

## **CAEPLA ORAL COMMENTS TO THE HOUSE OF COMMONS ENERGY COMMITTEE**

In late November, your CAEPLA leadership appeared before the House of Commons Energy Committee to discuss the structure and performance of Ottawa's National Energy Board, including its impact upon landowners. CAEPLA's opening statement, which was presented by CAEPLA Policy Advisor John Goudy, and CEO Dave Core, is printed below.

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Let me begin by saying that CAEPLA is a pro-development organization. We have several dozen regional and provincial affiliated associations—including four provincial pipeline landowner associations, which to the best of our knowledge are the only provincial pipeline landowner associations in Canada.

The individuals who gave birth to CAEPLA are landowners who had come to understand that the NEB is not a public interest regulator in the sense that any normal person would understand a public interest regulator to be. For all practical purposes, the NEB has three mandates—as an energy industry facilitator; as a regulatory watchdog; and as a quasi-judicial body and sometime ombudsman that is seemingly obligated to represent the interests of the people its policies affect.

As an industry facilitator it is a success; as a regulatory watchdog it is passive and theoretical; as a sometime ombudsman giving due regard to the legitimate interests of landowners, it is a failure.

For many years, growing landowner resentment toward the NEB has bubbled beneath the surface. It didn't spill into the public arena because few landowners had been subject to its regulatory provisions.

Alberta regulates about 400,000 kilometers of pipeline. By way of contrast, up until recently, the NEB's pipeline portfolio was about one-tenth that size. Due to oil sands and other production factors, this is and will be dramatically changing.

The first significant public expression of landowner resentment toward the NEB and its policies, spilled into the public arena some years ago when two farm couples from south western Ontario, mortgaged their farms to launch a court action. Frustrated by all that was occurring, these landowners believed it would be easier to address the issues by engaging in a legal action against the pipeline company that operated within the

provisions of NEB regulations, rather than against the federal government, as represented by the NEB.

The court battle addressed soil degradation and diminished property values. It resulted in a legal victory for landowners, but didn't change NEB policy.

Since that court case, without consulting landowners, the NEB amended its policies to shift financial and legal liability for abandoned pipelines from the pipeline companies to landowners. It established provisions, again apart from landowner consultation, that awarded jurisdictional control of what today amounts to 1 million acres of land, to the pipeline companies that the NEB openly and unabashedly was calling its "partners."

The NEB then established provisions, again apart from landowner consultation, that resulted in landowners holding liability every time they drove farm equipment across a buried pipeline on their farms, without first obtaining permission from either the NEB or the pipeline company.

The most recent episode of the NEB openly trampling landowner interests occurred in Alberta, when it unilaterally stripped thousands of landowners of the legislative and regulatory protections they had enjoyed for decades, when it transferred control of 24,000 kilometers of Alberta regulated pipeline into its own portfolio. It did this, even after landowners raised and spent hundreds of thousands of dollars to appear before the NEB with professional witnesses, to fully explain the far-reaching implications of such a policy.

Moving to the NEB's current LMCI process—the common abbreviation for its Land Matters Consultation Initiative—CAEPLA and our affiliated provincial associations raised several hundred thousand dollars to participate in this undertaking. Our objective was to ensure that we could utilize the expertise of professional witnesses to fully and accurately present the NEB with a clear understanding of the impact of its policies upon landowners.

(Let me pause here and parenthetically insert that these are after tax dollars we must solicit from landowners who are affected by NEB processes—Canadians who have no financial interest in NEB processes, no financial interest in pipelines, yet whose lives are being imposed upon, and whose property values are being diminished.)

At the very beginning of the LMCI process, a condition of participation for CAEPLA and our affiliated associations was an assurance that the rules would be amended in such a way that landowners would not hold financial or legal liability for abandoned pipelines. After all, we don't own or hold a financial interest in these pipelines.

We were assured by the NEB that such would be the case. Then, after we appeared at LMCI, we were told that landowners would have to hold some liability for abandoned pipelines. The result was that CAEPLA and all our affiliates walked out, knowing we had been misled.

Today we recognize that no single agency of government, no matter how well-intended and well-funded it may be, can fulfil mandates as contradictory as those held by the NEB.

The NEB cannot be an energy industry facilitator; a regulatory watchdog; and a type of ombudsmen to the people its own policies trample, all at the same time.

Regulatory capture at the NEB is very real and very alive. It is our considered opinion that this is not due to any inherent flaw in the character of its managers, but rather, exists as a natural outworking of the contradictory and competing mandates that the NEB possesses.