EXPROPRIATION BY PIPE LINE COMPANIES IN ALBERTA — *DOME PETROLEUMS LIMITED ET AL.* v. *SWAN SWANSON HOLDINGS LTD. ET AL.*[1]

For many years private companies have been expropriating property in Alberta according to procedure which give credence to the classic statement of Mr. Justice Thorsen while President of the Exchequer Court of Canada:[2]

> I have frequently . . . stated that Canada has the most arbitrary system of expropriation of land in the whole of the civilized world. I am not aware of any other country in the civilized world that exercises its rights of eminent domain in the arbitrary manner that Canada does.

The arbitrary nature of the expropriation proceedings of private companies in Alberta originally came to light in the *Copithorne*[3] case, where an expropriation order was granted by a Minister of the Crown without any notice whatsoever to the property owner. The first time the property owner became aware of the fact that his land had been expropriated was when he discovered the private company actually constructing power poles on what he thought was his own land. The procedures followed were upheld by the Supreme Court of Canada as not offending the principles of natural justice.

As a result of the public controversy created by the *Copithorne* case, the statutory provisions governing the procedures for private company expropriation were radically changed with the passage of the Expropriation Procedure Act[4] in 1961. Whereas previously a Minister was given the authority to issue expropriation orders without notice to property owners, which orders could be registered at the Land Titles Office thereby completing the expropriation, now the power was to be exercised by the Public Utilities Board and provision was made for a hearing prior to the expropriation order, presumably to permit the owner the opportunity to question whether his land should in fact be expropriated.

However, the changes actually effected by the Expropriation Procedure Act as interpreted by the Public Utilities Board, were few indeed. It is proposed in this article to briefly review the procedures by which private pipe line companies have been expropriating land under the Act and to analyze the changes in these procedures which were effected by the recent decision of the Alberta Supreme Court, Appellate Division in *Dome Petroleum Limited et al.* v. *Swan Swanson Holdings Ltd. et al.*[5]

By way of introduction it is to be noted that in any expropriation of a pipe line easement, there are four matters which a property owner might wish to raise. He could question: the public necessity or utility

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1 Unreported as of the writing of this comment. The writer is engaged in research on the subject of expropriation procedure for the Institute of Law Research and Reform. This comment deals with subject matter included in that research. The views are those of the author and not of the Institute.

2 *Grayson* v. *The Queen* [1956-60] Ex. C.R. 331, 335.

3 *Calgary Power Ltd. and Halmrast* v. *Copithorne* [1959] S.C.R. 24.

4 S.A. 1961, c. 30, Part 3. Companies which obtain drilling rights over land apply to the Board of Arbitration under the Right of Entry Arbitration Act, R.S.A. 1955, c. 290, if they can not obtain right of entry by agreement. The Board of Arbitration also has jurisdiction to grant the company an easement for small pipelines incidental to the production process. Generally the jurisdiction given to the Public Utilities Board under the Expropriation Procedure Act relates to major pipelines, known as transportation, as distinguished from production pipelines.

5 Unreported as of the writing of this article.

of the pipe line itself; the route; the width of right-of-way; or the exact nature or interest to be granted.

Procedure Prior To Dome Petroleum

A private company wishing to construct a pipe line had had to go through two separate procedures before commencing construction; application to the Minister of Mines and Minerals under the Pipe Line Act, 1958[6] for a permit; and, in the event that all the needed right-of-way could not be acquired by agreement, application to the Public Utilities Board under the Expropriation Procedure Act for an expropriation order.

(1) *Application for a Permit*

The Minister[7] bases his decision on whether to grant a permit mainly on his assessment of the public interest. The attitude of the Minister seems to be that if a company is willing to incur the expense of a pipe line there must be a public need for it and it is very rare for the Minister to refuse to issue a permit. Indeed, companies frequently acquire a great deal of the right-of-way before making the application to the Minister, so confident are they of obtaining ministerial approval. In practice, therefore, there is never much consideration given as to the question of the public necessity or utility of the pipe line, this decision being left to the companies themselves; thus property owners are never heard on this point.

The Minister examines the application to see that it complies with the technical and safety requirements of the Department. Having decided that the project is desirable and that the construction proposals are satisfactory, the Minister may grant the permit or he may order an applicant to publish a notice with respect to the proposed route in a newspaper.[8] In the case of short pipe lines, or longer pipe lines where most of the right-of-way has already been acquired by agreement, no publication is required and a permit is issued summarily. In such cases it is obvious that property owners who will be affected will not have had notice of the application for a permit.

Publication, if required, takes the form of a map roughly showing the proposed route accompanied by a statement that any objection to the *proposed route* may be filed with the Deputy Minister of Mines and Minerals by a certain date. No objection to the *project itself* is invited from members of the public.

If publication is required in a particular case, there is no guarantee that a property owner would be put on notice. Personal service is never required and the owner could miss the publication entirely. Even if it came to his attention, he might be unable to determine whether the proposed route was going to cross his land due to the generality of the map. The net result is that many permits are issued without those property owners who will be affected having had notice of the applica-

6 S.A. 1958, c. 58.

7 The Minister of Mines and Minerals can authorize others to fulfil his functions under the Pipe Line Act, 1958; sections 9(7) and 12(1). In practice the Deputy Minister is the person who exercises most of the powers under the Act, and who normally makes a decision on whether to issue a permit. Thus the term "Minister" is used in this article to include Deputy Minister.

8 S.A. 1958, c. 58., s. 6.

tion. By necessary implication, the owners will have had no opportunity to state objections to the Minister prior to the issuance of a permit.

The Pipe Line Act, 1958, is completely silent on the Minister's duty if he should receive an objection. It is interesting to note that the Pipe Line Act, 1952[9] provided that the Minister "*shall* have regard to the objections of an interested party," but this provision has been repealed. Moreover, the *Copithorne* case is authority for the proposition that a Minister in this situation is not under a duty to give the owner any right to be heard. Thus the Minister clearly has jurisdiction to issue a permit without soliciting objections and without paying any attention to whatever objections are in fact received.

If objections are received by the Minister, he frequently has an official from the Department make informal contact with the objectors. However, there is nothing analogous to a hearing. Moreover, the proposed route at this time is only stated in very general terms on the company's application. The legal survey is not normally conducted until after the permit is granted. Thus an owner would be placed in the position of attempting to make objections to a route which had not yet been ascertained.

The issuance of a permit conclusively settles the question of the public necessity or utility of the project. The form the permit takes is usually an authorization to construct the pipe line as proposed in the map submitted by the company. For lengthy pipe lines in particular the map will be drawn to a large scale and the red line which designates the authorized route might actually give the company authority to construct anywhere within an area of as much at 1,000 feet. The company is thereafter free to conduct its legal survey and choose its own route provided it stays within the general ministerial approval. The Minister does not at any time consider the size of right-of-way or the nature of interest over land which the company is to acquire. It follows that should a property owner object to the application for a permit, he will not be heard on either of these matters by the Minister.

The Minister's jurisdiction is not in any way affected by the *Dome Petroleum* decision and the above procedures will presumably remain the same until legislative change.

(2) *Application for Expropriation*

If the company is successful in obtaining a permit and if it cannot acquire all the right-of-way it desires by agreement, application must be made under The Expropriation Procedure Act to The Public Utilities Board for an expropriation order. There are two operative sections: under section 35 the Board, upon receipt of an application, is to fix a date for the hearing and at the hearing is to determine several matters including the estate or interest in land to be granted to the applicant and the compensation to be paid therefore; section 36 provides that the Board may "upon being satisfied of the necessity for the immediate exercise by the company of all or any of the rights over the land for which the application has been made" make an interim order granting the company certain immediate rights over the land. In practice a pipe line company will *always* make application for an interim order and,

[9] S.A. 1952, c. 67, 2.6(1).

before the *Dome Petroleum* decision, these orders were *always* granted. The company will thus gain immediate right of entry and the pipe line will be forthwith constructed. After completion of construction, the final hearing under section 35 is held but, the pipe line being a *fait accompli,* the only issue is compensation.

The jurisdiction of the Public Utilities Board to hear representations as to the route of the pipe line and the size of the right-of-way is the issue dealt with in the *Dome Petroleum* case, and in *Peace River Oil Pipe Line Company Limited* v. *Shulman et al.*,[10] a decision of the Board itself decided a year previously. In the *Peace River* case the Board delivered a lengthy written judgment in which it held that it was without jurisdiction to determine either route or width of right-of-way, and based its decision on two provisions in the Expropriation Procedure Act. The first is section 32 which provides that nothing in the Expropriation Procedure Act "restricts or affects any power or authority of the Minister . . . to prescribe the intended route or site, or the extent thereof," and that "where a permit issued under an authorizing Act approves or authorizes the works of a company, the permit is final and binding." There can be no doubt about the plain meaning of this section. If the Minister makes a decision authorizing construction *and specifies the route and width of right-of-way,* these matters are not open to review by the Board. In practice, however, as has been shown, the ministerial permit only authorizes construction and approves the route in rough terms. It is submitted that there is nothing in the permit that would prevent the Board either from directing a modification of route within the general route prescribed by the Minister or from considering the width of right-of-way to be granted.

The second and most important provision upon which the Board relied was section 45, which was held "to dispel any doubt that there may be about the Board's jurisdiction." Section 45 provides as follows:

> No person may in any proceedings under this Act dispute the right of an expropriating authority to have recourse to expropriation or question whether the land or estate or interest therein to be expropriated is necessary or essential for the public work or the works, as the case may be, for which it is to be acquired.

The plain meaning of section 45, in the Board's opinion, was that the company was *to receive the interest in land applied for.* The Board's function was thus reduced to rubber stamping the company's application. It is submitted that the Board erred in the interpretation of section 45 for reasons that are apparent in the discussion of the *Dome Petroleum* decision.

The *Peace River* decision was not appealed and the Board continued to follow it in numerous cases thereafter, including *Dome Petroleum.* If any land owner appeared at an interim hearing protesting that the route should be changed or that the company was taking too much right-of-way, they were politely told that these matters were not for the Board to decide.

It must be remembered that many permits would have been issued before property owners were even aware of the proposed project. The property owners who were aware might have stated objections to the Minister as to a route (which had not yet been chosen with precision),

10 Unreported. P.U.B. No. 28 795, August 9, 1968.

but they would not be accorded the opportunity to make their case at a hearing, nor would they have had the opportunity to question the size of right-of-way. Thus prior to *Dome Petroleum* private companies were in the fortuitous position of choosing for themselves the width of right-of-way and the route, provided only that they stayed within the general authorization given by the permit—a general authorization which was frequently granted without property owners having had any opportunity to object.

The one thing that the Board did decide was the nature of estate or interest to be granted to the company. Over the years the Board has developed a standard order which prescribes the rights over the land which the company may exercise and the rights are rarely the subject of argument before the Board. Argument could conceivably arise if a pipe line company ever applied for the fee simple rather than an easement, as is occasionaly the case with private power companies, but this has not occurred.

In summary, therefore, it can be said that before the *Dome Petroleum* decision property owners had no opportunity to question the public utility or necessity of the project or the width of right-of-way to be expropriated. They had an opportunity before the Public Utilities Board to question the rights to be granted over the land and a limited and somewhat ineffectual opportunity, in those cases where they received notice of the application for a permit, to state general objections as to the proposed route to the Minister of Mines and Minerals.

The Dome Petroleum Decision

Swan Swanson Holdings Ltd. owned land on the south-east outskirts of Edmonton which had potential for industrial subdivision. In fact Swanson Holdings had engaged a town planner for the purpose of preparing plans for the subdivision. Various pipe line companies had previously constructed several pipe lines across the land. *Dome Petroleum Ltd.* obtained a permit to build yet another pipe line and conducted a legal survey choosing to construct its pipe line immediately parallel to that of a pipe line owned by another company, and proposing to take a 50 ft. right-of-way. Swanson Holdings felt that a 50 ft. right-of-way as excessive for the eight inch pipe line which was proposed, and also questioned the location of the right-of-way. Swanson Holdings argued that the pipe line could be built within one of the rights-of-way already granted to other companies and that no more of its land was actually required. Because of the limitations on building near pipe lines,[11] the subdivision potential of the land would have been considerably reduced if the *Dome Petroleum* application were granted.

The Public Utilties Board, of course, took the position that it could not hear the representations of Swanson Holdings as to location or extent of right-of-way and granted the interim order.[112] Swanson Holdings proceeded by way of certiorari to the Supreme Court[13] for an order quashing the Board's order on the grounds, *inter alia,* that the Board

11 Imposed in The Subdivision and Transfer Regulations, 215/67, June 15, 1967, s. 37.
12 No reasons were given for the orders. The Board did not permit Swanson Holdings to argue its case before them.
13 The Notice of Motion was issued on October 1, 1969, out of the office of the Clerk of the Supreme Court, Judicial District of Edmonton, as No. 62962.

had erred in refusing to consider the width and location of the right-of-way.

Sinclair, J., dismissed the application,[14] relying on section 45 of The Expropriation Procedure Act, quoted *supra,* and on section 40(1) of the Pipe Line Act, 1958[15] (which permits a company that "requires" an interest in land for the purpose of its pipe line to expropriate the interest "required" by an order under the Expropriation Procedures Act). The learned judge stated:

> The word 'require' has two principal meanings. They may be said to be, firstly, the equivalent of 'need", and secondly, the equivalent of 'demand'. As used in the sections to which I have referred, it is the use of the word 'required' in the sense of 'need' that seems to be intended.
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> The issue thus resolved itself into the question as to whether it is for the Public Utilities Board, as a part of its function in the expropriation proceedings, to determine whether the company's 'need' a 50 foot right-of-way in this case.
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> I am of the opinion that the question is *conclusively* resolved by the words of Section 45 of the Expropriation Procedure Act which says, in part, that no person in any proceeding under that Act may question whether the land or estate or interest therein to be expropriated is *necessary,* or in other words is 'needed', for the works for which it is to be acquired.
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> In the result, I hold that the Public Utilities Board has no jurisdiction to consider whether all or any part of the 50 foot strip is needed by the company. That being so, there is no defect in the Board's procedure to which certiorari proceedings can apply.

The pipe line was constructed before the case was heard by the Appellate Division. The Appellate Division allowed the appeal from Sinclair, J.'s decision by a two to one majority.[16] Allen, J., giving the majority judgment, put the issue squarely: "Is the wording of clauses 35 and 36 such as to indicate that the Board merely acts as a 'rubber stamp' so far as the *area, location and extent*[17] of the right-of-way is concerned?" He held that section 45 did not have the meaning given to it by the Board and trial judge and gave three reasons for his decision. He firstly noted that the Act set out different procedures depending on whether the expropriating authority was the Crown, a municipality or private company. In the case of Crown or municipal expropriations "no one other than the Crown or municipality has anything to say about the area, extent or locale of lands to be acquired and the only thing left to be decided by an outside tribunal (in the event of disagreement) is the matter of compensation . . . ." But in the case of private company expropriations, the Public Utilities Board was directed, upon receipt of an application, to "hear and determine the application and . . . dispose of the application and make an order declaring the estate or interest in the land granted to the company for the works and general undertaking of the company . . . ." As was pointed out by the learned judge, "If section 45 is to be given the effect contended for by the companies and apparently accepted by the Board, what is the Board supposed to 'determine' and what is is supposed to 'dispose of'?"

His second reason was based on section 36(7) in which the Board is given jurisdiction to rescind an interim order as to the whole or any part of the land to which it relates, presumably upon the application of any interested party or of its own motion. "This certainly seems to run

14 Sinclair, J.'s judgment is unreported.
15 S.A. 1958, c. 58.
16 The decision of the Appellate Division is also unreported as of the date of this writing. The appeal bore No. 8177.
17 Emphasis added.

contrary to the presumed effect of section 45 which by its terms precludes disputing the right of an expropriating authority to question whether the land to be expropriated is necessary for the works in *any proceeding under the Act.*"

Allen, J.'s third and most important reason was based on public policy. He noted that "if the contention of the companies is accepted there would be no limit on the land they could arbitrarily take for the purpose of their works either by interim or final order and this does not seem reasonable," and pointed to the authorities which have frequently held that legislation to acquire land compulsory must be strictly construed. He continued:

> Yet we are asked to construe section 45 of the Exproriation Procedure Act as completely eliminating, in the case of expropriation by a company for private profit, any protection against what might be rapacious demands of such a company for areas to be expropriated far in excess of their actual requirements, perhaps in anticipation of convenience in extending or increasing facilities at some much later date, when the value of the property might be considerably enhanced.

He then concluded his judgment with the following operative passage:

> With these things in mind, and bearing in mind that no construction of section 45 should be such as to make it meaningless if it is possible and reasonable to construe it in a manner which will not offend the principle stated and will not result in a hardship and unfairness to landowners that could follow the interpretation placed upon it by the court below, and also having due regard to the provisions of subsection (7) of section 36 quoted above, it is my opinion that section 45 may be fairly construed to mean that after the Board has considered the actual requirements of the expropriating authority as to the *extent and area*[18] of the lands necessary or essential for its purposes and has arrived at a determination of these features, the land or interest or interests therein prescribed by its order to be expropriated cannot be questioned in any proceedings under the Act, e.g. in appeals or proceedings in the nature of appeals from the Board's order.

It is to be noted that Allen, J. in the above passage clearly held that the Board had jurisdiction to determine "the extent or area of the lands necessary or essential" for the company's purposes. For some reason not apparent in the judgment he did not use the phrase "area, *location* and extent" which he had earlier used. The omission of the word "location" in the operative passage of his judgment has been held to have had a very significant effect on the Board's jurisdiction, as will be shortly seen.

Macdonald, J., concurred with Allen, J., and added his own reasons why he felt the Board had misinterpreted section 45:

> Section 45 does two things—firstly—it prevents any person in proceedings under the Act from denying to an expropriating authority the right of taking expropriation proceedings under the Act, and, secondly—it prevents any person in proceedings taken under the Act from questioning the necessity or essentiality of the land or estate 'to be expropriated' for the public work or works for which the land or estate or interest is to be acquired.
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> The second part of this section in using the words 'to be expropriated' and 'to be acquired' I construe as speaking in the future tense. Before determination of what is 'to be expropriated' can be made, there must of course be the application to the Board, in the case of expropriation by companies, under Part 3 of the Act. On that application the Board hears and determines pursuant to section 35, subsection (2) paragraph (a)
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> > the estate or interest in the land granted to the company for the works and general undertaking of the company . . .'
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> It is true that in this case the permit granted under The Pipe Line Act determines that the applicant to the Board has established the necessity of acquiring land or an estate or interest therein for the 'work'. Section 45 of The Expropriation Procedure Act would deny any effort to question the decision made

[18] Emphasis added.

> under The Pipe Line Act or to question the right of the applicant to have recourse to expropriation.
> However 'the estate or interest in the land granted to the company' (section 35, subsection (2) paragraph (a)) is only determined after the Board holds its hearing. It is only after this determination that *the extent of the land or the estate or interest therein to be expropriated*[19] is precisely known.

Macdonald, J. also omitted reference to the question of location of the right-of-way.

The dissenting judgment, delivered by Johnson, J., held that section 45 was plain and unambiguous and adopted the interpretation of the Board and of Sinclair, J. He went on to state: "Much was made of the impropriety of legislation that places such power in the hands of expropriating companies. The proper forum for such arguments is not the court but the legislature. This language appears to me to be plain and without ambiguity and the Court could not, in the guise of interpretation, change its meaning or rob it of all effectiveness."

Interpretation of the Dome Petroleum decision by the Public Utilities Board

The result of the *Dome Petroleum* decision was that the interim orders granted to Dome Petroleum were quashed. Since the pipe line had already been constructed Dome Petroleum was forced to reapply to the Public Utilities Board for interim orders restoring their rights over Swanson Holdings' land. Again Swanson Holdings argued that a 50 ft. right-of-way was excessive and that the pipe line ought to be moved to land other than that described in the application. Swanson Holdings wanted the pipe line removed and put in one of the existing right-of-ways. The Board ruled that the decision of the Appellate Division was that the Board had jurisdiction to consider the extent and area (i.e. width), *but not the location,* of the right-of-way.[20] The Board noted that the operative passages of the Appellate Division's judgment did not state that the Board has jurisdiction over locations, and also relied on section 32 of the Expropriation Procedure Act relating to the finality of the ministerial permit. Since the company's map, which was appended to the permit granted by the Minister, showed the route as being adjacent to the pipe line right-of-way, the Board was of the view that the Minister had conclusively determined the route. In its decision the Board referred to the evidence of an employee of Dome Petroleum, Mr. Stitt, who had been called as a witness. During cross examination by Swanson's solicitor, Stitt was referred to the permit and appended map, which showed the intended route outlined in red. The Board's decision summarized Stitt's evidence as follows:

> Counsel asked the witness if there was any significance to be placed on the fact that the red line was shown at some places on the plan to be right adjacent to the existing right-of-way whereas in other places on the plan there was considerable space between the red line and the other pipe line rights-of-way. The witness replied 'No'.

This clearly shows that the Minister, in granting a permit, did not really intend to precisely define the route. The red line was simply an indication of the intended route and did not purport to specify it with precision. No legal survey having been conducted, this would have been impossible in any event. After the permit was granted the company conducted its

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[19] Emphasis added.
[20] This decision of the Board is also unreported, although the Board gave a 39 page written judgment: P.U.B. No. 29729.

survey and *at that stage* chose the specific route that it desired. To hold that the ministerial permit decided route and that section 32 prevent the Board from considering the question of location is, in the writer's view, a misunderstanding of the nature of the permit.

The Board also relied on section 36 of the Expropriation Procedure Act which permitted the Board to grant interim orders "upon being satisfied of the necessity for the immediate exercise by the company of all or any of the rights over the land *for which the application has been made.*" This section, in the Board's view, meant that the Board could only hear evidence relating to the land which was actually applied for. It is respectfully submitted that the Board erred in its interpretation of this section. It is true that the interim order, if granted, may only pertain to land included within the application; but the section is discretionary and the Board, if satisfied by the evidence that the location chosen by the company was not the best location, could refuse the interim order. The company would then have to choose another route and reapply.

It may be that this decision of the Public Utilities Board will also come before the Appellate Division for consideration, either in this[21] or some future case. It is submitted that Allen, J. did not intend to have his judgment so restricted. In the meantime the effect of the Board's interpretation of the Appellate Division's decision is to preserve a situation in which private companies are able to a considerable extent choose their own routes and in which property owners are bound by the companies' choice. However companies must now at least justify the size of right-of-way which they wish to take. That the Public Utilities Board is vigorously exercising this limited jurisdiction was shown when Dome Petroleum reapplied for interim orders. The Board heard much expert testimony in a hearing which lasted two full days and ended by reducing the right-of-way to 35 feet. The Board ordered that the width of the right-of-way granted in any particular case would to a considerable extent depend on the use that is being made of the land. The Board stated:

> The Board considers that where a pipe line is proposed to be constructed across an open parcel of land that is proven to have a potential for subdivision for residential, industrial or commercial purposes, the Board ought to consider what effect the pipe line will have on the development of the potential, having regard to the prohibitions against erecting buildings within certain distances of a pipe line for the right-of-way. In this respect it would appear to the Board that, in some cases, a monetary award alone may not be a complete answer to compensate for the restrictive effect that the construction of a land owner to develop his property to its highest and best use . . . .
> In the Board's view, what is 'necessary or essential' for a right-of-way must be considered from the point of view of an applicant company as well as from the point of view of the land owner.
> All that can be said at this time is that the Board will have to try to achieve some sort of balance between prohibitive costs on the one hand and complete disregard of the fair and reasonable rights of a land owner on the other hand.

In summary, therefore, it can be said that property owners still have no opportunity to question the public utility or necessity of a project. They retain the opportunity to question the nature of estate or interest granted over the land and the limited and somewhat ineffectual oppor-

21 As of the date of this writing, the solicitors for Swanson Holdings are applying for leave to appeal, which is required by s. 52 of the Expropriation Procedure Act. If leave is obtained, the appeal should be argued during the May sittings of the court in Edmonton.

unity, in some cases, to state general objections as to the proposed route to the Minister of Mines and Minerals. The immediate effect of the *Dome Petroleum* decision, as interpreted by The Public Utilities Board, is to give property owners a full and complete opportunity to question the width of right-of-way which is to be granted.

Prospects For The Future

Barring a further ruling from the Appellate Division, it is submitted that the present manner in which private pipe line companies expropriate property is still far from satisfactory. The writer is of the opinion that a property owner should have, at some stage of expropriation proceedings, the right to be heard as to the expropriation itself, and not be restricted simply to the question of compensation. This principle has in fact been adopted in the Ontario Expropriations Act,[22] applying to all expropriations by government and private companies, and in the Federal Bill C-200, now before Parliament, which applies to Crown expropriation. Both statutes permit property owners faced with proposed expropriation to insist on a hearing before an independent official, who makes a report to the appropriate Minister. After considering the report the Minister makes a decision as to whether to abandon the expropriation or to confirm it in whole or in part. This procedure, which has long been followed in Great Britain and was recommended by the McRuer Commission,[23] insures that a property owner will have at least an opportunity to air his objections, not necessarily as to the public benefit of the project itself but at least as to the question as to whether his land, or a particular portion thereof, is necessary. In Great Britain a property owner has the right to question even the public utility of the project.

The existing situation demands legislative action. There has never been in Alberta a comprehensive review of expropriation procedure. The Expropriation Procedure Act, 1961, was essentially a consolidation of various procedures which had been previously scattered through a multitude of statutes. Fortunately the Institute of Law Research and Reform is now studying the entire area of expropriation procedure, including expropriation by the Crown and municipalities, and will hopefully be making recommendations upon which the Government can act. In fairness to the Government of Alberta, it must be noted that the concern for the property owner in Canada is a rather recent phenomenon. The statement of Thorson, J., quoted at the beginning of the article, applied throughout Canada until the Ontario act was passed in 1969. Procedures by which private pipe line companies expropriate land in other jurisdictions are at least as arbitrary as in Alberta.

Whether a property owner is to be accorded the opportunity to state his case as to why his land should not be expropriated is a decision for the legislature to make. So also are the supplementary decisions as to who will adjudicate on the merits of the owner's objections and the procedures to be followed in making the objections. It is not fair to place courts in a position where they must interpret an ambiguous statute on questions so fundamentally important to the public interest.

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22 S.O. 1968-69.
23 Royal Commission, Inquiry into Civil Rights, Report No. 1, Volume 3, c. 66.
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