

FCPP - Frontier Centre for Public Policy



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In Brief:

- Governments sometimes regulate property to the point where it almost amounts to an expropriation.
- The same applies to intellectual property. Geophysical Service Incorporated (GSI), a company specializing in offshore seismic data, is challenging the governments of Newfoundland and Nova Scotia over what amounts to an expropriation of its seismic data in Atlantic Canada.
- GSI is challenging both federal and provincial offshore regulators in court.
- These governments make mention the "greater good" in what they are doing but private parties such as GSI should not shoulder the full burden of that greater good.

Seismic Company Challenging Confiscation of Intellectual Property

Individuals or companies should not shoulder cost of common good

Governments can sometimes regulate the use of private property to the extent of nearly expropriating it.

Regulatory policies are acceptable under our legal system, even if surprisingly, there is no requirement to pay compensation for the use of the private property.

Clearly, for the sake of justice, governments must protect and compensate property owners.

They must treat intellectual property similarly.

Geophysical Service Incorporated (GSI), a Calgary-based company specializing in marine seismic data, deserves such protection. The company performs expensive offshore seismic surveys for petroleum companies.

Seismic data is the most valuable information used for petroleum exploration and development.

Their problem with government regulations, however, started when they began collecting offshore seismic data in Atlantic Canada.

The governments of Nova Scotia and Newfoundland and Labrador require that GSI submit its valuable seismic data to them as a condition of working.

However, after a ten-year confidentiality period, these governments released the data into the public domain. This action deprived the company from selling the data to customers. The provinces threaten the financial viability of GSI.

Of course, GSI is contesting the public release of their intellectual property. Not surprisingly, they are hopping mad at these governments.

"The company may have been forced to submit its data ..., but it did so in confidence and without waiving its ownership, copyright and confidentiality rights," said Catherine Butlin, a lawyer for GSI.

Geophysical Services Incorporated has gone to court with federal and provincial offshore regulators such as the Canada-Nova Scotia Offshore Petroleum Board, the Canada-Newfoundland Labrador Offshore Petroleum Board, the National Energy Board and Natural Resources Canada. All of these legal cases are ongoing, and the boards will not comment on the proceedings because the claims are currently before the courts.

Paul Einarsson, chief operating officer and chairman of GSI, said this sort of seismic data is protected in

other provinces and territories, including his home province of Alberta. In Alberta, specifically, seismic data confidentiality is enshrined in Section 50 of the Alberta Mines and Minerals Act. Businesses do not submit data to governmental agencies because the free market is allowed to work.

In Newfoundland and Nova Scotia the data are given out for free and, in fact, these data are used to promote the provinces' economic development. The governments, Einarsson said, are using the information GSI gathered at very high expense for offshore energy development and are not paying for the use of the data.

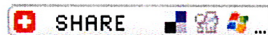
GSI protested when the Newfoundland Government passed new expanded legislation aiming to attract more oil companies who should be paying for the license fees. The government's response was particularly chilling.

"I understand that he's trying to protect his company and the interest of his company, but there comes a point when the greater good needs to be served and that's what this policy is all about," said Natural Resources Minister and now Premier Kathy Dunderdale while attending the Newfoundland and Labrador Oil and Gas Industries Association convention in St. John's.

Governments in the western tradition are established to promote and protect the common good. They often invoke the "greater good" when they want to expropriate physical or intellectual property. Governments see the "public good" as trumping private, commercial, interests. But governments should not compel a company or individual to shoulder exclusively the cost of the common good in a given sector.

A system in which private interests are trampled without offering the appropriate protections or compensations, as the historical record shows, is never sustainable in the long run. If governments deem it in the public interest – in this case regional economic development – effectively to confiscate hundreds of millions of dollars worth of intellectual property from private companies, such as GSI, then governments should fairly compensate them.

At best, governments should let the free market work to make their jurisdictions more attractive to receive investment, and not adopt policies and legislation that make them less so.



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is a policy analyst at the Frontier Centre for Public Policy who focuses on aboriginal matters and property rights. Based in Lethbridge, Alberta, he is from the Sudbury region of Northern Ontario, and has Metis ancestry from Quebec. He graduated from McGill University in 2001, majoring in political science and history. He specialized in Canadian and American politics, with an emphasis on constitutional law. He is completing a master of journalism degree at Carleton University, where he is specializing in political reporting. For two years, he covered House standing committees, as well as Senate committees. His career in journalism includes several stints at community newspapers in Northern Ontario, including Sudbury and Espanola. He also completed internships at CFRA 580 AM, a talk radio station in Ottawa and the Cable Public Affairs Channel. He writes a weekly column in the Winnipeg Sun and contributes to the Taxpayer, the flagship publication of the Canadian Taxpayers Federation. Quesnel's policy commentaries have appeared in the Lethbridge Herald, Vancouver Sun, Globe and Mail, Financial Post, and the National Post, among others.