



# INTELLECTUAL CANADA

## REGULATORY TAKING WITHOUT COMPENSATION IS NOT JUSTIFIED

By Greg Bohnert

**The head of a Calgary based seismic company is questioning the motivation behind regulations of offshore agencies, which requires the submission of seismic data in order to conduct surveys offshore Canada.**

**P**aul Einarsson's position as COO and Chairman of Geophysical Service Incorporated centers on the company's intellectual property being used by governments and government agencies in Newfoundland and Labrador and Nova Scotia to promote exploration without paying for it. The data is normally licensed to GSI customers.

But, GSI maintains the release and disclosure of the data violates its intellectual property rights and is interfering with its contractual relations with clients.

Geophysical Service Incorporated is the largest owner and largest creator of marine seismic data in Canada.

In Nova Scotia, seismic data has been submitted to the provincial regulator during three decades of work offshore.

In simple terms, the government rationalizes the collection of the data necessary for safety and environmental concerns, as well as the management of offshore oil and gas resources.

But, questions should be raised about regulatory taking of intellectual property, which means governments can exercise the right to use and disclose the data for free.

Einarsson, in fact, believes this is the underlying purpose of the regulations.

Government can sidestep paying for the intellectual property normally licensed to customers. This is what is happening in Nova Scotia and Newfoundland and Labrador.

GSI has launched legal action against the Canada Nova Scotia Offshore Petroleum Board, the Attorney General of Nova Scotia, and the Attorney General of Canada.

Geophysical Service Incorporated has applied for a Nova Scotia Supreme Court order declaring the board's demand that the companies provide it with all the records of non-exclusive seismic survey work it has done off Nova Scotia are unlawful and not authorized. The application questions whether the CNOSPB has the statutory authority to demand the seismic data in the first place.

The case was argued in court in late November of last year and will be one to keep a close watch on this year. Justice J Allan Boudreau has reserved his decision on the application.

Paul Einarsson is challenging the validity of the regulations, which in reality has destroyed the value of the intellectual property GSI had created.



In simple terms, Geophysical Service Incorporated claims seismic data produced by non-exclusive surveys the company conducted from 1971 to 2006 are confidential, proprietary, copyrighted, and constitute trade secrets.

Meantime, the Canada Nova Scotia Offshore Petroleum Board argues the data is collected under the regulations as part of the conditions and requirements to obtain work permits, and the collection of this data is valid.

This is something oil and gas companies are required to do, but Einarsson questions the need for a seismic company to be treated in the same fashion. GSI has created its own intellectual property much like computer software or a painting.

There is a difference in the regulations concerning work permits that do not apply to GSI but rather to oil and gas companies, which do entitle the board to work products like seismic data.

This is often the case when work commitment bids by oil companies, as opposed to a cash bid, entitle the boards to the “work products” created by oil companies like seismic data.

But, in the case of GSI, it makes no work commitment, gets no lease, and therefore receives nothing in return for the use of its data by the government.

This convenient confusion between oil company work commitment data and GSI’s data amounts to expropriation without compensation.

Einarsson’s opinion is the board adds nothing to the safety or environmental concerns that are not already covered in other laws and by other federal agencies. He further argues this kind of expropriation is not authorized nor was it contemplated as a purpose under the legislation which makes the regulations invalid.

He frames the question this way, “In order for Microsoft to register its copyright or Coke to patent its formula, does the government take its software or produced coke products and use them freely without paying for them? Or do they release it to other companies for them to use all because the government has a desire to promote?”

But, this is basically what the regulations apparently enable the governments of Nova Scotia

and of Newfoundland and Labrador to do.

The Canada and Newfoundland Offshore Petroleum Board requires seismic data obtained offshore has to be submitted as part of expensive geophysical permits to do the work. The board argues that under the terms of these agreements the data would be protected for a period of confidentiality of ten years.

After, the data can be freely distributed into the public domain according to the offshore regulators.

Einarsson contends they conveniently overlook the fact they are in Canada where federal laws and other laws apply such as Copyright, expropriation, and common laws of property ownership.

It is a different, but similar, situation; however, the result is the same.

**“For Microsoft to register its copyright or Coke to patent its formula, does the government take its software or produced coke products & use them freely without paying for them”?**

The government is using GSI’s intellectual property, first, without a license and without paying fees, and second, to promote the offshore for free and economic gain in the form of taxes, royalties, and investment by oil and gas companies. For GSI, there is no benefit or compensation paid for the use of this seismic data, and the only purpose GSI had in investing in this data was to license it. The actions of the boards are totally contrary to the purpose the data was created for.

For that reason, Paul Einarsson believes this regulatory taking by government is simply wrong. Using someone’s creation for free and without paying for it, is something any honest, hard working Canadian can understand being immoral.

The question is why can’t governments? 

