

Geophysical Service Incorporated (applicant) v. Canada - Nova Scotia Offshore Petroleum Board, The Attorney-General of Nova Scotia and The Attorney-General of Canada (respondents)  
(Hfx. No. 410874; 2014 NSSC 172)

**Indexed As: Geophysical Service Inc. v. Canada (Attorney General)**

Nova Scotia Supreme Court  
Boudreau, J.  
May 14, 2014.

**Summary:**

Canada awarded a seismic acquisition contract off the coast of Labrador to Fugro Jacques Geophysical, which hired an Italian-flagged ship to do the work. Geophysical Service Inc. (Geophysical) owned the only Canadian-flagged ship that was capable of doing the contract work. Geophysical sued Canada, alleging that it had unlawfully interfered with Geophysical's economic relations. Canada moved for summary dismissal of the action.

The Nova Scotia Supreme Court, in a decision reported at (2013), 332 N.S.R.(2d) 311; 1052 A.P.R. 311, granted the motion. Geophysical appealed.

The Nova Scotia Court of Appeal, in a decision reported at (2014), 340 N.S.R.(2d) 304; 1077 A.P.R. 304, allowed the appeal, reinstating the statement of claim. As part of its larger action, Geophysical claimed proprietorship and ownership of data that had been collected from it, retained and provided to third parties by the Canada-Nova Scotia Offshore Petroleum Board. At issue was the validity of ss. 25(1)(j) and 26(3) of the Nova Scotia Offshore Area Petroleum Geophysical Operations Regulations, which empowered the Board to collect and store such seismic data. Geophysical moved for an order declaring ss. 25(1)(j) and 26(3) ultra vires.

The Nova Scotia Supreme Court denied the motion.

**Mines and Minerals - Topic 8034**

Oil and gas - Regulation - Canada-Nova Scotia Offshore Petroleum Board - Jurisdiction (incl. judicial review) - In 1987 and 1988, Canada and Nova Scotia enacted mirror statutes to implement the 1986 Canada-Nova Scotia Offshore Petroleum Resources Accord - At issue was the validity of ss. 25(1)(j) and 26(3) of the statutes' regulations, which empowered the Canada-Nova Scotia Offshore Petroleum Board to collect and store seismic data generated by private companies - As part of its larger action, the plaintiff Geophysical claimed proprietorship and ownership of data that had been collected from it, retained and provided to third parties by the Board - Geophysical moved for an order declaring ss. 25(1)(j) and 26(3) ultra vires - The Nova Scotia Supreme Court denied the motion - The legislation's overall purpose was to foster early exploration and development of Nova Scotia's offshore petroleum resources - The vires of the regulations had to be examined in the context of the entire legislative scheme and purpose - Geophysical's seismic operations were part of the overall scheme for exploration and development - The Board's data and information requirements were integral to and consistent with the overall purpose, objectives and scheme of the legislation - The

Board's duty was to accumulate and manage geological records - The industry's rules were that the data that had been supplied by Geophysical to the Board for many years was no longer confidential - These rules were enabled by the governing statutes - See paragraphs 20 to 38.

**Statutes - Topic 5357**

Operation and effect - Delegated legislation - Regulations - Interpretation - Consistent with empowering statute - [See **Mines and Minerals - Topic 8034**].

**Statutes - Topic 5367**

Operation and effect - Delegated legislation - Regulations - Validity of - Ultra vires - Whether purpose authorized by empowering statute - [See **Mines and Minerals - Topic 8034**].

**Cases Noticed:**

Bell ExpressVu Limited Partnership v. Rex et al. (2002), 287 N.R. 248; 166 B.C.A.C. 1; 271 W.A.C. 1; 2002 SCC 42, reld to. [para. 16].  
Kubel v. Alberta (Minister of Justice), 2005 ABQB 836, reld to. [para. 18].  
Hartling et al. v. Nova Scotia (Attorney General) et al. (2009), 278 N.S.R.(2d) 112; 886 A.P.R. 112; 2009 NSSC 2, reld to. [para. 19].  
Shoppers Drug Mart Inc. et al. v. Ontario (Minister of Health and Long-Term Care) et al., (2013), 451 N.R. 80; 312 O.A.C. 169; 2013 SCC 64, reld to. [para. 19].  
Katz Group Canada Inc. v. Ontario (Minister of Health and Long-Term Care) - see Shoppers Drug Mart Inc. et al. v. Ontario (Minister of Health and Long-Term Care) et al.  
Pacific Pilotage Authority v. Alaska Trainship Corp., Pacific Maritime Agencies Ltd. and Ship S.S. Alaska, [1981] 1 S.C.R. 261; 35 N.R. 271, reld to. [para. 23].

**Statutes Noticed:**

Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act (Canada), Nova Scotia Offshore Area Petroleum Geophysical Operations Regulations, SOR/95-144, sect. 25(1)(j), sect. 26(3) [para. 9].  
Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act (Nova Scotia), Nova Scotia Offshore Area Petroleum Geophysical Operations Regulations, N.S. Reg. 191/95, sect. 25(1)(j), sect. 26(3) [para. 9].  
Nova Scotia Offshore Area Petroleum Geophysical Operations Regulations - See Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act Regulations and Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act Regulations.

**Authors and Works Noticed:**

Simms, Michael and Penick, Van, The Confidentiality of Seismic Data, 30 Dalhousie L.J. 515, generally [paras. 27, 28, 29].

**Counsel:**

A. William Moreira, Q.C., and Scott R. Campbell, for the applicant;

Thomas E. Hart, Q.C., for the respondent, Board;  
Edward A. Gores, Q.C., for the respondent, The Attorney General of Nova Scotia;  
Corinne Bedford, for the respondent, The Attorney General of Canada.

This motion was heard at Halifax, N.S., on November 26, 2013, by Boudreau, J., of the Nova Scotia Supreme Court, who delivered the following judgment on May 14, 2014.

Motion denied.

Editor: Sharon McCartney

### **Statutes - Topic 5357**

Operation and effect - Delegated legislation - Regulations - Interpretation - Consistent with empowering statute - In 1987 and 1988, Canada and Nova Scotia enacted mirror statutes to implement the 1986 Canada-Nova Scotia Offshore Petroleum Resources Accord - At issue was the validity of ss. 25(1)(j) and 26(3) of the statutes' regulations, which empowered the Canada-Nova Scotia Offshore Petroleum Board to collect and store seismic data generated by private companies - As part of its larger action, the plaintiff Geophysical claimed proprietorship and ownership of data that had been collected from it, retained and provided to third parties by the Board - Geophysical moved for an order declaring ss. 25(1)(j) and 26(3) ultra vires - The Nova Scotia Supreme Court denied the motion - The legislation's overall purpose was to foster early exploration and development of Nova Scotia's offshore petroleum resources - The vires of the regulations had to be examined in the context of the entire legislative scheme and purpose - Geophysical's seismic operations were part of the overall scheme for exploration and development - The Board's data and information requirements were integral to and consistent with the overall purpose, objectives and scheme of the legislation - The Board's duty was to accumulate and manage geological records - The industry's rules were that the data that had been supplied by Geophysical to the Board for many years was no longer confidential - These rules were enabled by the governing statutes - See paragraphs 20 to 38.

### **Statutes - Topic 5367**

Operation and effect - Delegated legislation - Regulations - Validity of - Ultra vires - Whether purpose authorized by empowering statute - In 1987 and 1988, Canada and Nova Scotia enacted mirror statutes to implement the 1986 Canada-Nova Scotia Offshore Petroleum Resources Accord - At issue was the validity of ss. 25(1)(j) and 26(3) of the statutes' regulations, which empowered the Canada-Nova Scotia Offshore Petroleum Board to collect and store seismic data generated by private companies - As part of its larger action, the plaintiff Geophysical claimed proprietorship and ownership of data that had been collected from it, retained and provided to third parties by the Board - Geophysical moved for an order declaring ss. 25(1)(j) and 26(3) ultra vires - The Nova Scotia Supreme Court denied the motion - The legislation's overall purpose was to foster early exploration and development of Nova Scotia's offshore petroleum resources - The

vires of the regulations had to be examined in the context of the entire legislative scheme and purpose - Geophysical's seismic operations were part of the overall scheme for exploration and development - The Board's data and information requirements were integral to and consistent with the overall purpose, objectives and scheme of the legislation - The Board's duty was to accumulate and manage geological records - The industry's rules were that the data that had been supplied by Geophysical to the Board for many years was no longer confidential - These rules were enabled by the governing statutes - See paragraphs 20 to 38.