says the Newfoundland company that developed the massive project signed the extraordinary contract because Hydro-Québec chose at the last minute to exploit inside information that the developer would go bankrupt without a deal.

Although the Churchill Falls contract has long been recognized as an unfair and unlucky deal for Newfoundland, Mr. Feehan says the origins of the most controversial aspect — the 21st-century renewal clause — have never been properly understood.

That's partly because two of the main negotiators for the Churchill Falls Labrador Company (CFLCo), the

an automatic renewal of the contract, without negotiations, for another 25 years starting in 2016. And it wanted a guaranteed price even lower than the original price paid before the renewal.

CFLCo was then in the midst of building the project, was heavily in debt, and nearing the end of its cash flow. By February 1968, it had only three months worth of money left.

If it refused Hydro-Québec's demands, and Quebec walked away from its commitment to purchase Churchill Falls power, CFLCo would almost certainly go bankrupt.

The study says Hydro-Québec had access to CFLCo's precarious finances because Hydro-Québec was also a minority owner of the company, and its president sat on CFLCo's board.

Despite such an apparent conflict of interest, there is no evidence that the contract was reached illegally. Twice, Newfoundland has challenged the contract in troversial aspect — the 21st-century renewal clause — have never been properly understood.

That's partly because two of the main negotiators for the Churchill Falls Labrador Company (CFLCo), the company that developed the project, died in a Labrador plane crash soon after the agreement was signed.

In the 1960s, Newfoundland began talks with Hydro-Québec to sell power from Churchill Falls, because Quebec would not allow Newfoundland to transmit the power through Quebec to other markets.

Quebec still gets power at bargain prices from Churchill Falls, and has a contract to do so until 2041. That contract was initially designed to last only 40 years, from 1976 (the year Churchill Falls power came onstream), to 2016.

According to the new study, a letter-of-intent signed between Hydro-Québec and CLFCo in 1966 company, and its president sat on CFLCo's board.

Despite such an apparent conflict of interest, there is no evidence that the contract was reached illegally. Twice, Newfoundland has challenged the contract in court, and each time the courts have upheld it.

But no one has ever launched a legal challenge of the renewal clause. Mr. Feehan, who is not a lawyer, thinks Newfoundland should.

"Nobody has ever claimed the renewal clause is illegal," he says. "But you really do have to question the ethics of it. And someone really should question the legality of it."

In a speech in 1996, former Newfoundland premier Brian Tobin estimated that Hydro-Québec received windfall profits of $1.4 million a day from redistributing Churchill Falls power. He said Newfoundland and Labrador, the resource owner, received only $45,000 a day.