

PART I – OVERVIEW & STATEMENT OF FACTS

Issues of Public Importance

1. The *Copyright Act* is of national application and importance. The Alberta Court of Appeal has fundamentally undermined copyright protection by determining that regulatory legislation can implicitly override the *Copyright Act* and deprive copyright owners of their express rights. At issue in this case is when can a regulatory regime be transformed into a property acquisition regime, without express statutory intent.
2. The Applicant, Geophysical Service Incorporated (“GSI”), creates, processes and licenses seismic data. Copies of the seismic data are submitted to government boards pursuant to the requirements of a regulatory regime. After a 5 year period,¹ the seismic data can be disclosed to the public. At this point, third parties access and copy the data for their own commercial purposes.
3. GSI receives no compensation when its seismic data is released publically, copied, packaged and re-copied, and eventually sold.² On this basis, GSI commenced an action for copyright infringement against companies that were allegedly making use of its seismic data without either notice to GSI or GSI’s permission.
4. The trial judge below determined that copyright subsists in the seismic data, but held that to the extent that the regulatory regime conflicts with the *Copyright Act*, the regulatory regime prevails. The *Canadian Petroleum Resources Act*, a central piece of the regulatory regime, was found to implicitly supplant the *Copyright Act*.
5. On one level, the courts below held that the *Canada Petroleum Resources Act*, without expressly stating it, creates an exception to the exclusive right under the *Copyright Act* to control, licence, and charge a fee for dissemination or copying of data acquired, submitted and

¹ The statutorily mandated confidentiality period is five years. Government boards have administratively extended this period in some cases up to 10 or 15 years.

² *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 211.

retained under the regulatory regime. On another level, copyright protection is diminished and the courts have sanctioned government appropriation of rights without compensation.³

6. With its comprehensive record, this case provides this Honourable Court an ideal opportunity to consider the apparent conflict between the *Canadian Petroleum Resources Act* and the *Copyright Act*. More generally, it requires consideration of how to identify and resolve apparent legislative conflict where provisions deal with similar subject matter but entirely different rights.

7. The present matter has federal, provincial, territorial and international dimensions. The federal and provincial legislation mirrors one another such that the decisions below have an impact in multiple jurisdictions.⁴ As noted by the Society of Composers, Authors and Music Publishers of Canada (SOCAN) in its affidavit in support of this application for leave to appeal, the decisions below are in contravention of international treaties:

Canada is a party to the Berne Convention, an international copyright treaty with 172 signatories. The Berne Convention requires certain minimum standards, including a minimum term of protection of life of the author plus 50 years.

The decision of the Alberta Court of Appeal limits, or creates an exception to, the exclusive right of reproduction of GSI's copyright-protected works from life of the author plus 50 years under the *Copyright Act* to 5 years under the confidentiality provisions of the *Canada Petroleum Resources Act*.

A compulsory, non-exclusive, sublicensable, and royalty-free licence to copy and re-copy the works completely replaces the author's exclusive right to reproduction, frustrating the intent of the *Copyright Act* to balance rights between authors and users, and violates Canada's obligations under the Berne Convention.⁵

³ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at paras. 293-294; *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at para. 21.

⁴ *Canada-Newfoundland and Labrador Atlantic Accord Implementation Act*, SC 1987, c 3; *Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act*, RSNL 1990, c C-2; *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*, SC 1988, c 28; *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*, SNS 1987, c 3.

⁵ Affidavit of Jamie Leacock sworn June 22, 2017 at paras. 6-8. See also U.S. *Copyright Act*, 17 U.S.C. § 602(a)(1) which makes it an infringement to import into the U.S. without permission of the owner of the copyright.

8. Prior to the decisions below, no Canadian court had recognized copyright in seismic data. Accordingly, when the courts below were considering conflicting legislation and rights, they were doing so in a nascent legal setting. While the courts sought to strike a balance, the focus and emphasis was clearly on the oil and gas exploration regulatory regime and they failed to adequately consider the significance of intellectual property rights. The regulatory regime addresses confidentiality, but is silent on intellectual property rights such as copyright.

Background

9. The Applicant GSI is a Canadian company that conducts offshore marine seismic surveys in the Canadian Atlantic and Arctic. GSI licences this marine seismic data for a fee to oil and gas companies mainly for exploration purposes.⁶ GSI's "undisputed evidence" is that its capital costs were very high and that seismic data creation is a very complex, costly undertaking with many risks. Since 1993, GSI's investment in its seismic materials has exceeded \$340 million, in addition to the approximately \$400 million investment of GSI's predecessors.⁷

10. Within the industry, seismic data is treated as highly confidential and proprietary. Great lengths are gone to in order to maintain confidentiality and copying the seismic data by any method or in any form is not permitted.⁸

11. Data acquisition and reporting requirements with respect to offshore development of oil and gas are governed by Canadian federal and provincial statutes and regulations. This is referred to collectively as the "regulatory regime". In order to access land and marine areas to conduct seismic surveys, GSI must obtain licences and authorizations from Canadian and Provincial government authorities, including the National Energy Board, the Canada Newfoundland and Labrador Offshore Petroleum Board and the Canada Nova Scotia Offshore Petroleum Board (collectively "the Boards"). In accordance with the regulatory regime, GSI must submit its seismic data to the Boards.⁹

⁶ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 1.

⁷ *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at para. 3.

⁸ *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at para. 4.

⁹ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at paras. 2, 128; *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at para. 5.

12. GSI has an exclusive right to control and disseminate the data it created for a statutorily mandated five year period. Following the expiry of the five year period and other additional Board-imposed confidentiality periods (usually 5 or 10 years), the Boards permit third parties to access and to copy and re-copy the seismic data for their own commercial purposes to the detriment of GSI. For example, commercial copy companies get a copy from the Board, copy it further, package it, and then sell it to interested third parties.¹⁰

13. The Boards do not compensate GSI when they release GSI's seismic data.¹¹ Even though the data may be 5 or 10 or more years old, it still has significant value and it is unlikely the creator of the data has recuperated their costs of creating the data in that short period of time. For example, recording seismic data in the St. Lawrence Seaway is fraught with environmental barriers and other problems and may be impossible to do in the present political climate. This makes GSI's 30-year-old data in that area very valuable and extremely costly to update.¹²

14. GSI commenced an action against the Boards, several oil and gas companies, commercial copying companies and data resellers. It asserted copyright in the seismic material that was deposited with the Boards and that its copyright has been breached by the copying of the material without its consent and without compensation.¹³

Trial

Case management

15. Chief Justice Wittman of the Alberta Court of Queen's Bench as case management judge ordered the matter proceed to trial on the following two issues:

- a. Can copyright subsist in seismic material of the kind that are the subject matter of GSI's claims?
- b. What is the effect of the regulatory regime on GSI's claims?¹⁴

¹⁰ *Geophysical Service Incorporated v Encana Corporation*, 2017 ABCA 125 at para. 36; *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para 2.

¹¹ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 211.

¹² *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 283.

¹³ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 5.

¹⁴ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 7.

Copyright in Seismic Data

16. Justice Eidsvik of the Court of Queen’s Bench of Alberta held that GSI has copyright in certain seismic data. First, she determined the raw seismic field data and written reports are a literary work or a compilation of a literary work.¹⁵ The seismic sections, i.e. the “squiggly or zebra lines”, are an artistic work, similar to a map, plan or chart, or a compilation of an artistic work since the product is the result of selection or arrangement of the data, or sound recordings, from the geology of the subsurface.¹⁶

17. Next, the trial judge considered whether these literary or artistic products are “original” so as to qualify as “works” within the meaning of the Act. She found that both the raw or field data and the processed data meet the “skill and judgment” test in *CCH*. She reasoned that “skill” was required to produce seismic data on the follow basis:

- a. “the data is created, not merely collected, through the intervention of human skill”;¹⁷
- b. “data creation is akin to photography” in that it requires careful selection of location, angle of technological instruments, and finally filtering and refining of the product;¹⁸ and
- c. “the creative effort compares to that of the conductor of an orchestra, who ensures that some instruments are played louder, or softer, or faster or slower, to make a beautiful creation”.¹⁹

18. She found that “judgment” was “evident in the production of field data through the multitude of decisions made by the seismic crew.” The processors exercise skill and judgment in the decisions they make to create a usable product (i.e. the processed data) from the field data. The quality of the final product varies depending on the skill of the processor.²⁰

¹⁵ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 75 citing *Apple Computer Inc. v Mackintosh Computers Ltd.*, (1987), 1990 CanLII 119 (SCC), 28 DLR (4th) 178 (FCTD) at para 40, [1990] 2 SCR 209.

¹⁶ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at paras. 74-76.

¹⁷ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 79.

¹⁸ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 80.

¹⁹ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 81.

²⁰ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at paras. 82-83.

19. The trial judge concluded that the *CCH* test was satisfied and both the raw or field data and the processed data should be considered “original” artistic or literary productions in the scientific domain and therefore protected “works” under s. 3 of the *Copyright Act*.²¹

Regulatory Regime

20. Having determined that copyright can subsist in seismic material, the trial judge then considered whether the Respondents breached copyright by copying or allowing others to copy data that was submitted to various government entities pursuant to the regulatory regime.

21. The trial judge considered the *Canada Petroleum Resources Act* (“*CPRA*”),²² the key statute in the regulatory regime, and the *Access to Information Act* (“*ALA*”). Section 101 of the *CPRA* is titled “Disclosure of Information” and the relevant portions read as follows:

Privileged information or documentation or 101(2) Subject to this section, information or documentation is privileged if it is provided for the purposes of this Act or the Canada Oil and Gas Operations Act, other than Part 0.1 of that Act, or any regulation made under either Act, or for the purposes of Part II.1 of the National Energy Board Act, whether or not the information or documentation is required to be provided.

Disclosure 101(2.1) Subject to this section, information or documentation that is privileged under subsection (2) shall not knowingly be disclosed without the consent in writing of the person who provided it, except for the purposes of the administration or enforcement of this Act, the Canada Oil and Gas Operations Act or Part II.1 of the National Energy Board Act or for the purposes of legal proceedings relating to its administration or enforcement.

...

Information that may be disclosed (7) Subsection (2) does not apply in respect of the following classes of information or documentation obtained as a result of carrying on a work or activity that is authorized under the Canada Oil and Gas Operations Act, namely, information or documentation in respect of

...

(d) geological work or geophysical work performed on or in relation to any frontier lands,

²¹ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at paras. 78, 115.

²² *Canada Petroleum Resources Act*, RSC 1985, c 36 (2nd Supp).

(i) in the case of a well site seabed survey where the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (b)(i) or (ii) or (c)(i) or (ii), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, after the expiration of five years following the date of completion of the work;²³

22. “Geophysical work” is defined in section 101(1) and includes the type of work performed by GSI. Pursuant to s. 101(2), the information is privileged subject to the rest of the section.

23. The parties agreed that s. 101(7) applies to GSI’s seismic materials being held by the Boards. The difference in interpretation arises in relation to s. 101(7)(d)(ii): what happens upon the expiry of the five-year privilege period? The trial judge concluded as follows:

The *CPRA*, properly interpreted, allows for disclosure without restriction after a defined period of time. It is a complete and specific code that applies to all oil and gas property in the offshore and frontier lands, including seismic data. Its provisions supplant any more general pieces of legislation, such as the *Copyright Act* or the *AIA* to the extent that they conflict. Therefore, the Boards and recipients of seismic data have not breached GSI’s copyright rights. Under the existing Regulatory Regime, it is not unlawful for the Boards to disclose data after the expiry of the privilege period in the manner that they have been doing. There is no need to resort to the procedures set out in the *AIA* to respond to requests for data.²⁴

24. In sum the trial judge held, the regulatory regime:

- a. allows for disclosure without restriction after a defined period of time;
- b. is a complete answer to GSI’s claims against multiple parties for unlawful disclosure and copyright infringement; and
- c. supplants any more general pieces of legislation, such as the *Copyright Act*.

²³ [Emphasis added].

²⁴ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 132

Court of Appeal

25. GSI appealed the trial judge's decision with respect to the effect of the Regulatory Regime on GSI's claims.²⁵ There was no cross-appeal by the Respondents on the finding that copyright subsists in GSI's seismic data.

26. The grounds of appeal were framed as follows:

- a. The Trial Court erred in finding that the Regulatory Regime is a complete answer to GSI's disclosure and copyright infringement claims; and
- b. The Trial Court erred in considering section 111(2) of the *Canada Petroleum Resources Act* and finding that it provides for the confiscation, without compensation, of GSI's vested property rights, including copyright, in seismic data.

27. The Court of Appeal agreed with the trial judge and dismissed the appeal. On the first issue, the Court of Appeal found that while s. 101 of the *CPRA* does not explicitly provide that seismic data may be "copied", the provisions relating to "disclosure" do not impose restrictions, which makes the ability to copy data a rational interpretation in line with the objectives of the legislation. The Court also agreed with the trial judge that the *CPRA* created an implied exception to the *Copyright Act* and that the "specific legislative authority of the [*Canada Petroleum Resources Act*] and the *Federal Accord Act* overrides the general rights contained in the *Copyright Act*."²⁶

28. Given its finding on the first issue, the Court declined to deal with the second issue. The Court of Appeal nonetheless stated it agreed with the trial judge's determination it was Parliament's intent to create a regulatory regime which was confiscatory in nature.²⁷

PART II – QUESTIONS IN ISSUE

29. This Application for Leave to Appeal raises the following issues of national and public importance:

²⁵ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 7.

²⁶ *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at paras. 99-105.

²⁷ *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at paras. 106-107.

Impact of regulatory regime on copyright protection & breach of copyright without compensation

What is the appropriate interpretation and balancing of the *Copyright Act* and the regulatory regime governing seismic surveys in Canada? If the two apparently conflict, should the Court adopt an interpretation that allows for breaching copyright without compensation? Should the court endorse the transformation of a regulatory regime into a proprietary acquisition regime?

PART III – STATEMENT OF ARGUMENT

30. From the decisions below, it is now the law in Canada that copyright can subsist in seismic data and is therefore protected by the *Copyright Act*. It is also now the law that government entities and third-parties, through the government entities, can exploit or appropriate this intellectual property right without any compensation to the creator. Furthermore, the period of protection which would normally be at least 50 years under copyright law, is reduced to a period of 5 years under the regulatory regime.

31. Such a result goes directly against the purpose of copyright law which is to balance the public interest in promoting the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator.²⁸

32. The approach to resolving the apparent conflict in the legislation unnecessarily imputes knowledge of the presence of copyright in seismic data to Parliament. The courts below ultimately make an assessment of what it considers to be good public policy, rather than attempt to protect intellectual property rights.

33. Accordingly, this case raises issues of public importance that go to the core of copyright law and intellectual property rights generally. It brings to the forefront the issue of the interaction between copyright protection and government regulatory regimes and how those schemes are to be reconciled. It also exposes a wide range of property in Canada to the uncertainty of potential government confiscation simply by way of changes in policy.

²⁸ *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 SCR 339, 2004 SCC 13 at para. 23; *Théberge v. Galerie d'Art du Petit Champlain inc.*, [2002] 2 SCR 336, 2002 SCC 34 at para. 30.

Considering the Purpose of Copyright Law

34. Copyright means the right to copy – the sole right to distribute, publish, produce or reproduce an original work or any substantial part thereof in any material form. Having copyright in a work allows a person to control how it is used in order to protect its value. Others who want to use the work have to compensate the copyright holder and/or get their permission.²⁹

35. The purpose of copyright law is to balance the public interest in promoting the encouragement and dissemination of works of the arts and intellect and obtaining a just reward for the creator. The *Copyright Act* achieves this purpose by prohibiting others from copying, or distributing a person's work for a set period of time without permission.³⁰

36. Little consideration is given by the courts below to the purpose and objectives of the *Copyright Act* and the principles underlying copyright protection in Canada. When the trial judge considers the *Copyright Act* in detail, it is with respect to determining whether copyright subsists in seismic data. However, once the trial judge finds that copyright is established and the analysis shifts to the effect of the regulatory regime on GSI's claims, the focus turns almost exclusively to the implied purpose and objectives behind the regulatory regime.

37. In considering the apparent conflict between *Copyright Act* protections and provisions of the regulatory regime, the trial judge states that the "considerations balanced in this regard are the same as those found in the *Copyright Act*, i.e. the rights of the creator versus the rights of the public to access data."³¹ Aside from similar references to the balance to be achieved by both Acts, the analysis at the conflict stage is almost entirely on the history of the *CPRA*. For example, the trial judge goes through the statutory framework, legislative history including a clause-by-clause comparison document, federal legislation, and provincial legislation. In contrast, the *Copyright Act* is only briefly analyzed at this stage.

38. The trial judge relies on Justice Rothstein's discussion on the interpretation of conflicting provisions in *Re Broadcasting* and paraphrases his approach: "He points out that conflict is

²⁹ *Copyright Act*, s. 3, s. 6; Canadian Intellectual Property Office, "A guide to copyright", online: http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02281.html

³⁰ *CCH Canadian Ltd. v. Law Society of Upper Canada*, *supra*, at para. 23; *Théberge v. Galerie d'Art du Petit Champlain inc.*, *supra*, at para. 30.

³¹ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 297.

defined narrowly and that unavoidable conflicts only occur when two pieces of legislation are directly contradictory, when their concurrent application would lead to absurd results, or where the practical effect of one would frustrate the purpose intended by Parliament of the other.”³²

39. The extent to which a court is expected to consider the purpose intended by Parliament for both of the statutes said to be in conflict is unclear. In resolving an apparent statutory conflict, is it sufficient to focus on the purpose of one statute to the detriment of the other? Here the focus was almost exclusively on the purpose of the regulatory regime and subsequently the conflict was resolved in favour of the regulatory regime.

40. Section 101(7)(d)(ii) of the *CPRA* is only half the equation. Section 3 of the *Copyright Act* is the equally important other half. An approach to statutory interpretation from the perspective of oil and gas exploration rights may yield one result, while working from the perspective of intellectual property rights can lead to another. Granting leave would allow for a fulsome consideration of copyright and the purpose intended by Parliament for its protection.

Rules of Interpretation for Resolving Conflict between Legislation: “Implied Exception Rule” or Specialia Generalibus Non Derogant

41. In finding that the regulatory regime of the *CPRA* prevails over the *Copyright Act* when there is conflict, the trial judge relied on a principle of statutory interpretation that the more specific legislation prevails over the more general.³³

42. Relying on the test set out by Justice Rothstein in *Re Broadcasting*, the trial judge found that “absurd results would occur if the copyright provisions were applied at the same time as the Regulatory Regime disclosure process.”³⁴ She then referred to *Society of Composers Authors and Music Publishers of Canada v Canadian Association of Internet Providers* 2004 SCC 45 and quoted from *Geophysical Service Incorporated v Martin* (2013), 343 Nfld & PEIR 180 (Nfld TD), at para 59:

Where two provisions are in conflict and one of them deals specifically with the matter in question while the other is of more general application, the conflict may be avoided by

³² *Ibid.* at para. 295 citing *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 [“*Re Broadcasting*”].

³³ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 132.

³⁴ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 299.

applying the specific provision to the exclusion of the more general one. The specific prevails over the more general: it does not matter which was enacted first. ...³⁵

43. While these descriptions accurately state the rule of interpretation known as the “implied exception rule” or *specialia generalibus non derogant*, it remains unclear how a court is to properly determine when a statute or provision is to be considered more general or more specific in a given situation.

44. Similar to the concern raised above with respect to the consideration of the purpose of the *Copyright Act*, in applying the implied exception rule, perspective is extremely important. When considering whether there is a breach of copyright, one would instinctively expect that a *Copyright Act* provision would be more specific and legislation dealing with areas other than intellectual property rights would be considered more general. In contrast, if the issue is framed in terms of being a dispute about oil and gas exploration rights, legislation such as the *CPRA* would be more specific and the *Copyright Act* would be more general.

45. In considering apparent conflict between two pieces of legislation, how are courts to determine which one leads, and which one follows? Even if one statute gets into more detail in some respects than another statute, does that automatically make it the more specific statute for all purposes?

46. The approach of the courts below creates a situation where almost any other statute conflicting with the *Copyright Act* would be considered the more specific statute and thereby trumping copyright protection. In the present case, the issues before the court dealt specifically with breach of copyright and yet the *Copyright Act* plays second fiddle.

47. Ruth Sullivan provides some guidance with respect to interpreting conflicting statutory provisions and ranking those provisions:

It may be apparent from the scheme and purpose of the legislation that one provision was intended to have priority over the other. In the absence of an express or implicit legislative solution, the conflict must be dealt with under common law paramountcy rules. These are essentially ranking rules. They assign a relative status to each of the provisions in conflict, with the higher ranked or paramount provision prevailing over the lower ranked or subordinate one. The paramount provision is applied in accordance with

³⁵ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at paras. 300-301.

its terms, while the subordinate provision is rendered inoperative to the extent it is in conflict with the paramount law. When legislation is rendered inoperative, it remains a valid part of the law, but in so far as it is inoperative it cannot be applied. It remains in this suspended state until the conflict disappears, usually through repeal or amendment of one or both of the conflicting laws.³⁶

48. She goes on to describe how this concept of paramountcy is captured by rules of interpretation:

This paramountcy rule is generally stated in the form of the Latin maxim *specialia generalibus non derogant* – the general does not derogate from the specific. In the event of a conflict between a specific provision dealing with a particular matter and a more general provision dealing not only with that matter but with others as well, the specific provision prevails. It prevails even if the general legislation was subsequently enacted. The specific provision is treated as an exception to the rule embodied in the more general provision.³⁷

49. The difficulty in the present case is that it is not apparent from either statutory scheme that one was specifically intended to have priority over the other. Following Sullivan’s approach, where there is no express or implicit legislative solution, the analysis shifts to paramountcy rules and the “specific provision prevails”. Again, however, no guidance is given as to the proper approach to making the necessary determinations as to specific and general.

50. The Court of Appeal’s decision below is similarly vague on the application of the paramountcy rules as it deals with this in three short paragraphs. The Court begins with accepting (without its own analysis) that the *CPRA* is more specific and more recent than the *Copyright Act*.

51. It is true the *CPRA* is more specific solely in terms of oil and gas exploration, but it is unclear how it could be more specific in terms of copyright. Also, it is true the *CPRA* is the more recent statute in some respects, but significant amendments were made to the *Copyright Act* after the *CPRA* came into effect. The significance of a statute being more recent in relation to a different subject matter (i.e. oil and gas exploration rights and not intellectual property rights) is unclear.³⁸

³⁶ Ruth Sullivan, *Statutory Interpretation*, 2nd ed. (Irwin Law Inc., 2007) at p. 309-310.

³⁷ Ruth Sullivan, *Statutory Interpretation*, *supra*, at p. 310-311.

³⁸ See for example the *Copyright Modernization Act*, SC 2012, c 20.

52. The application of the rules of interpretation with respect to conflicting legislation dealing with disparate areas is lacking in thoroughness in the courts below as well as in jurisprudence and academic commentary generally. Given the significant impact this decision could have on copyright owners and those subject to breaches of copyright, a more careful look is warranted.

Disparate Rights: Confidentiality vs. Copyright

53. The *CPRA* speaks in terms of confidentiality but makes no mention of intellectual property rights. Similarly, the *Copyright Act* deals with copyright, but does not address confidentiality. The Respondents' position in the trial below highlights the focus of the *CPRA* on confidentiality:

The Defendants submit that the disclosure of seismic data in the manner permitted by the Regulatory Regime balances two competing policy objectives: the objective of protecting confidential information long enough to allow for recuperation of the expenses incurred in undertaking a non-exclusive seismic project against the objective of stimulating natural resource exploration and development by making such information publicly available. These specific objectives, and the Regulatory Regime that puts them in place, override the general application of the *Copyright Act*.³⁹

54. The result of this disconnect between the two statutes is a strained analysis with respect to the apparent conflicting legislation. The trial judge states:

The rights afforded to owners of copyrightable material created in the Canadian offshore conflict head on with the rights and obligations under the Regulatory Regime. In simple terms, it is the difference of a few decades of protection (approximately 50 years) under the *Copyright Act* versus 5 to 15 years under the Regulatory Regime (as it is presently applied)."

55. Although both statutes are being applied to the same information (i.e. seismic data), the "rights and obligations" under the regulatory regime are in fact a single right with respect to confidentiality. Whereas the rights engaged by the *Copyright Act* are more complex. Copyright gives the creator of an original work exclusive rights for its use and distribution which includes control over reproduction and derivative works.

³⁹ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 123.

56. Justice Gonthier in *Théberge v. Galerie d'Art du Petit Champlain inc.* described copyright as *sui generis* in nature and cautioned against comparing it to other rights.⁴⁰ In the present case, it appears that is exactly what happened: the courts below pit confidentiality directly against copyright and treats them interchangeably. It is difficult to say that the rights in this case “conflict head on” (as phrased by the trial judge). Instead, it may be the case that there is no true conflict since the rights are different and can exist simultaneously.

57. Justice Rothstein’s description of types of statutory conflict in *Re Broadcasting* supports an approach where conflict is defined narrowly and overlapping provisions will be given effect according to their terms, unless they cannot stand together.⁴¹ It is possible to define conflict narrowly in the present case whereby copyright persists and the exercise of a right to disclose the information (under the *CPR*) is limited in certain respects by copyright. The discretion would lie with the creator as to whether they wish to waive copyright or give permission to use (whether that is by way of viewing, copying, restricted for certain purposes etc.). This approach may not be convenient to oil and gas companies, but it does not necessarily create “unavoidable conflict” or an “absurd result”.⁴²

58. The uncertainty in the present case as to whether there is an actual statutory conflict is highlighted by the Court of Appeal decision. While the Court of Appeal agrees with the result reached by the trial judge, the Court does not explicitly endorse the trial judge’s finding that there was a conflict in this case. Instead, the Court of Appeal (again without its own analysis) refers to the conflict as the “perceived conflict” and the “apparent conflict”.⁴³

59. If it is the case that there is not a conflict because the provisions at issue deal with different rights, then how should the rules of statutory interpretation be applied? Should an attempt at reading the provisions harmoniously be favoured over an approach that emphasizes a so-called absurd result?

⁴⁰ Gonthier J. writing for the dissent in *Théberge v. Galerie d'Art du Petit Champlain inc.*, *supra*, at para. 114.

⁴¹ *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 at paras. 41-42.

⁴² *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 295 citing *Re Broadcasting* at paras 41 to 45.

⁴³ *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at para. 103.

60. This Honourable Court in *Re Broadcasting* stated that where multiple interpretations are possible, the presumption of coherence requires the two statutes to be read together to avoid conflict:

Although the Acts have different aims, their subject matters will clearly overlap in places. As Parliament is presumed to intend “harmony, coherence, and consistency between statutes dealing with the same subject matter” (*R. v. Ulybel Enterprises Ltd...*), two provisions applying to the same facts will be given effect in accordance with their terms so long as they do not conflict.

Accordingly, where multiple interpretations of a provision are possible, the presumption of coherence requires that the two statutes be read together so as to *avoid* conflict. Lamer C.J. wrote in *Pointe-Claire (City) v. Quebec (Labour Court)*, ... at para. 61:

There is no doubt that the principle that statutes dealing with similar subjects must be presumed to be coherent means that interpretations favouring harmony among those statutes should prevail over discordant ones⁴⁴

61. As canvased by GSI before the courts below, there are various approaches and interpretations which can provide harmony and bring meaning to both confidentiality and copyright. For example, applying the ordinary reading of what it means to disclose would significantly reduce the impact on copyright. Also, requiring recourse to the scheme for accessing government records created by the *Access to Information Act* is another avenue (canvased before the trial judge) to promote harmony.

Novel Nature of the Copyright Claim

62. The focus on confidentiality in the regulatory regime (and silence as to copyright) described above is not surprising since copyright in seismic data is a novel development flowing from these particular proceedings. The trial judge below canvases two Canadian decisions which held there is no copyright in raw seismic data: *Geophysical Service Inc. v Canada-Nova-Scotia Offshore Petroleum Board*, 2014 FC 450 and *ResourceEye Services Inc. v Atrum Coal Groundhog Inc.*, 2015 BCSC 821.⁴⁵ She finds both these decisions cannot be relied upon because there was a paucity of evidence in both on the copyright issue.⁴⁶

⁴⁴ *Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168*, 2012 SCC 68 at paras. 37-38 [Emphasis in original, citations omitted].

⁴⁵ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 106.

⁴⁶ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at paras. 107-113.

63. With respect to whether seismic data has copyright protection in the United States, the trial judge notes that an expert opinion stated, “There exist no cases expressly deciding whether Seismic Data is copyrightable under the American Copyright Act.”⁴⁷

64. The fact that recognition of copyright in seismic data is novel ought to have coloured the interpretation of the regulatory regime and its interplay with the *Copyright Act*. Instead, copyright is treated as a secondary right as a result of a regulatory regime that was not designed to account for copyright in the first place.

65. It cannot be said that Parliament intended in any sense to override or displace copyright protected works by virtue of its regulatory regime – it simply was not on its radar. Yet, the interpretation of the courts below turns on a legislative history of the regulatory regime, which history is devoid of any mention of copyright. Legislative intent has to somehow retroactively account for the fact that copyright can subsist in seismic data.

66. The governing rules of interpretation, as relied on below, simply do not properly account for a circumstance where the apparent conflict involves a recently recognized right. The fact copyright subsists in seismic data is a significant legal development which calls for a fresh examination of the legislation.

Confiscatory Legislation is to be Strictly Construed

67. The trial judge made it clear that the regulatory regime is confiscatory legislation: “the Regulatory Regime has confiscated the seismic data created over the offshore and frontier lands and the *CPRA* is not apologetic for it”.⁴⁸ This Honourable Court has held repeatedly, over many decades, that potentially confiscatory legislation should be strictly construed in favour of the party whose rights are affected. Statutory language must be clear and express if rights are being confiscated and absent such language, intent to confiscate may be found by “unavoidable inference”.⁴⁹

⁴⁷ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 114.

⁴⁸ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 322.

⁴⁹ *Morguard Properties Ltd v City of Winnipeg*, [1983] 2 SCR 493; *Pacific National Investments Ltd v Victoria (City)*, [2000] 2 SCR 919; *Professional Institute of the Public Service of Canada v Canada (Attorney General)*, [2012] 3 SCR 660; *Spooner Oils Ltd v Turner Valley Gas Conservation Board*, [1933] SCR 629 at p 638, 4 DLR 545.

68. In addressing this rule of interpretation, the trial judge points to s. 111 of the *CPRA*. The section provides as follows:

Replacement of rights

111 (1) Subject to section 110 and subsections 112(2) and 114(4) and (5), the interests provided for under this Act replace all petroleum rights or prospects thereof acquired or vested in relation to frontier lands prior to the coming into force of this section.

No compensation

(2) No party shall have any right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of Canada or from any servant or agent thereof for any acquired, vested or future right or entitlement or any prospect thereof that is replaced or otherwise affected by this Act, or for any duty or liability imposed on that party by this Act.

69. The trial judge focuses on s. 111(2) and states that “it makes clear that there is no compensation for any confiscation under the Act”.⁵⁰ At first glance, s. 111(2) provides a simple answer; however, looking at the context in which this provision operates, it becomes apparent that it is wholly inapplicable. Section 111 is not concerned with the risk to government as a result of breaches of copyright in seismic data through releases under s. 101(7). Instead, it is clear that s. 111 was intended to deal with the government’s exposure to risk by requiring old permittees (oil companies) to roll over their rights into new forms of rights. This interpretation is confirmed by s. 111(1) and the title to that section.⁵¹

70. With s. 111(2) not being relevant, rules with respect to strictly construing confiscatory legislation in favour of the party whose rights are affected remain applicable. The Court of Appeal states that it “offer[s] no opinion” on this issue since it was satisfied with its findings on the first ground of appeal. However, as this case turns on statutory interpretation, the approach to confiscatory legislation could have a significant impact. On a larger scale, this error speaks to uncertainty in the law with respect to the applicability of long standing rules of statutory interpretation, such as those applicable to confiscatory legislation, in light of the decision of this Honourable Court in *Rizzo*.⁵²

⁵⁰ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 322.

⁵¹ Professor Nigel Bankes, “Expiration of Confidentiality also gives Boards the Liberty to Copy and Distribute”, *ABlawg: The University of Calgary Faculty of Law Blog*, April 28, 2016: https://ablawg.ca/wp-content/uploads/2016/04/Blog_NB_GSI_April2016-1.pdf.

⁵² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27.

71. Furthermore, the interpretations endorsed by the courts below could allow for the confiscation of *any* work product requiring a permit or licence. Allowing property rights to be cast aside by what amounts to a change in policy runs afoul of the purposes and objectives of intellectual property legislation. It also allows for uncertainty in an area that demands consistency and predictability in order for rights to be meaningfully enjoyed.

Appropriation of Rights & Implied Licence

72. The trial judge below found that the regulatory regime creates

- a. “a compulsory licencing system through which the Boards have the authority to copy, and as a result they are not infringing the *Copyright Act* when they do so”⁵³; and
- b. “a compulsory licence over the data in perpetuity after the expiry of the confidentiality or privileged period.”⁵⁴

73. The trial judge described the situation as follows:

It is also clear that GSI fought against this disclosure policy for years (and obviously is still fighting). To suggest that it has “consented” to the disclosure of its very valuable seismic data, impliedly or not, does not sit well with me. In my view, GSI has been forced to grant, in effect, a compulsory licence to permit its offshore seismic data to be released and used by the public. The Regulatory Regime provides for this, as discussed above. GSI may not have liked to do so, it certainly never “consented” and it may be unfair, but it is the Regulatory Regime approved by Parliament.⁵⁵

74. This finding raises the question of when and under what circumstances will courts turn a licensing regime into a proprietary acquisition regime. GSI shares its work with the government under strict confidentiality rules, and when that work is found to be copyrighted, the response by the courts is that the creator impliedly licenced its rights to the government thereby permitting unrestricted release to the public.

75. The regulatory regime does not expressly provide for a compulsory licence nor can one be implied on record given that GSI has persistently maintained its position and fought against disclosure of its seismic data.⁵⁶

⁵³ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 318; *Geophysical Service Incorporated v EnCana Corporation*, 2017 ABCA 125 at para. 104.

⁵⁴ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 321.

⁵⁵ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 317.

⁵⁶ *Geophysical Service Incorporated v Encana Corporation*, 2016 ABQB 230 at para. 317.

76. The trial judge implies the copyright licence on the basis GSI knowingly participated in the regulatory regime. However, any copyright licence of this nature should be grounded in statute since the Boards derive their authority from statute. A licence of this nature – appropriating a right – should not be implied from agreement or conduct of a party. Allowing for such implied licences creates a dangerous precedent and facilitates the justification of breaches of intellectual property rights.

Conclusion: Long-term Balancing of Interests

77. An intellectual property regime encourages investment and economic activity. For example, having an extended patent protection period has allowed for the discovery and development of pharmaceutical drugs which require an immense expenditure of time and money potentially without any return on that investment for decades.

78. In this case, if \$340 million, preceded by \$400 million, is invested in creating, storing, processing and reproducing seismic data, and then a government entity can simply give it away for free, where is the balance?

79. The response to this question by the courts below is simply that it must have been Parliament's intent. This answer fails to acknowledge whatsoever the existence of copyright in seismic data and the fact that it is novel in terms of judicial (and legislative) recognition. The reality is that a regulatory regime which forces a licence on creators allowing for the confiscation of their property entirely disrupts the balance intended by the *Copyright Act*.

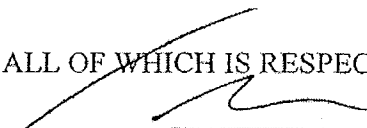
PART IV – SUBMISSIONS CONCERNING COSTS

80. The Applicant requests costs in the cause.

PART V – ORDERS SOUGHT

81. The Applicant respectfully submits that leave to appeal be granted, with costs in the cause.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22 day of June, 2017



Timothy C. Platnich
Counsel for the Applicant

PART VI – TABLE OF AUTHORITIES

<u>Case</u>	<u>Para</u>
<i>Apple Computer Inc. v Mackintosh Computers Ltd.</i> , (1987), 1990 CanLII 119 (SCC), 28 DLR (4th) 178 (FCTD), [1990] 2 SCR 209.....	16
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<i>Théberge v. Galerie d'Art du Petit Champlain inc.</i> , [2002] 2 SCR 336, 2002 SCC 34.....	31, 35, 56
<i>Reference re Broadcasting Regulatory Policy CRTC 2010-167 and Broadcasting Order CRTC 2010-168</i> , 2012 SCC 68	38, 57, 60
<i>Society of Composers Authors and Music Publishers of Canada v Canadian Association of Internet Providers</i> , 2004 SCC 45	42
<i>Geophysical Service Incorporated v Martin</i> (2013), 343 Nfld & PEIR 180 (Nfld TD).....	42
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<i>Rizzo & Rizzo Shoes Ltd. (Re)</i> , [1998] 1 SCR 27	70
<i>Spooner Oils Ltd v Turner Valley Gas Conservation Board</i> , [1933] S.C.R. 629	67
 <u>Secondary Sources</u>	
Ruth Sullivan, <i>Statutory Interpretation</i> , 2nd ed. (Irwin Law Inc., 2007)	47, 48
Professor Nigel Bankes, “Expiration of Confidentiality also gives Boards the Liberty to Copy and Distribute”, ABlawg: The University of Calgary Faculty of Law Blog, April 28, 2016: https://ablawg.ca/wp-content/uploads/2016/04/Blog_NB_GSI_April2016-1.pdf	69

PART VII – STATUTES, REGULATIONS, RULES, ETC.

Access to Information Act, RSC 1985, c A-1

Canada-Newfoundland and Labrador Atlantic Accord Implementation Act, SC 1987, c 3

Canada-Newfoundland and Labrador Atlantic Accord Implementation Newfoundland and Labrador Act, RSNL 1990, c C-2

Canada Petroleum Resources Act, RSC 1985, c 36 (2nd Supp)

Definitions

101 (1) In this section,

delineation well means a well that is so located in relation to another well penetrating an accumulation of petroleum that there is a reasonable expectation that another portion of that accumulation will be penetrated by the first-mentioned well and that the drilling is necessary in order to determine the commercial value of the accumulation; (*puits de délimitation*)

development well means a well that is so located in relation to another well penetrating an accumulation of petroleum that it is considered to be a well or part of a well drilled for the purpose of production or observation or for the injection or disposal of fluid into or from the accumulation; (*puits d'exploitation*)

engineering research or feasibility study includes work undertaken to facilitate the design or to analyse the viability of engineering technology, systems or schemes to be used in the exploration for or the development, production or transportation of petroleum on frontier lands; (*recherches ou études techniques*)

environmental study means work pertaining to the measurement or statistical evaluation of the physical, chemical and biological elements of the

Définitions

101 (1) Les définitions qui suivent s'appliquent au présent article.

date d'abandon du forage

date d'abandon du puits Date à laquelle le puits a été abandonné ou complété ou son exploitation suspendue conformément aux règlements applicables en matière de forage pris sous le régime de la Loi sur les opérations pétrolières au Canada. (*well termination date*)

études de l'environnement Travaux relatifs aux mesures ou à l'évaluation statistique des éléments physiques, chimiques et biologiques des terres, des régions côtières ou des océans, y compris les vents, les vagues, les marées, les courants, les précipitations, la banquise et ses mouvements, les icebergs, les effets de la pollution, la flore et la faune marines et terrestres, l'habitation et les activités humaines et tous autres sujets connexes. (*environmental study*)

levé marin Étude portant sur la nature du sol, du sous-sol et du fond ou du sous-sol marins des terres domaniales situées dans le

lands, oceans or coastal zones, including winds, waves, tides, currents, precipitation, ice cover and movement, icebergs, pollution effects, flora and fauna both onshore and offshore, human activity and habitation and any related matters; (*études de l'environnement*)

experimental project means work or activity involving the utilization of methods or equipment that are untried or unproven; (*opération expérimentale*)

exploratory well means a well drilled on a geological feature on which a significant discovery has not been made; (*puits d'exploration*)

geological work means work, in the field or laboratory, involving the collection, examination, processing or other analysis of lithological, paleontological or geochemical materials recovered from the surface or subsurface or the seabed or its subsoil of any frontier lands and includes the analysis and interpretation of mechanical well logs; (*travaux de géologie*)

geophysical work means work involving the indirect measurement of the physical properties of rocks in order to determine the depth, thickness, structural configuration or history of deposition thereof and includes the processing, analysis and interpretation of material or data obtained from such work; (*travaux de géophysique*)

geotechnical work means work, in the field or laboratory, undertaken to determine the physical properties of materials recovered from the surface or subsurface or the seabed or its subsoil of any frontier lands; (*travaux de géotechnique*)

well site seabed survey means a survey pertaining to the nature of the surface or subsurface or the seabed or its subsoil of any frontier lands in the area of the proposed drilling

secteur prévu pour le forage d'un puits et sur les éléments, à prendre en compte à cet égard, susceptibles d'influencer sur la sécurité ou l'efficacité du forage. (*well site seabed survey*)

opération expérimentale Activité comportant l'emploi de procédés ou de matériel qui n'ont pas été essayés ni éprouvés. (*experimental project*)

puits de délimitation Puits dont l'emplacement est tel par rapport à un autre puits pénétrant un gisement d'hydrocarbures que l'on peut vraisemblablement s'attendre à ce qu'il pénètre une autre partie de ce gisement, et que le forage est nécessaire pour en déterminer la valeur exploitable. (*delineation well*)

puits d'exploitation Puits dont l'emplacement est tel par rapport à un autre puits pénétrant un gisement d'hydrocarbures qu'il est considéré comme étant un puits complet ou partiel foré aux fins soit de production ou d'observation, soit d'injection ou de refoulement des fluides à partir du gisement ou vers celui-ci. (*development well*)

puits d'exploration Puits foré sur un horizon géologique qui n'a pas fait l'objet d'une découverte importante. (*exploratory well*)

recherches ou études techniques Y sont assimilés les travaux destinés à faciliter la conception ou à analyser la viabilité des techniques, méthodes ou plans à mettre en oeuvre pour la recherche, l'exploitation, la production ou le transport des hydrocarbures dans les terres domaniales. (*engineering research or feasibility study*)

renseignements Tous éléments d'information ainsi que leur support.

site in respect of a well and to the conditions of those lands that may affect the safety or efficiency of drilling operations; (*levé marin*)

well termination date means the date on which a well has been abandoned, completed or suspended in accordance with any applicable regulations respecting the drilling for petroleum made under the Canada Oil and Gas Operations Act. (*date d'abandon du puits*)

Privileged information or documentation

(2) Subject to this section, information or documentation is privileged if it is provided for the purposes of this Act or the Canada Oil and Gas Operations Act, other than Part 0.1 of that Act, or any regulation made under either Act, or for the purposes of Part II.1 of the National Energy Board Act, whether or not the information or documentation is required to be provided.

Disclosure

(2.1) Subject to this section, information or documentation that is privileged under subsection (2) shall not knowingly be disclosed without the consent in writing of the person who provided it, except for the purposes of the administration or enforcement of this Act, the Canada Oil and Gas Operations Act or Part II.1 of the National Energy Board Act or for the purposes of legal proceedings relating to its administration or enforcement.

Production and evidence

(3) No person shall be required to produce or give evidence relating to any information or documentation that is privileged under subsection (2) in connection with any legal proceedings, other than proceedings relating to the administration or enforcement of this Act, the Oil and Gas Production and Conservation Act or Part II.1 of the National Energy Board Act.

travaux de géologie Travaux comportant la collecte, l'examen et le traitement ou autres analyses, sur le terrain ou en laboratoire, des échantillons lithologiques, paléontologiques ou géochimiques prélevés en surface ou dans le sous-sol marins des terres domaniales. S'entend en outre de l'analyse et de l'interprétation de diagraphies. (*geological work*)

travaux de géophysique Travaux comportant la mesure indirecte des propriétés physiques des roches afin d'en déterminer la profondeur, l'épaisseur, la configuration structurale ou l'historique sédimentaire. S'entend en outre du traitement, de l'analyse et de l'interprétation des éléments ou des données fournies par ces travaux. (*geophysical work*)

travaux de géotechnique Travaux comportant l'analyse, sur le terrain ou en laboratoire, des propriétés physiques des échantillons prélevés, en surface ou du sous-sol ou en surface ou du fond ou du sous-sol marins des terres domaniales. (*geotechnical work*)

Renseignements protégés

(2) Sous réserve des autres dispositions du présent article, les renseignements fournis pour l'application de la présente loi, de la Loi sur les opérations pétrolières au Canada, à l'exception de sa partie 0.1, de leurs règlements ou de la partie II.1 de la Loi sur l'Office national de l'énergie sont protégés, que leur fourniture soit obligatoire ou non.

Communication

(2.1) Sous réserve des autres dispositions du présent article, les renseignements protégés au titre du paragraphe (2) ne peuvent, sciemment, être communiqués sans le consentement écrit de la personne qui les a fournis, si ce n'est pour l'application de la

Registration of documents

(4) For greater certainty, this section does not apply to a document that has been registered under Part VIII.

Disclosure pursuant to resource management and revenue sharing agreements

(5) Information or documentation that is privileged under subsection (2) may be disclosed to any government of a province or to any organization representing any aboriginal people of Canada, where such disclosure is made pursuant to an agreement between the Government of Canada and the government of that province or that organization respecting resource management and revenue sharing in relation to activities respecting the exploration for or the production of petroleum carried out on any frontier lands.

Idem

(6) The recipient of information or documentation disclosed pursuant to an agreement referred to in subsection (5) shall not disclose that information or documentation except as otherwise provided in this section.

Disclosure — governments and agencies

(6.1) The National Energy Board may disclose any information or documentation that it obtains under this Act or the Canada Oil and Gas Operations Act — to officials of the Government of Canada, the government of a province or a foreign government or to the representatives of any of their agencies — for the purposes of a federal, provincial or foreign law, as the case may be, that deals primarily with a petroleum-related work or activity, including the exploration for and the management, administration and exploitation of petroleum resources, if

(a) the government or agency undertakes to keep the information or documentation confidential

présente loi, de la Loi sur les opérations pétrolières au Canada ou de la partie II.1 de la Loi sur l'Office national de l'énergie ou dans le cadre de procédures judiciaires à cet égard.

Idem

(3) Nul ne peut être tenu de communiquer les renseignements protégés au titre du paragraphe (2) au cours de procédures judiciaires qui ne visent pas l'application de la présente loi, de la Loi sur les opérations pétrolières au Canada ou de la partie II.1 de la Loi sur l'Office national de l'énergie.

Enregistrement

(4) Il demeure entendu que le présent article ne vise pas les documents enregistrés au titre de la partie VIII.

Communication en certains cas

(5) Les renseignements peuvent être communiqués à tout gouvernement provincial ou à tout organisme représentant les peuples autochtones du Canada à la suite d'accord entre ceux-ci et le gouvernement fédéral portant sur la gestion des ressources et le partage des revenus liés à des activités de prospection ou de production d'hydrocarbures effectuées sur les terres domaniales.

Conditions de la communication

(6) Le destinataire des renseignements visés au paragraphe (5) ne peut les communiquer que sous le régime du présent article.

Communication : administrations publiques et organismes

(6.1) L'Office national de l'énergie peut communiquer tout renseignement qu'il a obtenu au titre de la présente loi ou de la Loi sur les opérations pétrolières au Canada à

and not to disclose it without the Board's written consent;

(b) the information or documentation is disclosed in accordance with any conditions agreed to by the Board and the government or agency; and

(c) in the case of disclosure to a foreign government or agency, the Minister consents in writing.

Disclosure — Minister

(6.2) The National Energy Board may disclose to the Minister the information or documentation that it has disclosed or intends to disclose under subsection (6.1), but the Minister is not to further disclose that information or documentation unless the Board consents in writing to that disclosure or the Minister is required by an Act of Parliament to disclose that information or documentation.

Consent

(6.3) For the purposes of paragraph (6.1)(a) and subsection (6.2), the National Energy Board may consent to the further disclosure of information or documentation only if the Board itself is authorized under this section to disclose it.

Information that may be disclosed

(7) Subsection (2) does not apply in respect of the following classes of information or documentation obtained as a result of carrying on a work or activity that is authorized under the *Canada Oil and Gas Operations Act*, namely, information or documentation in respect of

(a) an exploratory well, where the information or documentation is obtained as a direct result of drilling the well and if two years have passed since the well termination date of that well;

(b) a delineation well, where the information or documentation is obtained as a direct result of

des fonctionnaires de l'administration publique fédérale ou d'une administration publique provinciale ou étrangère ou à des représentants de tout organisme de l'une de ces administrations, pour l'application d'une règle de droit — fédérale, provinciale ou d'un État étranger — portant principalement sur des activités afférentes aux hydrocarbures, y compris la prospection, la gestion, l'administration et la production de ceux-ci si, à la fois :

a) l'administration publique ou l'organisme s'engage à en protéger la confidentialité et à ne pas le communiquer sans le consentement écrit de l'Office;

b) la communication est effectuée selon les conditions convenues entre l'Office et l'administration publique ou l'organisme;

c) dans le cas de toute communication à une administration publique étrangère ou à l'un de ses organismes, le ministre consent par écrit à la communication.

Communication au ministre

(6.2) L'Office national de l'énergie peut communiquer au ministre les renseignements qu'il a communiqués ou qu'il entend communiquer en vertu du paragraphe (6.1); le ministre ne peut les communiquer que si une loi fédérale l'y oblige ou si l'Office y consent par écrit.

Consentement

(6.3) Pour l'application de l'alinéa (6.1)a) et du paragraphe (6.2), l'Office national de l'énergie ne peut consentir à la communication de renseignements que dans les cas où il peut lui-même les communiquer sous le régime du présent article.

Renseignements communicables

(7) Le paragraphe (2) ne vise pas les catégories de renseignements provenant

drilling the well and if the later of

(i) two years since the well termination date of the relevant exploratory well, and

(ii) ninety days since the well termination date of the delineation well, have passed;

(c) a development well, where the information or documentation is obtained as a direct result of drilling the well and if the later of

(i) two years since the well termination date of the relevant exploratory well, and

(ii) sixty days since the well termination date of the development well, have passed;

(d) geological work or geophysical work performed on or in relation to any frontier lands,

(i) in the case of a well site seabed survey where the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (b)(i) or (ii) or (c)(i) or (ii), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, after the expiration of five years following the date of completion of the work;

(e) any engineering research or feasibility study or experimental project, including geotechnical work, carried out on or in relation to any frontier lands,

(i) where it relates to a well and the well has been drilled, after the expiration of the period referred to in paragraph (a) or the later period referred to in subparagraph (b)(i) or (ii) or (c)(i) or (ii), according to whether paragraph (a), (b) or (c) is applicable in respect of that well, or

(ii) in any other case, after the expiration of five years following the date of completion of the research, study or project or after the reversion of the lands to Crown reserve lands, whichever occurs first;

(f) any contingency plan formulated in respect of

d'activités autorisées sous le régime de la Loi sur les opérations pétrolières au Canada et relatives à :

a) un puits d'exploration, si les renseignements proviennent effectivement du forage du puits et si deux ans se sont écoulés depuis la date d'abandon du puits;

b) un puits de délimitation, s'ils proviennent effectivement du forage du puits et si deux ans se sont écoulés depuis la date d'abandon du puits d'exploration en cause ou si quatre-vingt-dix jours se sont écoulés depuis la date d'abandon du puits de délimitation, selon la dernière des éventualités à survenir;

c) un puits d'exploitation, s'ils proviennent effectivement du forage du puits et si deux ans se sont écoulés depuis la date d'abandon du puits d'exploration en cause ou si soixante jours se sont écoulés depuis la date d'abandon du puits d'exploitation, selon la dernière des éventualités à survenir;

d) des travaux de géologie ou de géophysique exécutés dans telle partie des terres domaniales ou y ayant trait :

(i) s'agissant d'un levé marin pour un puits foré, après la période visée à l'alinéa a) ou la dernière des périodes visées aux alinéas b) ou c), selon l'alinéa qui s'applique au puits en cause,

(ii) par ailleurs, cinq ans après leur achèvement;

e) des recherches ou études techniques ou des opérations expérimentales, y compris des travaux de géotechnique, exécutés dans telle partie des terres domaniales ou y ayant trait :

(i) si elles portent sur un puits foré après l'expiration de la période visée à l'alinéa a) ou la dernière des périodes visées aux alinéas b) ou c), selon l'alinéa qui s'applique au puits en cause,

(ii) par ailleurs, au plus tôt soit cinq ans après

*Operations Act.***Safety or environmental protection**

(10) Subject to section 101.1, the National Energy Board may disclose all or part of any information or documentation related to safety or environmental protection that is provided in relation to an application for an operating licence or authorization under subsection 5(1) of the Canada Oil and Gas Operations Act or to an operating licence or authorization that is issued under that subsection or provided in accordance with any regulation made under that Act. The Board is not, however, permitted to disclose information or documentation if the Board is satisfied that

(a) disclosure of it could reasonably be expected to result in a material loss or gain to a person, or to prejudice their competitive position, and the potential harm resulting from the disclosure outweighs the public interest in making the disclosure;

(b) it is financial, commercial, scientific or technical information or documentation that is confidential and has been consistently treated as such by a person who would be directly affected by its disclosure, and for which the person's interest in confidentiality outweighs the public interest in its disclosure; or

(c) there is a real and substantial risk that disclosure of it will impair the security of pipelines, as defined in section 2 of the Canada Oil and Gas Operations Act, buildings, installations, vessels, vehicles, aircraft or systems, including computer or communication systems, used for any work or activity in respect of which that Act applies — or methods employed to protect them — and the need to prevent its disclosure outweighs the public interest in its disclosure.

Exception

(11) Subsections (8) to (10) do not apply in

audience publique

(9) Le paragraphe (2) ne vise pas les renseignements fournis dans le cadre d'une audience publique tenue en vertu de l'article 5.331 de la Loi sur les opérations pétrolières au Canada.

Renseignements communicables — sécurité ou protection de l'environnement

(10) Sous réserve de l'article 101.1, l'Office national de l'énergie peut communiquer tout ou partie des renseignements en matière de sécurité ou de protection de l'environnement fournis relativement à une demande faite au titre du paragraphe 5(1) de la Loi sur les opérations pétrolières au Canada, à un permis de travaux ou autorisation délivrés en vertu de ce paragraphe ou fournis conformément à un règlement pris en vertu de cette loi. L'Office ne peut toutefois pas communiquer les renseignements à l'égard desquels il est convaincu :

a) soit que leur communication risquerait vraisemblablement de causer des pertes ou profits financiers appréciables aux intéressés, ou de nuire à leur compétitivité, et que le préjudice pouvant résulter de leur communication l'emporte sur l'importance, au regard de l'intérêt public, de leur communication;

b) soit qu'il s'agit de renseignements financiers, commerciaux, scientifiques ou techniques de nature confidentielle, traités comme tels de façon constante par les intéressés, et que l'intérêt de ces derniers à préserver la confidentialité des renseignements l'emporte sur l'importance, au regard de l'intérêt public, de leur communication;

c) soit qu'il y a un risque sérieux que la communication des renseignements compromette la sécurité de pipelines, au sens de l'article 2 de la Loi sur les opérations

respect of the classes of information or documentation described in paragraphs (7)(a) to (e) and (i).

pétrolières au Canada, de bâtiments, d'installations, de véhicules, de navires, d'aéronefs ou de réseaux ou systèmes divers, y compris de réseaux ou systèmes informatisés ou de communication, qui sont destinés à des activités visées par cette loi — ou la sécurité de méthodes employées pour leur protection — et que la nécessité d'empêcher leur communication l'emporte sur l'importance, au regard de l'intérêt public, de leur communication.

Exception — paragraphes (8) à (10)

(11) Les paragraphes (8) à (10) ne s'appliquent pas à l'égard des catégories de renseignements visées aux alinéas (7)a) à e) et i).

Replacement of rights

111 (1) Subject to section 110 and subsections 112(2) and 114(4) and (5), the interests provided for under this Act replace all petroleum rights or prospects thereof acquired or vested in relation to frontier lands prior to the coming into force of this section.

Remplacement des titres

111 (1) Sous réserve de l'article 110 et des paragraphes 112(2), 114(4) et (5), les titres régis par la présente loi remplacent tous les droits relatifs aux hydrocarbures sur les terres domaniales qui ont été acquis ou dévolus avant l'entrée en vigueur du présent article, qu'ils soient actuels ou éventuels.

No compensation

(2) No party shall have any right to claim or receive any compensation, damages, indemnity or other form of relief from Her Majesty in right of Canada or from any servant or agent thereof for any acquired, vested or future right or entitlement or any prospect thereof that is replaced or otherwise affected by this Act, or for any duty or liability imposed on that party by this Act.

Aucun recours

(2) Nul ne peut réclamer ou recevoir quelque dédommagement de Sa Majesté du chef du Canada ou de ses préposés ou mandataires en rapport avec des droits, acquis ou dévolus, actuels ou éventuels, que la présente loi remplace ou modifie, ou en compensation des obligations qu'elle lui impose.

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act, SNS 1987, c 3

Copyright Modernization Act, SC 2012, c 20

Copyright Act, RSC 1985, c C-42

Copyright in works

3 (1) For the purposes of this Act, *copyright*, in relation to a work, means the sole right to produce or reproduce the work or any substantial part thereof in any material form whatever, to perform the work or any substantial part thereof in public or, if the work is unpublished, to publish the work or any substantial part thereof, and includes the sole right

(a) to produce, reproduce, perform or publish any translation of the work,

(b) in the case of a dramatic work, to convert it into a novel or other non-dramatic work,

(c) in the case of a novel or other non-dramatic work, or of an artistic work, to convert it into a dramatic work, by way of performance in public or otherwise,

(d) in the case of a literary, dramatic or musical work, to make any sound recording, cinematograph film or other contrivance by means of which the work may be mechanically reproduced or performed,

(e) in the case of any literary, dramatic, musical or artistic work, to reproduce, adapt and publicly present the work as a cinematographic work,

(f) in the case of any literary, dramatic, musical or artistic work, to communicate the work to the public by telecommunication,

Loi sur le droit d'auteur, L.R.C. 1985, c c-4

Droit d'auteur sur l'oeuvre

3 (1) Le droit d'auteur sur l'oeuvre comporte le droit exclusif de produire ou reproduire la totalité ou une partie importante de l'oeuvre, sous une forme matérielle quelconque, d'en exécuter ou d'en représenter la totalité ou une partie importante en public et, si l'oeuvre n'est pas publiée, d'en publier la totalité ou une partie importante; ce droit comporte, en outre, le droit exclusif :

a) de produire, reproduire, représenter ou publier une traduction de l'oeuvre;

b) s'il s'agit d'une oeuvre dramatique, de la transformer en un roman ou en une autre oeuvre non dramatique;

c) s'il s'agit d'un roman ou d'une autre oeuvre non dramatique, ou d'une oeuvre artistique, de transformer cette oeuvre en une oeuvre dramatique, par voie de représentation publique ou autrement;

d) s'il s'agit d'une oeuvre littéraire, dramatique ou musicale, d'en faire un enregistrement sonore, film cinématographique ou autre support, à l'aide desquels l'oeuvre peut être reproduite, représentée ou exécutée mécaniquement;

e) s'il s'agit d'une oeuvre littéraire, dramatique, musicale ou artistique, de reproduire, d'adapter et de présenter publiquement l'oeuvre en tant qu'oeuvre cinématographique;

(g) to present at a public exhibition, for a purpose other than sale or hire, an artistic work created after June 7, 1988, other than a map, chart or plan,

(h) in the case of a computer program that can be reproduced in the ordinary course of its use, other than by a reproduction during its execution in conjunction with a machine, device or computer, to rent out the computer program,

(i) in the case of a musical work, to rent out a sound recording in which the work is embodied, and

(j) in the case of a work that is in the form of a tangible object, to sell or otherwise transfer ownership of the tangible object, as long as that ownership has never previously been transferred in or outside Canada with the authorization of the copyright owner,

and to authorize any such acts.

f) de communiquer au public, par télécommunication, une oeuvre littéraire, dramatique, musicale ou artistique;

g) de présenter au public lors d'une exposition, à des fins autres que la vente ou la location, une oeuvre artistique — autre qu'une carte géographique ou marine, un plan ou un graphique — créée après le 7 juin 1988;

h) de louer un programme d'ordinateur qui peut être reproduit dans le cadre normal de son utilisation, sauf la reproduction effectuée pendant son exécution avec un ordinateur ou autre machine ou appareil;

i) s'il s'agit d'une oeuvre musicale, d'en louer tout enregistrement sonore;

j) s'il s'agit d'une oeuvre sous forme d'un objet tangible, d'effectuer le transfert de propriété, notamment par vente, de l'objet, dans la mesure où la propriété de celui-ci n'a jamais été transférée au Canada ou à l'étranger avec l'autorisation du titulaire du droit d'auteur.

Est inclus dans la présente définition le droit exclusif d'autoriser ces actes.

Term of copyright

6 The term for which copyright shall subsist shall, except as otherwise expressly provided by this Act, be the life of the author, the remainder of the calendar year in which the author dies, and a period of fifty years following the end of that calendar year.

Durée du droit d'auteur

6 Sauf disposition contraire expresse de la présente loi, le droit d'auteur subsiste pendant la vie de l'auteur, puis jusqu'à la fin de la cinquantième année suivant celle de son décès.