Date: 20080926

Docket: T-521-07

Citation: 2008 FC 1087

Ottawa, Ontario, September 26, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

ALLIANCE PIPELINE LTD.

Appellant / Respondent by Cross-Appeal

and

TERRANCE BALISKY, MARCIA BALISKY, PETER EGGERS, LEVKE EGGERS, BRYAN ELLINGSON, CHARLES EVASKEVICH, NORA EVASKEVICH, ROGER JONES, FERN JONES, GREGORY LEROUX, 340104 ALBERTA LTD., DONALD LILAND, BRIAN MOE, JANICE MOE, RANDY MOE, KRISTIN MOE, FRANKLIN MOLLER, ROBERT RICHARDS, ADA RICHARDS, CONNIE SCHMIDT, PRISCILLA SCHMIDT, ALBERT SLATER, KENNETH SLATER, ED WELSH, DONALD MEADOR, JOHN GLASMAN, ELAINE GLASMAN, GLEN BAGERT, DON PEDERSON AND GORDON STRATE

Respondents / Appellants by Cross-Appeal

REASONS FOR JUDGMENT AND JUDGMENT

[1] Alliance Pipeline Ltd., along with its U.S. affiliate, owns and operates a natural gas pipeline running from northern British Columbia to Chicago. Within Canada, the pipeline extends 1,600 kilometres and its tributaries comprise another 800 kilometres. It crosses property owned by 3,100

landowners. The respondents in this case are among them.

[2] Alliance gained approval for its pipeline from the National Energy Board (NEB) in 1998. The NEB specifically endorsed Alliance's plan to secure rights of way across the landowners' property. In turn, as required by the *National Energy Board Act*, R.S., 1085, c. N-7, (NEB Act) Alliance notified the landowners of its plan, provided a description of the lands over which the pipeline would cross, and presented an offer of compensation for the use of the land. Alliance settled with most of the landowners for amounts greater than those set out in the original offer. The pipeline was completed in 2000.

[3] Alliance did not reach settlement agreements with the respondents. The respondents requested that the issue of compensation be determined by arbitration. An Arbitration Committee was formed and, in 2007, the Committee issued its decision setting out the amount of compensation to which it believed the respondents were entitled. Alliance appeals those amounts, arguing that the Committee took into account irrelevant factors. The landowners also appeal, arguing that the Committee should have ordered Alliance to pay them an annual fee rather than a lump sum.

[4] The issue, then, is whether the Committee erred in either its determination of the appropriate amount of compensation or the manner in which compensation should be paid. In my view, the Committee's decision was, in the main, reasonable. However, I find that the Committee erred in its determination of the compensation payable to three of the respondents – two in Fort Saskatchewan, Alberta and one in Fort St. John, British Columbia. I must, therefore, allow Alliance's appeal in

part. I dismiss the respondents' appeals.

I. Factual Background

[5] In return for rights of way across the landowners' property, Alliance originally offered compensation corresponding to the market value of the parcels of land it needed. It offered full market value for the land over which the pipeline crossed and half market value for lands needed as temporary work spaces. Market value was determined according to the value of each landowner's property as a whole. From that, a value for each acre was arrived at, and each landowner was offered an amount corresponding to the number of acres Alliance required. This methodology is referred to in the industry as the "en bloc" approach.

[6] Alliance reached settlement agreements with many landowners for amounts greater than those originally offered. These amounts were similar to those paid by other pipeline companies in the area for similar purposes. In Alberta, Alliance also agreed to pay landowners the additional $500 per acre entry fee required by the Alberta *Surface Rights Act*, R.S.A., 2000, c. S-24, even though Alliance, as a federally-regulated company, was not bound by that statute. The Committee found that these settlements reflected a "pattern of dealings", at least in some parts of Alberta, and represented the going rate of compensation for pipeline rights of way.

[7] As mentioned, Alliance did not reach settlement agreements with the respondents. The respondents chose to exercise their rights under the NEB Act to have the issue of compensation

determined by arbitration (ss. 88, 90 – relevant provisions are set out in an Annex). An Arbitration Committee was struck but, because one of its members was appointed to the bench, it never rendered a decision. A second Committee was appointed, heard the parties' representations, and issued a report in 2007. A parallel set of proceedings involving different landowners unfolded before a different Committee. That Committee's decision was appealed to the Federal Court: see *Bue* v. *Alliance Pipeline Ltd*., 2006 FC 713, [2006] F.C.J. No. 910 (QL).

II. The Committee's Decision

[8] The Committee addressed compensation in three main geographical areas: Grande Prairie, Alberta; Fort Saskatchewan, Alberta; and Fort St. John, British Columbia.

[9] The Committee noted that its task, according to s. 97(1) of the NEB Act, was to determine the compensation issue while considering the following factors, where applicable:

> (a) the market value of the lands taken by the company;
>
> (b) where annual or periodic payments are being made pursuant to an agreement or an arbitration decision, changes in the market value referred to in paragraph (*a*) since the agreement or decision or since the last review and adjustment of those payments, as the case may be;
>
> (c) the loss of use to the owner of the lands taken by the company;

(d) the adverse effect of the taking of the lands by the company on the remaining lands of an owner;

(e) the nuisance, inconvenience and noise that may reasonably be expected to be caused by or arise from or in connection with the operations of the company;

(f) the damage to lands in the area of the lands taken by the company that might reasonably be expected to be caused by the operations of the company;

(g) loss of or damage to livestock or other personal property or movable affected by the operations of the company;

(h) any special difficulties in relocation of an owner or his property; and

(i) such other factors as the Committee considers proper in the circumstances.

[10] The Committee also adopted what it considered to be the approach laid out by Justice Douglas Campbell in *Bue*, above. Justice Campbell held that s. 97(1) gave the Committee "wide scope" in exercising its mandate but made clear that a Committee should not blend damage factors with the value of land. He said that "any damage factor is not relevant to the value of lands taken". In particular, s. 97 should not result in "global awards" in which land value and damages are combined. Rather, those two heads of compensation should be regarded as separate "silos" and kept apart.

[11] In addition, Justice Campbell endorsed the approach taken by Alberta courts which involved determining the market value of pipeline rights of way with reference to comparable transactions relating to similar lands and similar purposes – the "pattern of dealings" approach (citing *Nova* v.

Petryshen (1983), 27 L.C.R. 276 (QL) and *Nova* v. *Bain et al*, (1985), 33 L.C.R. 91 (QL) and *Patson Industries Ltd.* v. *Calgary (City of), (*1981), 24 L.C.R. 181 (Alta. L.C.B.)(QL*)*). Those cases direct arbitration committees to apply the "pattern of dealings" approach, unless there is a good reason not to do so. Even a small number of transactions or a single agreement may be relevant.

[12] The Committee heard extensive expert evidence on land values and any patterns of dealing in the relevant areas. In the Grande Prairie area, the Committee concluded that there was a pattern of dealings between pipeline operators and landowners at $950 per acre, plus the $500 per acre Alberta entry fee, while the actual market value of the land, according to the en bloc approach, was $600 per acre. It found that federally-regulated companies usually pay the Alberta fee to landowners even though they are not legally required to do so. The Committee also noted a pattern of payments for temporary work areas at half the right-of-way value, with no entry fee (*i.e.*, $475 per acre).

[13] The Committee observed that the pattern in Grande Prairie was based not just on the market value of the lands, but on additional factors such as reasonably anticipated loss of use of the land, adverse effect on the landowner's remaining lands, nuisance, inconvenience and noise. The Committee surmised that the $500 Alberta fee may have been intended to compensate landowners for these and other intangible effects of ongoing pipeline operations. As for unanticipated or severe effects that pipeline operations might have on landowners, the Committee noted that these could be the subject of separate damage claims.

[14] The Committee did not find a pattern of dealings in the area of Fort Saskatchewan, Alberta. It found, however, that the market value of land in that area was $1,600 per acre. To compensate landowners for the same factors as the Committee considered appropriate for the Grande Prairie landowners, the Committee augmented the Fort Saskatchewan market value by a factor of 158%, bringing the figure to $2500 per acre (after rounding off). The Committee reasoned that the pattern-of-dealings figure it had arrived at for Grande Prairie was $158% higher than the market value of the land itself (*i.e.*, $950 versus $600), so the Fort Saskatchewan figure should be increased by the same margin. And, further, the $500 entry fee should be added to give a total of $3,000 per acre. The Committee set compensation for temporary work space at $1,250, being half the right-of-way figure without the addition of the Alberta entry fee.

[15] For the area of Fort St. John, British Columbia, the Committee found evidence that the Grande Prairie pattern of dealings was replicated there. It determined that one of the respondent landowners (Mr. Strate) should receive $950 per acre, plus the $500 entry fee, for rights of way and $475 per acre for temporary work space (*i.e.*, the same as in Grande Prairie). In respect of another landowner (Mr. Pederson), the Committee found that his land was of greater value and, using the 158% Grande Prairie mark-up, set his compensation for a right of way at $1,250 per acre, plus the $500 entry fee.

[16] For all of these valuations, the Committee concluded that it was unnecessary to take account of the fact that the landowners would likely still be able to make good use of the land after the pipeline had been completed – this is referred to as the “residual and reversionary interest” in the

land. The Committee found that the pattern-of-dealings approach already took this factor into account and, therefore, there was no need to deal with it separately.

[17] The Committee rejected the respondents' submission that Alliance should be ordered to pay annual compensation for rights of way over the lifetime of the pipeline's operation, rather than a lump sum. The Committee noted that it had the power to order that compensation be spread out over a number of years at a landowner's request (s. 98(1), NEB Act). However, this amount simply represented the equal division of a lump sum, not an annual fee representing "land rent". If a landowner exercised the option to receive a lump-sum payment over a number of years, the amount could be reviewed after five years (s. 86(2)(*b*)).

III. Did the Committee Err in Setting the Amount of Compensation?

(1) General Approach

[18] Alliance submits that the Committee did exactly what it was told by Justice Campbell not to do – it granted the respondents global compensation awards that blended land values with damages. It argues that the Committee should only have considered those factors identified in s. 97(1) of the NEB Act that relate specifically to land value, *i.e.*, "the market value of the lands taken by the company" (s. 97(1)(*a*) and "the adverse effect of the taking of the lands by the company on the remaining lands of an owner" (s. 97(1)(*d*)). Alliance suggests that the other factors mentioned in s. 97(1) relate to damages and should not have been considered by the Committee.

[19] There is no doubt that the Committee took into account factors other than land value. The question is whether it erred in doing so.

[20] Under the NEB Act, an arbitration committee must determine "all compensation matters referred to in a notice of arbitration served on it" (s. 97(1)). Here, the notices of arbitration identified the issue to be decided as "compensation for the right of entry" in respect of Alliance's proposed pipeline. In determining the appropriate amount of compensation, the NEB Act directs the committee that it "shall consider" the factors laid out in s. 97(1) "where applicable". It seems clear on the face of the statute that, where an arbitration notice identifies compensation for the right of entry as the issue to be decided, an arbitration committee must consider all of the applicable factors set out in s. 97(1) relating to that issue. The statute identifies several factors, beyond the market value of the land and the adverse effect on contiguous lands, that are relevant to the question of the amount of compensation landowners should receive for a pipeline right of way—including the landowners' loss of use of the land, as well as nuisance, inconvenience and noise.

[21] The Committee heard evidence about the impact that the pipeline would likely have on the landowners' use and enjoyment of the land in the future. For example, the Committee was told about the phenomena of "subsidence" (sinking of the land situated over the pipeline) and "hot strips" (warming of the land over the pipeline), both of which reduce the landowners' ability to continue to use the land for agricultural purposes. The Committee also heard evidence about the ongoing maintenance and inspection that the pipeline would require, including low-altitude flights over the pipeline route. In my view, in the circumstances, the Committee reasonably concluded that

factors such as “loss of use” and “nuisance, inconvenience and noise” were applicable to its task of determining the appropriate amount of compensation the landowners were due.

[22] To my mind, the Committee’s approach did not amount to a blending of land values with an award of damages. Rather, the Committee attempted to put a value on the right of way, as was its mandate according to the arbitration notices, in order to compensate the landowners for what they were actually giving up. It rightly took account of various applicable factors set out in the NEB Act. Those factors include effects that may “reasonably be expected to be caused” by the building of the pipeline (see ss. 97(1)(*e*), (*f*)). In other words, at least to some extent, the Committee is required to take account of the foreseeable adverse effects that landowners are likely to experience when it establishes an amount of compensation for a right of way.

[23] However, this is not the same as an award of damages, which would be based on actual losses in respect of unforeseen or extraordinary harm. I agree with Alliance that damage claims should be dealt with separately from compensation for rights of way, and that the market value of land is a separate issue from the other factors in s. 97(1). The NEB Act recognizes that “compensation for the acquisition of lands” is a separate issue from “compensation for all damages suffered as a result of the operations of the company” (s. 86(2)(*a*), (*c*)). It also distinguishes between the “details of the compensation offered by the company for the lands required” and the “value of the lands required in respect of which compensation is offered” (s. 87(1)(*b*), (*c*)). Looking at the NEB Act as a whole, then, one sees that damages are separate from the question of the compensation owed to landowners for a right of way, and that determining compensation for a right

of way is not simply a matter of putting a value on the land over which the pipeline crosses. Given that the Committee recognized these distinctions, I can see no error in its general approach.

(2) The Quantum

[24] As mentioned, the Committee looked first to the question whether there was a pattern of dealings relating to pipeline rights of way. This approach has been endorsed by the courts of Alberta and by this Court, in the cases referred to above. Still, there are two issues that arise from the Committee's treatment of the pattern of dealings. First, the Committee's approach raises the question whether a pattern of dealings in one geographical area (*i.e.*, Grande Prairie, Alberta) can help decide the amount of compensation due to landowners in another (*i.e.*, Fort Saskatchewan, Alberta or Fort St. John, British Columbia). Second, there is the question whether the $500 entry fee established under Alberta law can be considered part of a pattern of dealings applicable to a federally-regulated pipeline.

[25] As described above, the Committee essentially took a pattern of dealings in Grande Prairie and applied it to property in Fort Saskatchewan and Fort St. John. In particular, it awarded landowners in Fort Saskatchewan a premium calculated according to the ratio between the market value of land and the pattern-of-dealings amounts realized in Grande Prairie. Essentially, the Committee used a formula to calculate the appropriate compensation for landowners in Fort Saskatchewan based on what was happening in Grande Prairie. To endorse this approach would

mean that the compensation for a pipeline right of way for *any* given location in Canada could be calculated as follows:

$$\text{Compensation} = \text{Market Value of Land} \times \frac{\text{Pattern of Dealings in Grande Prairie}}{\text{Market Value of Land in Grande Prairie}}$$

[26] There is obviously some arithmetic logic in this approach. However, I do not see a legal foundation for it. While an arbitration committee must look first for a pattern of dealings in the particular area, when none exists, it must look to the applicable factors in s. 97(1) and make a determination of the appropriate amount of compensation. I see no authority, either in the case law or the NEB Act, for taking a pattern of dealings in one area and applying it pro rata to another. The point of relying on a pattern of dealings is that it provides good evidence of the value of a right of way in a particular location. Courts can assume, absent evidence to the contrary, that willing landowners and willing pipeline operators will have considered what each is gaining and losing and arrived at a figure they find to be reasonable. The cases make clear that a committee is not bound by a pattern of dealings when there is a good reason for discounting it. But they do not suggest that a committee can extrapolate from a pattern of dealings in one area to arrive at compensation amounts in another.

[27] One can readily understand the Committee's concern – that landowners should be treated as equals regardless of where they reside. There is nothing in the evidence, however, to indicate that the adverse effects of a pipeline right of way are directly proportionate to the value of the land over

which the pipeline passes. In other words, there is no proof, for example, that residents of Fort Saskatchewan will experience greater losses or more nuisance, inconvenience or noise from the pipeline than residents of Grande Prairie. Yet, the amount of compensation they would receive for these adverse effects would be much higher according to the Committee's approach -- $900 per acre in Fort Saskatchewan, as compared to $350 per acre in Grande Prairie. Perhaps this difference can be justified taking into account the actual effects on the landowners. However, it is not justified on the basis of the arithmetic reckoning that the Committee applied. The factors in s. 97(1) must be considered.

[28] In respect of the Fort St. John area, I see no problem in the Committee's conclusion that the Grande Prairie pattern of dealings was replicated there. However, in respect of Mr. Pederson's land, the Committee took the same approach as it did in respect of the Fort Saskatchewan landowners and, for similar reasons, I find that the Committee should have considered the factors in s. 97(1) in determining the appropriate amount of compensation.

(3) The Alberta Entry Fee

[29] The amounts awarded by the Committee included the $500 Alberta entry fee established under the Alberta *Surface Rights Act*. For Grande Prairie and Fort St. John, the Committee found that the entry fee formed part of the pattern of dealings in the respective areas. With respect to Fort Saskatchewan, the Committee added the fee in order to treat landowners there on a similar footing.

[30] As mentioned, the Committee speculated that the Alberta fee was intended to compensate landowners for various intangible adverse effects of accommodating pipelines on their property. This seems unlikely, given that the Alberta statute, like the NEB Act, takes account of a broad range of potentially negative effects (s. 25). The $500 fee supplements the compensation landowners receive (s. 19). It appears to be more a bonus than a compensatory payment.

[31] However, where, as here, a Committee finds that the provincial fee forms part of a pattern of dealings applicable to federally-regulated companies, I cannot characterize its inclusion as unreasonable, even though not all Committees will agree on this (compare the Committee's decision in *Bue*, above, versus that in *Alliance Pipeline Ltd.* v. *Fast*, 2003 FCT 642).

[32] Accordingly, I cannot conclude that the Committee's awards relating to Grande Prairie and to Mr. Strate's land in Fort St. John are unreasonable. However, in respect of the respondents in Fort Saskatchewan and Mr. Pederson in Fort St. John, the Committee appears to have automatically added the $500 fee even though it had no pattern of dealings to go by. For these landowners, the issue of compensation must go back to the Committee for a fresh determination. Whether a supplementary fee should be included in that award in order to achieve a just level of compensation is a matter best left to the Committee to decide after considering all the applicable factors in s. 97(1).

IV. Did the Committee Err in Awarding the Landowners a Lump Sum?

[33] The respondents argue that the Committee erred in failing to award landowners an annual fee as compensation for use of their land rather than a lump sum. In particular, the respondents point to a formula that had been developed by the Nova Corporation in the 1980s and suggest that this formula represented a "pattern of dealings" that the Committee should have recognized. The Nova formula involved paying landowners 50% of the market value of their land in the first year and 20% in each subsequent year that the pipeline was in operation. The Committee found that the formula had been applied in unique circumstances and, in any case, had fallen into disuse by 2002. Therefore, it could not be said to represent a relevant pattern of dealings. I cannot find, in light of the evidence before it, that the Committee's decision was unreasonable.

[34] The respondents also argue that the NEB Act permits a Committee to order annual compensation in the nature of "land rent". They submit that Justice Campbell's conclusion in *Bue*, above, to the contrary is incorrect.

[35] The respondents cite in their favour s. 98(1) of the NEB Act which states that "[w]here an Arbitration Committee makes an award of compensation … the Committee shall direct, at the option of [the landowner], that the compensation … be made by one lump sum payment or by annual or periodic payments of equal or different amounts over a period of time." In addition, the respondents point to s. 86(2)(*b*) of the NEB Act which specifies that annual or periodic payments are subject to review every five years.

[36] In Justice Campbell's view, these provisions mean that a Committee is obliged, if so requested by a landowner, to divide a lump sum into annual or periodic payments and, if those payments extend five years or more into the future, the amount can be reviewed. Justice Campbell specifically held that the Act does not permit a Committee to order compensation in the form of "land rent" (at para. 100).

[37] Before me, the respondents repeated the arguments that obviously had been aired before Justice Campbell. However, I have not been persuaded that Justice Campbell's conclusion was clearly wrong and, accordingly, I feel bound by it.

[38] In any case, as noted above, the Committee concluded that the Nova formula was not an apt comparable in the circumstances and that finding makes it unnecessary for me to decide whether the Committee might have the authority, in other circumstances, to award compensation in the form sought by the respondents.

V. Conclusion and Disposition

[39] I will allow Alliance's appeal in part and order that the Committee determine the proper compensation for the landowners in Fort Saskatchewan, and for Mr. Pederson's land in Fort St. John, according to the factors set out in s. 97(1) of the NEB Act. In all other respects, Alliance's appeal is dismissed as is the respondents' cross-appeal.

JUDGMENT

THIS COURT'S JUDGMENT IS that :

1. Alliance's appeal is allowed in part. The Committee shall determine the compensation for landowners in Fort Saskatchewan and for Mr. Pederson's land in Fort St. John according to the factors set out in s. 97(1) of the *National Energy Board Act*;

2. The respondents' cross-appeal is dismissed; and

3. As success is divided, I make no order as to costs. Nor would I disturb the Committee's cost award in the proceedings below.

"James W. O'Reilly"
Judge

Annex “A”

National Energy Board Act, R.S., 1985, c. N-7	*Loi sur l'Office national de l'énergie*, L.R., 1985, ch. N-7
Methods of acquisition	Modes d’acquisition
86. (1) Subject to subsection (2), a company may acquire lands for a pipeline under a land acquisition agreement entered into between the company and the owner of the lands or, in the absence of such an agreement, in accordance with this Part.	**86**. (1) Sous réserve du paragraphe (2), la compagnie peut acquérir des terrains par un accord d’acquisition conclu avec leur propriétaire ou, à défaut d’un tel accord, conformément à la présente partie.
Form of agreement	Forme de l’accord
(2) A company may not acquire lands for a pipeline under a land acquisition agreement unless the agreement includes provision for	(2) L’accord d’acquisition doit prévoir :
(*a*) compensation for the acquisition of lands to be made, at the option of the owner of the lands, by one lump sum payment or by annual or periodic payments of equal or different amounts over a period of time;	*a*) le paiement d’une indemnité pour les terrains à effectuer, au choix du propriétaire, sous forme de paiement forfaitaire ou de versements périodiques de montants égaux ou différents échelonnés sur une période donnée;
(*b*) review every five years of the amount of any compensation payable in respect of which annual or other periodic payments have been selected;	*b*) l’examen quinquennal du montant de toute indemnité à payer sous forme de versements périodiques;
(*c*) compensation for all damages suffered as a result of the operations of the company;	*c*) le paiement d’une indemnité pour tous les dommages causés par les activités de la compagnie;
Notice of proposed acquisition of lands	Avis d’intention d’acquisition
87. (1) When a company has determined the lands that may be required for the purposes of a section or part of a pipeline, the company shall serve a notice on all owners of the lands, in so far as they can be ascertained, which notice shall set out or be accompanied by	**87.** (1) Après avoir déterminé les terrains qui peuvent lui être nécessaires pour une section ou partie de pipeline, la compagnie signifie à chacun des propriétaires des terrains, dans la mesure où leur identité peut être établie, un avis contenant, ou accompagné de pièces contenant :
(*a*) a description of the lands of the owner that are required by the company for that section or part;	*a*) la description des terrains appartenant à celui-ci et dont la compagnie a besoin;

(*b*) details of the compensation offered by the company for the lands required;

(*c*) a detailed statement made by the company of the value of the lands required in respect of which compensation is offered;

b) les détails de l'indemnité qu'elle offre pour ces terrains;

c) un état détaillé, préparé par elle, quant à la valeur de ces terrains;

Negotiation proceedings

Request for negotiations

88. (1) Where a company and an owner of lands have not agreed on the amount of compensation payable under this Act for the acquisition of lands or for damages suffered as a result of the operations of the company or on any issue related to that compensation, the company or the owner may serve notice of negotiation on the other of them and on the Minister requesting that the matter be negotiated under subsection (3).

Procédure de négociation

Demande de négociation

88. (1) À défaut d'entente entre la compagnie et le propriétaire sur toute question touchant l'indemnité, notamment son montant, à payer en vertu de la présente loi pour l'achat de terrains ou pour les dommages causés par les activités de la compagnie, la compagnie ou le propriétaire peut signifier à l'autre partie et au ministre un avis demandant que la question fasse l'objet de la négociation prévue au paragraphe (3).

Arbitration proceedings

Request for arbitration

90. (1) Where a company or an owner of lands wishes to dispense with negotiation proceedings under this Part or where negotiation proceedings conducted under this Part do not result in settlement of any compensation matter referred to in subsection 88(1), the company or the owner may serve notice of arbitration on the other of them and on the Minister requesting that the matter be determined by arbitration.

Procédure d'arbitrage
Demande d'arbitrage

90. (1) Pour passer outre à la procédure de négociation ou en cas d'échec de celle-ci sur toute question visée au paragraphe 88(1), la compagnie ou le propriétaire peut signifier à l'autre partie et au ministre un avis d'arbitrage.

Determination of compensation

97. (1) An Arbitration Committee shall determine all compensation matters referred to in a notice of arbitration served on it and in doing so shall consider the following factors

Détermination de l'indemnité

97. (1) Le comité d'arbitrage doit régler les questions d'indemnité mentionnées dans l'avis qui lui a été signifié, et tenir compte, le cas échéant, des éléments suivants :

where applicable:

(*a*) the market value of the lands taken by the company;

(*b*) where annual or periodic payments are being made pursuant to an agreement or an arbitration decision, changes in the market value referred to in paragraph (*a*) since the agreement or decision or since the last review and adjustment of those payments, as the case may be;

(*c*) the loss of use to the owner of the lands taken by the company;

(*d*) the adverse effect of the taking of the lands by the company on the remaining lands of an owner;

(*e*) the nuisance, inconvenience and noise that may reasonably be expected to be caused by or arise from or in connection with the operations of the company;

(*f*) the damage to lands in the area of the lands taken by the company that might reasonably be expected to be caused by the operations of the company;

(*g*) loss of or damage to livestock or other personal property or movable affected by the operations of the company;

(*h*) any special difficulties in relocation of an owner or his property; and

(*i*) such other factors as the Committee considers proper in the circumstances.

Definition of "market value"

(2) For the purpose of paragraph (1)(*a*), "market

a) la valeur marchande des terrains pris par la compagnie;

b) dans le cas de versements périodiques prévus par contrat ou décision arbitrale, les changements survenus dans la valeur marchande mentionnée à l’alinéa *a*) depuis la date de ceux-ci ou depuis leurs derniers révision et rajustement, selon le cas;

c) la perte, pour leur propriétaire, de la jouissance des terrains pris par la compagnie;

d) l’incidence nuisible que la prise des terrains peut avoir sur le reste des terrains du propriétaire;

e) les désagréments, la gêne et le bruit qui risquent de résulter directement ou indirectement des activités de la compagnie;

f) les dommages que les activités de la compagnie risquent de causer aux terrains de la région;

g) les dommages aux biens meubles ou personnels, notamment au bétail, résultant des activités de la compagnie;

h) les difficultés particulières que le déménagement du propriétaire ou de ses biens pourrait entraîner;

i) les autres éléments dont il estime devoir tenir compte en l’espèce.

Définition de « valeur marchande »

(2) Pour l’application de l’alinéa (1) *a*), la

value" is the amount that would have been paid for the lands if, at the time of their taking, they had been sold in the open market by a willing seller to a willing buyer.

valeur marchande des terrains correspond à la somme qui en aurait été obtenue si, au moment où ils ont été pris, ils avaient été vendus sur le marché libre.

Form of compensation payment where land taken

98. (1) Where an Arbitration Committee makes an award of compensation in favour of a person whose lands are taken by a company, the Committee shall direct, at the option of that person, that the compensation or such part of it as is specified by that person be made by one lump sum payment or by annual or periodic payments of equal or different amounts over a period of time.

Indemnités relatives à la prise de terrains

98. (1) S’il s’agit d’une indemnité relative à des terrains pris par une compagnie, le comité d’arbitrage, au choix de l’indemnitaire, ordonne que le paiement se fasse en tout ou en partie sous forme de paiement forfaitaire ou de versements périodiques de montants égaux ou différents échelonnés sur une période donnée.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-521-07
STYLE OF CAUSE:	ALLIANCE PIPELINE LTD. v. TERRANCE BALISKY, ET AL
PLACE OF HEARING:	Edmonton, Alberta
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REASONS FOR JUDGMENT AND JUDGMENT:	O'REILLY J.
DATED:	September 26, 2008

APPEARANCES:

Lars H. Olthafer Laura Estep	FOR THE APPLICANT
J. Darryl Carter, Q.C.	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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