

# Government regulations should not mean expropriation without compensation

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Photo: provided by Greg Bohnert

In 1969 the future president of Geophysical Service Incorporated was working in Libya. Davey Einarsson arrived there working for the original GSI, but on September 1st he had resigned to take on the job of Exploration Manager for Chappaqua Oil. It was the same day Ghadafi seized control of Libya and shortly after the oil company was nationalized and asked to leave.

Fast forward to the present day where Calgary-based Geophysical Service Incorporated, the largest owner of marine seismic data in Canada is fighting the expropriation without compensation of its private property.

By definition what GSI is fighting is not nationalization. But COO and Chairman Paul Einarsson can certainly see a parallel in current government policy which is expanding the release of GSI data into the public domain. That legacy also explains the passion and persistence Einarsson has to continue the fight to see some justice done for his company.

“What is occurring is so unfair and in my opinion un-Canadian. Nova Scotia is using another’s data, interpreting it, disclosing the confidential interpretations, which include data and posting it online to promote the current NS13-1 lease sale,” says Einarsson. “These acts and in addition to the above acts also provide navigation shape files for download without any tracking is the first we have seen of this new expanded disclosure. The CNSOPB despite litigation seeks to rapidly expand its use, conversion and disclosure of seismic data that it is expropriating. This is wreckless and irresponsible behaviour by what I see as a totalitarian entity right here in Canada.”

GSI has filed legal action against both federal and provincial regulators such as the Canada Nova Scotia Offshore Petroleum Board, the Canada Newfoundland and Labrador Offshore Petroleum Board, the National Energy Board and Natural Resources Canada over the use, disclosure and release of its

proprietary seismic data to third parties, which means many current and prospective GSI customers are not bothering to pay to license the data when they can get it for free. The new policy to disclose digital files has exacerbated this damper on sales.

Paul Einarsson has tracked down much of his seismic data which has been released from the NEB, Natural Resources Canada, the CNLOPB and the CNSOPB data banks, and in most cases been copied. His research has come through endless filings of Access to Information Act requests. But some governments and agencies would rather use clauses under the same regulation to obstruct or simply refuse to release the information.

“While they bend the rules left and right GSI is hamstrung by strict observation of these rules,” says Einarsson. “The new form of disclosure by the CNSOPB will make it impossible for GSI to now even do access requests to find out who the recipients are.”

Recently after a litany of complaints from GSI to the Office of the Information Commissioner of Canada that the Department of Natural Resources was not forthcoming with the disclosure of records from a June 2010 Access to Information request, some action was finally taken.

OIC Commissioner Suzanne Legault determined there was substance to the complaints filed by Einarsson that the Access to Information Act was misapplied in concealing the records requested. As explained in a letter from the counsel for the OIC an application was initiated for a judicial review in respect of the Minister of Natural Resources Canada’s decision to refuse to disclose all records of what it did with GSI’s surveys to third parties under the personal information exemption.

“GSI data was improperly disclosed to customers and prospective customers of GSI and NRC sought to obstruct GSI access to this information by covering up companies, company employees and emails and other professional information. It is trying to use privacy as a shield to cover up this illegal if not highly improper distribution,” alleges Einarsson.

The issue is getting traction in the media, but not to the extent one might expect. Part of that is few companies unlike GSI have the courage to take their fight public. Managing editor of Blacklocks.ca Tom Korski who is following the GSI story understands the attitude towards such claims, and why there is such inaction or lack of leadership from the political arena.

“In my experience there is simply little comprehension of the Copyright Act or intellectual property values on Parliament Hill among many staffers, regulators, media and even legislators. Unlicensed distribution is not seen as theft; it is dismissed as a technical infraction of inconvenient rules that favour greedy complainants. I recall one MP who admitted to distributing copyright material actually become angry over suggestions he was stealing someone’s work.” says Korski.

Government meddling in the distribution of proprietary seismic data is an issue Paul Einarsson feels is a concern for the industry.

“The entire new information economy the government says it is trying to promote is at risk when the government itself deals directly to provide cooperation, support and business to piracy

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firms while actively seeking to destroy the Canadian business of a creator or investor in intellectual property because we speak out about their improper expropriation.”

The fight has been escalated by discoveries that governments or regulatory bodies can easily obstruct a company’s or individual’s rights by side stepping the spirit of the Access to Information Act , at a time when the federal government and others are busy touting “government transparency ”policies that will enshrine those same rights for all Canadians.

Government policies that open up the playing field for competition often translate into opening doors and dropping barriers for huge foreign multi-nationals to step in. Historically what is done for the greater good, more often than not, comes at a cost for Canadians, in the form of job losses, or foreign takeovers.

For GSI, a huge issue is that the Newfoundland and Labrador crown oil company Nalcor, now becoming a seismic data owner invested up to 40 million dollars with a foreign competitor of GSI to place a survey over GSI data which virtually put GSI out of business in this area.

The survey was in part to show new activity after arguing GSI was obstructing new work.

The Canada Newfoundland and Labrador Offshore Petroleum Board has gone into competition with GSI by releasing the company’s intellectual property after an improper ten year confidentiality period they created. That same data is used by the province to promote its offshore economic development, but without paying the license fees for the data which belongs to GSI.

Submitting that valuable non-exclusive seismic data to the CNLOPB was a regulatory requirement for GSI to obtain a permit to do the work offshore. The governments say they act only as a library.

“The problem is libraries don’t make it easier for you to violate intellectual property laws. The boards and NRC made copies, sent data out to be copied, or scanned and knowingly participated in copyright violations,” says Einarsson, who adds there are hundreds of examples as evidence to support his claims.

When there is evidence of government policies that do more harm than good, the question is why such regimes should be allowed to continue?

In Alberta and other territories for example there is the protection GSI should have and is entitled to. Under section 50 of the Alberta Mines and Minerals Act the confidentiality of seismic data is enshrined. Importantly there is no requirement for companies

to submit seismic data to any provincial agency to obtain permits to do their work so there is nothing there to disclose. The free market is allowed to work.

People and companies can keep the fruits of their labour and don't have to deal with expropriation.

Geophysical Service Incorporated is getting support after taking its fight public over this government overreach.

Joseph Quesnel, policy analyst with the Frontier Centre for Public Policy, in a recent editorial concluded that a system in which private interests are trampled on without providing, or even offering the appropriate protections or compensation, are never sustainable in the long run.

As Quesnel sees it, "Governments throughout Canada are given wide latitude in regulating property. The GSI case illustrates the precarious nature of intellectual property rights in Canada. Through regulation, governments may confiscate property without compensation. Great emphasis is placed on physical property, but little attention is given to intellectual property, even though the economic loss can be just as great."

The actions of both provinces and federal government undermine the ownership of GSI's seismic data and threaten the financial viability of the company.

Paul Einarsson feels it is an example for all other Canadian businesses and citizens who have to ask themselves if they might be next.

Most representatives of the Newfoundland and Labrador, and Nova Scotia governments and regulatory agencies are quick to offer no comment since cases are before the courts, but continue to use, and are even expanding the disclosure of seismic data at the centre of legal wrangling to promote offshore exploration and development.

Going public with lawsuits takes courage, and often brings unwarranted criticism from within the industry itself. It's part of the cost of seeking justice.

Recently GSI filed a statement of claim in the Court of Queen's Bench in Alberta against Nalcor, the Newfoundland and Labrador crown-owned energy company. GSI maintains that Nalcor is interfering in its business with customers by taking interests in leases with GSI licensees where license agreements require other participants to license the same GSI data.

Just like computer software these are single user licenses and if participants don't have a license, it's wrong. The alleged interference occurs when Nalcor refuses to license the seismic data of GSI customers which is a standard practise in the industry. In this case alone GSI is seeking more than nine million dollars in damages from Nalcor.

Paul Einarsson says for him this goes to the heart of the matter. "Nalcor is directly or indirectly benefiting from GSI data, while ignoring GSI contracts with its customers that requires all participants to license the same data over a particular block. Nalcor never assisted GSI or any other Canadian company yet it invests 40 million with a foreign company."

The protracted dispute over the distribution of proprietary seismic data in the public domain can be blamed perhaps on the unwillingness by politicians to act to correct damaging policies or government overreach. There also is a perception that such disputes fall outside of the overall defense of such regulations for the public or economic good, even when there is proof those policies do not bring about the much touted results for the industry.

More importantly they set disturbing precedents for all private property owners.

In Canada most of the regulatory policies put in place by government are acceptable, they are the result of conferring with the principles and the result of policy analysis. People expect that the policies are enacted to protect them.

But in the case of Geophysical Service Incorporated, government policies have caused all harm and no good.

However Paul Einarsson feels progress is being made in his fight over confiscation of private property.

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Geophysical Service Incorporated is soon to be the focus of a documentary video on the issue of the fight for property rights in Canada. It's an important issue for the oil and gas industry and for all Canadians. For more on the ongoing story visit [www.geophysicalservice.com](http://www.geophysicalservice.com). **S**



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