

SURFACE ACCESS TO PRIVATE LAND FOR PIPELINE DEVELOPMENT

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Introduction

Right of Entry Order vs. Expropriation

- The test
- The process
- The various players



The Fine Print

- **This presentation is provided for your general information and convenience only. It is not intended to be a complete statement of the law or an opinion on any subject. Although we endeavor to ensure its accuracy, no one should act upon it without a thorough examination of the law after the facts of a specific situation are considered.**

Means of Gaining Access

- **Negotiated right of way agreement**
- **Right of entry order**
- **Expropriation**



Where No Agreement Can Be Reached

Is it a flow line?

- "flow line" means a pipeline that connects a well head with a scrubbing, processing or storage facility and that precedes the transfer of the conveyed substance to or from a transmission, distribution or transportation line

Yes: need a right of entry order

No: seek to expropriate the interest

Either Way You Need Your Permit First

- OGC approves the defined “oil and gas activity”
- The OGC permit does not convey any access rights to the surface
- Appeal period



EXPROPRIATION

Out with the Old

- Good riddance *Railway Act*
- some much needed clarity
- surveyors – they aren't what they used to be



In with the New

- the Ministry of Energy and Mines
- streamlined and recognizable process under the *Expropriation Act*
- Process is the same, but the players are different



Who are the Players?

- Expropriating Authority – the “specified permit holder”
- Approving Authority – Minister of Energy and Mines
- And not to be left out – the OGC



What about the temporary workspace?

- the permit holder can expropriate “as much land as necessary”...
- provided it is under 18m in breadth
- the OGC may authorize more on an application by a “specified permit holder”



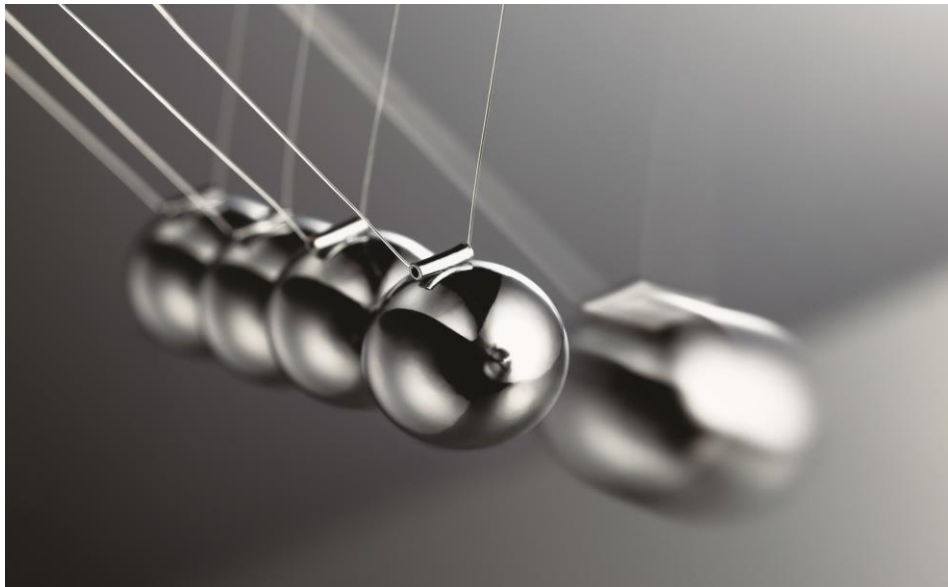
Timing is a Concern

- Permit is required in advance
- Additional OGC approval may be required if $>18\text{m}$
- Ministry has not yet dealt with an application



Possible Delays

- not a concern for the landowner
- for the company it's a different story
- If requirements met the Ministry “must” approve the expropriation, but the Act is silent on timing



Next Steps

- **Advance Payment within 30 days of approval**
- **Vesting Notice within 30 of advance payment**
- **Compensation claim within one year of advance payment**



RIGHT OF ENTRY

The BC Surface Rights Board

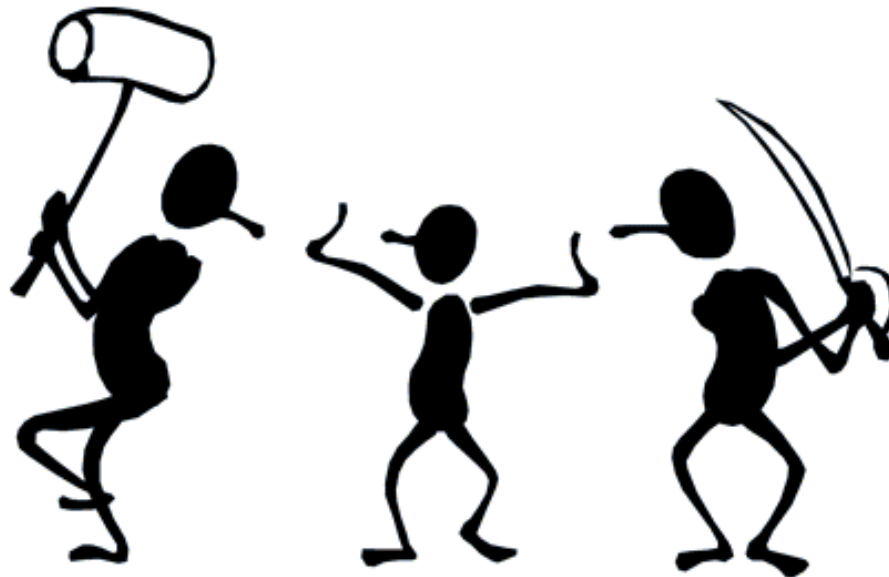
- former Mediation and Arbitration Board
- constituted under the *Petroleum and Natural Gas Act*
- independent, quasi-judicial board which addresses issues of compensation and access, including compensation for damage, loss of rights and periodic renegotiation of compensation

Significant Increase

| Case Completions | # before the Board (2009) | # before the Board (2013) |
|---|---------------------------|---------------------------|
| Applications received | 15 | 71 |
| Active applications from previous years | 8 | 66 |
| Total | 23 | 137 |

2 step process

- Mediation...but with a right of entry component
- Arbitration



Compensation

- **partial payment**
- **security deposit**
- **arbitration award**



Considerations in determining amount

154 (1) In determining an amount to be paid periodically or otherwise on an application under this Part, the board may consider, without limitation, the following:

- (a) the compulsory aspect of the right of entry;
- (b) the value of the applicable land;
- (c) a person's loss of a right or profit with respect to the land;
- (d) temporary and permanent damage from the right of entry;
- (e) compensation for severance;

Considerations cont.

- (f) compensation for nuisance and disturbance from the right of entry;
- (g) the effect, if any, of one or more other rights of entry with respect to the land;
- (h) money previously paid for entry, occupation or use;
- (i) the terms of any surface lease or agreement submitted to the board or to which the board has access;
- (j) previous orders of the board;
- (k) other factors the board considers applicable;
- (l) other factors or criteria established by regulation.

Appraisals

- **What are they good for?**
 - Huh? Absolutely nothing?
- **Fear Not**



Enforcement & Appeals

Enforcement

- Same as a Writ of Possession issued by the Court
- Cost consequences for failure to comply

Appeals

- Review and Variance
- Judicial Review

Thank You

Any Questions?

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