

Re: Jessica Ernst vs Alberta Energy Regulator (AER), Supreme Court of Canada

Docket #36167

(Submission Date: November 4, 2015)

*8. Ms. Ernst's primary purpose in bringing this action is to defend water, and to protect the right to free speech for all Canadians, including those who speak out in defence of water. In Ms. Ernst's view, water is life and nothing is more in need of respect and protection.*¹

*There are laws against companies fracking into freshwater aquifers. Are you going to uphold these laws? And, in response, the regulator said, we are not going to uphold these laws, but, you know what Jessica, we think that you are a security threat and we are not going to communicate with you even though you've got explosive amounts of methane in your water. And so, they treated her, this well known, highly respected member of the oil patch, as some kind of security threat. And, it wasn't until a year, or nearly a year, later that one of the chief lawyers for the regulator [Richard McKee] in a conversation with Jessica Ernst, and this conversation was taped, admitted, 'Jessica you were never a security threat, but your actions and your public comments about the [ERCB] Board, and its negligence, had deeply humiliated the agency.' And, as a consequence, they had cut off communication with her.*²

The BC Tap Water Alliance Board and I, Will Koop, do not seek to appear before the Court. Instead, I am entering this written statement. I join with other interveners – such as the BC Civil Liberties Association, the Canadian Civil Liberties Association, The David Asper Centre for Constitutional Rights, Dahm and Plowman – and support the pleadings of the Appellant, Ms. Ernst, presently before this Supreme Court.

I am familiar with the Ernst lawsuit filed against the Alberta Energy Regulator (formerly EUB and ERCB), the Alberta Ministry of Environment, and Encana (previously, EnCana) Corporation. I have read the original and fresh Statements of Claim filed with the Alberta Court, and am familiar with the subsequent and ongoing proceedings. I have also attended a proceeding held in January 2013 in the Calgary Court of Queen's Bench, alongside a packed audience.

I enjoin this Court to find that the Constitutional rights of Canadians, as defined by the *Charter*, trump governments and their agencies, such as Alberta's regulator (formerly, the ERCB - Energy Resources Conservation Board - since transformed into the AER – Alberta Energy Regulator), a

¹ *Factum of the Appellant, Jessica Ernst*, Supreme Court of Canada File No. 36167, September 11, 2015.

² Transcription of author Andrew Nikiforuk interviewed on October 27, 2015, on Morning Magazine, on Radio KGNU, an independent community radio station for Boulder (88.5 FM) and Denver (1390 AM), Colorado. Mr. Nikiforuk was interviewed, during his speaking tour there, to comment on his new book, *Slick Water*, concerning Ms. Ernst, the Appellant.

former Crown entity mandated to undertake “the Public Interest.” In this respect, I urge the Court to place the *Charter* above the AER, even when it was the EUB and ERCB, as it should be.

On December 10, 2012 the government of Alberta enacted into law REDA, the *Responsible Energy Development Act*, namely the creation of the AER.³ Confounding the applicability of the *Charter*, the government of Alberta removed the former long-held role of the ERCB (created in 1938,⁴ and its former given titles) as “an agent of the Crown,” radically transforming the function of the AER, now “established as a corporation.”⁵ Because the AER is no longer a Crown entity, does the *Charter* no longer apply under its new roles and responsibilities,⁶ especially with industry funding it completely? If so, this new legal shift allows Board members of the AER to be in conflict of interest, because board members serving on private corporations can sit as board members or directors of other corporations. AER Chair Gerard Protti provides such an example of conflict, who is also on the Board of Petromanas.⁷

Furthermore, is it constitutional for a government – provincial, territorial or federal – to turn what was a public interest, government agency regulator into an independent, non-Crown “corporation” to avoid being sued for *Charter* violations?

There doesn't appear to have been any debate (in Hansard) on the transformation of the ERCB to a non-Crown entity, nor any discussion on whether or not this switch is constitutional. However, there were many discussion references during late 2012 to the *Charter* by elected members with regard to *Bill 3*, the *Education Act*. Furthermore, I could find no subsequent discussion or clear explanation in media reports, in government of Alberta information bulletins, nor in other published documents on the internet concerning the AER's new status as a non-governmental entity. It seems as though the general public is unaware of the AER's status as a non-governmental, private company, entity.

Though the status of the AER – with its independence from the *Charter*, and REDA's failure to mention or define “Public Interest”⁸ – does not directly relate to the Appellant, as the date of her lawsuit precedes its new powers, it obviously sets a very dangerous state of affairs for Albertans. Therefore, we think this Court needs to direct Alberta's new administration to amend REDA, and

³ Introduced to the Alberta Legislature on October 24, 2012, as *Bill 2*.

⁴ Wikipedia, Energy Resources Conservation Board.

⁵ *Part 1, Alberta Energy Regulator, Division 1, Establishment and Governance of Regulator*, sections 3 and 4. “The Regulator has the capacity and, subject to this Act and any other enactment, the rights, powers and privileges of a natural person,” and “The Regulator is not an agent of the Crown.”

⁶ As acknowledged by Chief Justice Wittmann, in section 42 of his September 19, 2013 *Reasons for Judgement* on the Ernst case: “a claim for a *Charter* breach is based upon the establishment of a right and infringement of it by the action of a government or government agency.” Specifically, Section 32 of the *Charter*.

⁷ <http://www.petromanas.com/About-PMI/Governance/Board-of-Directors/index.php>

⁸ “The current bill makes no mention whatsoever of public interest with regard to energy development. The ERCB, which will soon be dissolved, was committed at least to the public interest. The public interest is essential to responsible energy development and should be enshrined in the mandate of the regulator to ensure that its conduct reflects the best interests of Albertans. As it stands, the bill currently emphasizes resource development over the public interest.” Statement by Deron Bilous (regarding Bill 2, REDA), New Democratic Party representative, November 5, 2012, Alberta Hansard, 28th Legislature.

reinstate AER's core function as "an agent of the Crown" (and to also reinstate "the Public Interest"), in order for the AER to comply with Canada's Constitution, namely its *Charter's* rights and freedoms established in 1982.

Furthermore, the AER, now functioning since 2013 as a private corporation, sets a dangerous precedent to Canada's other Territorial and Provincial regulators to redirect their core roles and mandates, luring them away from protecting water and the public interest and being agents of the Crown. Indeed, the AER's new Board has organized a "best-in-class regulator" public relations program to influence Canadian and other governments around the world and its citizenry, going so far as to suggest the AER model is "Best In Class."⁹

I am deeply concerned about the yet-undisclosed motivations of my BC Attorney General to act as an intervener in this appeal Hearing, with intention to file "a factum in this matter" and participate "in oral argument."¹⁰ The Attorney General has not informed British Columbia's citizenry, to either disclose the government's intentions and aims as intervener, nor to seek advice from the Attorney General's citizenry on what the government's position should be. (How will the Attorney General's as-yet-undisclosed position relate to the actions of our energy regulator, the BC Oil and Gas Commission? Is it also the intention of our government to re-render its regulator into a private corporation along the lines of the AER?) I would argue that the BC Attorney General – or, for that matter, any other provincial, territorial or federal Attorney General – has no public right to intervene on such a serious subject without first openly conferring with its jurisdictional citizenry. Indeed, when the BC Liberal administration was heralded into office in May 2001, the then Premier, Gordon Campbell, clearly stated his administration's operational intention of "open government" in the BC Legislature.

From ongoing research I have conducted since 1991 on community drinking water sources, there is little doubt that Canadian and United States federal, provincial and state governments have had explicit historical legislative mandates to protect¹¹ sources of water for drinking and consumptive uses. And, as has come to light more and more over the last few years, there is little doubt that the majority of such governmental mandates over public lands were compromised and interfered with, for various political and profit-motivated reasons: that the oil and gas industry has been responsible for interfering with these mandates is undeniable and disturbing. The shenanigans conducted by North American energy corporations since the 1980s to avoid legal liabilities and precedent, and the extensive public relations schemes, synergizing, and private deals made with landowners are absolutely epic in number, category and proportion. That governments (first, second, and third order) have ultimately forsaken their own citizens in siding with the objectionable and contrary aims of these corporations is uncontestable and shameful. In many

⁹ AER, Best-In-Class Project.

¹⁰ Filing of August 27, 2015 (file 10344-1445).

¹¹ The original definitions of "to protect" and/or "protection" are not to be confused with later definitions of "protection" through the applied usage of treatment technologies. That protection means to maintain the "purity" of surface water sources against human industry and detrimental encroachments, and the protection of ground water from being similarly tainted.

North American jurisdictions the public has subsequently fought against government and industry, achieving outright bans on fracking.

It is within this contextual and problematic framework in the Province of Alberta that Ms. Ernst finds herself in. Ms. Ernst has made her experiences and circumstances public. Is that the real reason why the AER violated her *Charter* rights and why the Alberta Courts threw her case against the regulator out, even though the Court of Queen's Bench ruled that she has a valid *Charter* claim, which the AER is not appealing?

It is also the framework within which Albertans Dahm and Plowman find themselves.¹² I have visited the Province of Alberta, and I have witnessed the damages (most recently, again, in September 2015). I would also urge this Court to accept the interventions by the Civil Liberties groups, as they raise matters that we too are concerned about. In this respect, the Appellant's appeal is a critical matter, because it not only affects all Canadians, but also our water, land and air, and the citizens striving to protect it.

From my ongoing research, the documented evidence of fracking harms from both below and above ground are extensive and obvious, most of which is lied about or withheld from the public. In this respect, Ms. Ernst has been making her scientific research and Encana's Rosebud aquifer fracking data public, warning citizens for years. For any regulator that may set aim to scare her, violate her *Charter* rights, and defame her in formal legal filings, with the intent to discredit her and dissuade Canadians from listening to her, without any evidence whatsoever so as to justify violating those rights, is not only wrong, but it sets a terribly dangerous precedent for the energy industry to use – via “corporatized” energy regulators – against families impacted by fracking experiments conducted across Canada. Such aimed wrongfulness must be overturned with substantial punishment as deterrent.

Now, more than ever, citizens must have the right to warn their fellow Canadians of the frauds, cover(s) up, lies, and research showing grave public health and safety risks and harms.

Ms. Ernst, the Appellant, continues to do the work that the regulators and companies refuse to undertake. And, for her rights to be violated because of this is particularly galling. It puts all Canadians at risk, not just due to the loss of Canadians' *Charter* rights and protections, but also our waters, needed to sustain life.

Therefore, I too am concerned for my, and the BC Tap Water Alliance's, *Charter* rights, as well as the rights of my fellow British Columbia citizens. We have a fundamental right to protect our water, and for the freedom of expressions, because here in British Columbia the experimental and industrial practices from fracking are removing massive volumes of fresh water, are contaminating our water, land and air, by the many cumulative life-cycle impacts of fracking.

If the Supreme Court of Canada does not overturn the rulings of the lower Courts in Alberta, then the BC regulator, and other regulators across Canada, may also be corporatized by governments in order to avoid responsibility and accountability. They may also then be freely able to legally violate my right to freedom of expression on my research on the many harms

¹² Re, sections 10 through 14 of Dahm and Plowman's September 14, 2015 *Motion for Intervention*, Tab 1.

caused by the unconventional oil and gas industry, and then silence me, and others like me, and those at the BC Tap Water Alliance.

We thank you for hearing this appeal, and in doing the right thing to protect our rights under the *Charter* so that we, the public, may voice our opposition and concerns without being defamed or harmed by regulators acting and working like oil and gas companies.

BACKGROUND

1. Will Koop. I hold the title of Coordinator with the B.C. (British Columbia) Tap Water Alliance (www.bctwa.org). The Alliance was formed some 18 years ago with an ambassadorial mandate to advocate, promote and defend the resource protection of surface-fed drinking watershed sources in British Columbia, with a concurrent, following mandate on the protection of groundwater sources.

For example, we conducted intensive, extensive and ongoing research on the scandalous administration of British Columbia's community Watershed Reserves, legal Crown Land tenures set aside ("reserved") by government (federal and provincial) since the early 1900s specifically for drinking water protection. I have authored numerous media releases and reports, including a self-published book in 2006,¹³ and a sequel report in 2013,¹⁴ regarding the troubling history of administrative misdirection and secrecy conducted through five elected administrations since the 1960s. Similar histories have prevailed in the United States on federal forest lands in numerous State jurisdictions.

2. In February 2010, we launched a website called *Stop Fracking British Columbia*, the first such website of its kind in Canada at that time. I have authored numerous media releases and reports related to the full-cycle environmental and social impacts from fracking (hydraulic fracturing), including the first summary report on the subject of cumulative environmental effects from fracking in northeast British Columbia,¹⁵ where the largest experimental fracking operations in the world were formerly conducted by Encana Corporation and its Texas-based partner Apache Canada Ltd. in the Horn River Basin near Two Island Lake, industrial operations situated on leased Crown lands about 80 kilometres northeast of Fort Nelson.

3. Following the publication of my 2010 report, *EnCana's Cabin Not So Homey*, the federal government's Natural Resources Standing Committee invited me to appear before the Committee in Ottawa on February 3, 2011 (**Tab A**, in English and French).

¹³ *From Wisdom to Tyranny: A History of British Columbia's Drinking Watershed Reserves.*

¹⁴ *The Big Eddy: A History of the Big Eddy Waterworks District and its Long-Standing Battles to Protect the Dolan Creek Watershed Reserve.*

¹⁵ *Encana's Cabin Not So Homey.* I had conducted field trips to northeastern BC, to visit the Horn River and Montney hydrocarbon Basins, on two separate occasions in 2010, including a fixed-wing aircraft flight northeast of the Town of Fort Nelson.

Richard Dunn, a vice-president with Encana Corporation, previously appeared before the Standing Committee on November 23, 2010 (via video conference). Mr. Dunn was specifically asked by a Committee member if EnCana would “publicly disclose the chemicals used in the fracturing process.” Similar requests were made, without success, by Ms. Ernst to the AER and Encana and ordered by Justice Wittman in document exchange for her lawsuit concerning the contamination of her community’s aquifer. On March 2, 2011, Mr. Dunn formally responded (**Tab B**, in English and French). He disclosed the chemical product names, but failed to list the chemicals.

4. Due to the documented and reported harms from fracking registered in Canada and the United States, and with the 2010 launch of a federal inquiry on fracking underway by the U.S. Environmental Protection Agency, we published a joint media release, *Public Inquiry Needed to Address Human Health and Environmental Risks Posed by Shale Gas Drilling, Coalition Says*, demanding the BC government launch “a full public inquiry into the threats posed by an expanding shale gas industry.” The government ignored our pleading.

5. In 2012, I published *Frack EU: Unconventional Intrigue in Poland, A Preliminary Investigation of the Fracking Assault on Poland*, tracing diverse, complicated and converging political webs of intrigue related to industrial fracking and groundwater contamination, emanating from the partnered complicity of energy corporations and North American government regulators. For instance, in Chapter 12, *Operation Synergy: Fracking the World, Poisoning Our Minds and Hearts – the Emerging Global Dilemma of Petroleum Sponsored Strategic Messaging*, we examined how Alberta’s energy regulator participated in duping its electorate, whilst quietly sending ambassadors to Poland to dupe their electorate as well, to advocate the energy industry’s experimental and harmful practices of fracking.

6. I co-authored an investigative report with Damien Gillis, *Talisman frackwater pit leaked for months, kept from public*, concerning the leakage of toxic fracking wastewater from Talisman Energy’s 30,000 cubic metre containment pit into ground water west of Fort St. John, British Columbia.¹⁶

7. In March, 2015, we issued a media release, *Did the Council of Canadian Academies’ Frack Panel ‘Cherry-Pick’ the Scientific Evidence on Harms from Fracking?*, questioning whether the Canadian Council of Academies’ national 2014 report on fracking had conducted a thorough, peer-reviewed assessment of the literature on fracking and associated risks and harms. We conducted a lengthy analysis and determined that it was wanting, and that the Council had relied heavily on propaganda by the Alberta regulator and Canadian Association of Petroleum Producers, while avoiding many significant published papers.

Will Koop.

¹⁶ The account was published on November 18, 2013, in the on-line website, *The Common Sense Canadian*.

TAB A

Presentation to Federal Natural Resources Standing Committee,
February 3, 2011 (English and French)

B. C. TAP WATER ALLIANCE

Caring for, Monitoring, and Protecting
British Columbia's Community Water
Supply Sources

Email – info@bctwa.org

Website – www.bctwa.org

(*Stop Fracking British Columbia* – www.bctwa.org/FrackingBC.html)



NATURAL RESOURCES STANDING COMMITTEE PRESENTATION - FEBRUARY 3, 2011

Bonjour. Merci Beaucoup. Thank you for the opportunity to appear before this Committee.

My name is Will Koop. I am a researcher and author of numerous reports and a book concerned about the protection of public drinking water sources in British Columbia (see B.C. Tap Water Alliance website, www.bctwa.org). A year ago I created a website, *Stop Fracking British Columbia*, when I began to investigate energy corporations in northeast BC mining enormous volumes of fresh water to hydraulically fracture or “frack” deep shale gas deposits. Though water is a fundamental component of fracking, it is only one of numerous other environmental and social concerns.

BC's shale developments are far removed from where I live, an 18-hour vehicle journey from Vancouver just to get to the outer edge of the vast energy zones leased to the international energy companies. I visited the area twice, in May and September, 2010. As a result, I produced three reports that touch on some of the dynamics of these issues:

- June 17, 2010: *The World's Biggest Experimental Frack Job!!* (Apache Canada's 2010 operations in the Horn River Basin);
- October 13, 2010: *24-7 Less Peace in the Peace* (Talisman Energy's operations north of Hudson's Hope);
- November 9, 2010: *Encana's Cabin Not So Homey* (the issue of cumulative effects).

In addition, I also produced two YouTube videos: *My Very First Frack*, and *The Komie Commotion*. Quebecers concerned about deep shale gas developments have translated my cumulative effects report and the videos into French on their website blogs.

Our provincial regulator, the BC Oil & Gas Commissioner, stated to this Committee on December 14, 2010, that the environmental and social consequences from deep shale gas developments in northeast BC are “responsible” and in order. *I'm here to tell you that they are not.*

For instance, in my report, *EnCana's Cabin Not So Homey*, I described how the **RUSH** to develop BC's non-renewable deep shale gas is occurring without cumulative environmental effects studies:

Northeast British Columbia's shale gas race will undoubtedly become and remain one of the most significant environmental and public planning issues facing First Nations, the Province, Regional Districts, regulators, communities and residents alike.

Given the backdrop of evermore lax and non-existent legislation and regulations, these developments can be understood as distinct social and political failures.

I included a quote from a 1986 Ministry of Environment report that aptly summarizes what the BC government has failed to undertake:

Strategic planning precedes the sale of petroleum rights. This ensures all parties involved are aware of the concerns and constraints associated with development in an area before development is proposed.

In 1991, the Ministry of Environment released a report urging the government to implement “cumulative effects” studies in the energy zone, which it failed to undertake. The concerns by Ministry staff continued about the absence of cumulative effects with the creation of the BC Oil and Gas Commission in 1997. In 2003, the Commission finally published a lengthy two volume report on how to *possibly* implement cumulative environment effects in northeast BC. However, the matter was ignored. Since 2003, the government leased thousands upon thousands of hectares of public lands to energy companies without conditions to conduct cumulative effects studies and without consulting the public.

When EnCana’s representative Richard Dunn was asked by this Committee to comment on the state of cumulative effects studies in British Columbia, Mr. Dunn stated on November 23, 2010, that ***“it would not make sense to do a cumulative effects assessment.”*** Mr. Dunn’s response is not only an affirmation that cumulative effects studies have been ignored, but it is also a disturbing statement about the energy corporation’s attitude and philosophy, including Mr. Dunn’s comments about Canada being on the “forefront of environmental and economic stewardship.” EnCana has significant lease areas and corporate partnerships throughout northeast BC, and elsewhere.

There was only one long-term cumulative environmental effects study in western Canada. It was conducted by Ernst Environmental Services of Pioneer Natural Resources Canada Inc.’s oil and gas operations in the Chinchaga area of BC and Alberta. Unfortunately, that ten year study was terminated after the company was acquired in November 2007 by Taqa North, a Saudi Arabia company owned by the Abu Dhabi National Energy Company PJSC, with deep shale gas leases in northeast BC. In 2005, Jessica Ernst, of Ernst Environmental Services, had her well water in Rosebud, Alberta contaminated with methane, ethane and other hydrocarbons after EnCana fractured the area for coalbed methane gas.

As Mr. Parfitt testified before this Committee on December 2, 2010, the cumulative effects issue is further complicated by the fact that the BC Oil and Gas Commission has provided little accurate or comprehensive data on public resource uses by energy companies, such as the water withdrawals list he referred to. This long list released by the BC Oil & Gas Commission regarding companies operating in the Horn River Basin, failed to provide accurate information, incorrectly suggesting that little water was needed for fracking operations from 2009-2010.

I wrote in my last report that EnCana had apparently conducted the world’s largest fracking operation on multi-well pad 63-K in the Horn River basin next to Two Island Lake, doubling the resource figures by Apache Canada a half year earlier when it announced the world’s largest frack operation a few kilometres away. I estimated that EnCana used about 1.8 million cubic metres of fresh water (over 700 Olympic swimming pools of water), about 78,000 tonnes of specially-mined frack sand (about 800 rail cars), and about 35,000 cubic metres of toxics, and that this operation might be a template or indication of many more operations in the future. The BC government does not mandate energy companies to publish this, and related, data, but ought to.

EnCana's public relations officer in its Calgary headquarters later said to me in a telephone conversation that EnCana was concerned about the information in my report. I responded that I was only too happy to change the information if EnCana would provide me with its own final figures from pad 63-K. I then emailed a number of questions to EnCana (see attached), but have not received a response. As I read from this Committee's transcripts, EnCana promised to provide the Committee with the water and frack sand data on pad 63-K, but has yet to do so.

(Email sent to EnCana, Calgary Headquarters, 16/11/2010 1:22 PM.)

When I obtain the final information from you (EnCana) about 63-K pad (at Two Island Lake), I will then make the necessary changes to my recent report. The projected information in my report was based on an interview with a Trican rep. that confirmed information presented in Trican presentations.

Here are my immediate questions for 63-K pad:

1. Are all the completions for all 14 wells completed?
 2. Is the total number of "314 fracs" correct, and if so, does this reflect the end of completions for 63-K.
 3. Can you provide me with the data on how many completions were done per well.
 4. Can you provide me with data describing the length of each horizontal bore.
 5. How many days did all the completions take in total, beginning to end (if all the completions are completed).
 6. I know from the OGC that information on 63K is generally registered as "confidential". Can EnCana provide me with the well completions data it provides to the OGC re total water volume, total frack sand, and total bulk chemical volume use for 63-K pad?
- Sincerely, Will Koop.

The absence of long-term, integrated strategic cumulative effects planning, the lack of accurate resource use data by the Oil and Gas Commission, and little governmental oversight or monitoring of the energy developments in northeast BC are not the only concerns. Many landowners who are directly affected by the energy developments have told me of their concerns, whereby they seem to have few rights and stakeholder privileges. They state that: high pressure toxic gas facilities should not be established so close to residences; air quality standards are deficient; there are few or no air monitoring alarm systems; water tables used for residents and agriculture are changing; that BC's Mining legislation gives priority to developers to access and develop private property. David Core with the Canadian Association of Energy and Pipeline Landowner Association provided the Committee with some of these concerns on November 25th.

The concerns that I have raised to this Committee about legislative and regulatory deficiencies and monitoring oversight in British Columbia are not isolated. In our submission to the National Energy Board in July, 2006 regarding Kinder Morgan's Anchor Loop Project (<http://www.bctwa.org/NEBSubmission-July10-06.pdf>), I reported how the Alberta government failed to act on the recommendations of a special Committee appointed by Alberta's Executive Cabinet in 1972. That committee recommended that the tar sands ***might be*** developed over a 750 year period, not a 50 year period. The Alberta government suppressed the report until it was leaked 3 years later to Mel Hurtig, who then released the study. The special governmental committee headed by the Ministry of Environment understood the "***magnitude***" of environmental consequences from energy companies proposing to mine the tar sands. In that same report, the committee made strong statements concerned about multinational energy corporations and strong statements about Canada's energy security as it related to both protecting the environment and in providing long term energy supplies found in Canada for the long term use of Canadians. Thankyou, Merci.

Merci beaucoup.

Bonjour. Je vous remercie de me donner l'occasion de comparaître devant vous.

Je m'appelle Will Koop. Je suis chercheur et auteur de nombreux rapports et d'un livre sur la protection des sources publiques d'eau potable en Colombie-Britannique.

Il y a un an, j'ai créé un site Web appelé « Stop Fracking British Columbia » quand j'ai commencé à enquêter sur les sociétés énergétiques du Nord-Est de la Colombie-Britannique qui utilisent d'énormes quantités d'eau douce pour la fracturation hydraulique liée aux gisements de gaz de schiste. Même si l'eau est un élément fondamental de la fracturation, il ne s'agit que de l'une des nombreuses préoccupations environnementales et sociales.

Les sites d'exploitation du gaz de schiste de Colombie-Britannique sont bien loin d'où je vis. Il faut 18 heures de voiture à partir de Vancouver seulement pour arriver aux limites extérieures des vastes zones énergétiques et aux sociétés d'énergie internationales. J'ai visité cette région à deux reprises, en mai et en septembre 2010.

Par la suite, j'ai préparé trois rapports qui portent sur la dynamique de ces enjeux. Il s'agit des rapports suivants: « *The World's Biggest Experimental Frack Job!* », qui concerne Apache Canada; « *24/7 Less Peace in the Peace* », qui concerne Talisman Energy; et « *Encana's Cabin Not So Homey* », qui porte sur la question des effets cumulatifs. De plus, j'ai produit deux vidéos YouTube intitulées « My Very First Frack » et « The Komie Commotion ».

Des Québécois préoccupés par la question de l'exploitation des gaz de schiste ont traduit en français sur leurs blogues mon rapport sur les effets cumulatifs ainsi que les vidéos.

Le commissaire de la B.C. Oil and Gas Commission, notre organisme de réglementation provincial, a déclaré devant le comité le 14 décembre que les conséquences environnementales et sociales de l'exploitation des gaz de schiste dans le Nord-Est de la Colombie-Britannique sont examinées de façon « responsable » et sécuritaire. Je suis ici pour vous affirmer le contraire.

Par exemple, dans mon rapport intitulé « *Encana's Cabin Not So Homey* », j'ai décrit comment la course à l'exploitation du gaz de schiste non renouvelable de la Colombie-Britannique a lieu sans que l'on mène d'études sur les effets environnementaux cumulatifs: « La course à l'exploitation du gaz de schiste au Nord-Est de la Colombie-Britannique deviendra et restera sans aucun doute l'un des plus grands enjeux en matière de planification environnementale et publique pour les Premières nations, la province, les districts régionaux, les organismes de réglementation, les collectivités et les habitants. » Étant donné que la réglementation est soit inexistante, soit de moins en moins stricte, l'exploitation de ces gisements peut être considérée comme un échec social et politique.

J'ai inclus la citation suivante, contenue dans un rapport du ministère de l'Environnement datant de 1986, qui résume très bien ce que le gouvernement de la Colombie-Britannique a négligé de faire: « La planification stratégique précède la vente des droits pétroliers ». Cela permet de

garantir que toutes les parties concernées sont au courant des inquiétudes et des contraintes associées à l'exploitation dans une certaine région avant qu'on propose de faire l'exploitation.

En 1991, le ministère de l'Environnement a publié un rapport exhortant le gouvernement à effectuer des études sur les effets cumulatifs dans la zone énergétique, ce qu'il a négligé de faire. Les inquiétudes du personnel du ministère concernant l'absence d'études sur les effets cumulatifs ne se sont pas estompées avec la création de la B.C. Oil and Gas Commission en 1997. En 2003, la commission a finalement publié un long rapport en deux volumes sur la façon de réaliser des études sur les effets cumulatifs dans le Nord-Est de la Colombie-Britannique. Toutefois, on n'en a pas tenu compte.

Depuis 2003, le gouvernement a loué des milliers d'hectares de terres publiques aux sociétés d'énergie sans les obliger à mener des études sur les effets cumulatifs et sans consulter la population. Le 23 novembre, lorsque le comité a demandé au représentant du Canada, Richard Dunn, ce qu'il pensait des études sur les effets cumulatifs en Colombie-Britannique, M. Dunn a déclaré: « Il serait insensé d'effectuer une évaluation des effets cumulatifs ».

La réponse de M. Dunn est non seulement une déclaration que les études sur les effets cumulatifs n'ont pas été prises en compte, mais également une déclaration troublante relativement à l'attitude et à la philosophie des sociétés énergétiques. M. Dunn a notamment affirmé que le Canada est « à l'avant-plan de la gestion environnementale et économique ». La société Encana a d'importantes locations et des partenariats dans tout le Nord-Est de la Colombie-Britannique et ailleurs.

Il n'existe qu'une seule étude à long terme sur les effets environnementaux cumulatifs dans l'Ouest du Canada. Elle a été menée par Ernst Environmental Services sur le site des exploitations pétrolières et gazières de Pioneer Natural Resources Canada Inc., dans la région de Chinchaga, en Colombie-Britannique et en Alberta. Malheureusement, on a mis fin à cette étude de dix ans après que la compagnie a été acquise, en novembre 2007, par TAQA North, une société d'Arabie saoudite détenue par la Abu Dhabi National Energy Company, qui loue des sites d'exploitation des gaz de schiste au Nord-Est de la Colombie-Britannique.

En 2005, Jessica Ernst, de Ernst Environmental Services, a vu son eau de puits à Rosebud, en Alberta, être contaminée par le méthane, l'éthane et d'autres hydrocarbures à la suite des activités de fracturation effectuées par Encana dans cette région pour l'exploitation du gaz de méthane de houille.

Comme M. Parfitt l'a dit devant votre comité le 2 décembre dernier, la question des effets cumulatifs se complique davantage du fait que la B.C. Oil and Gas Commission a fourni peu de données précises ou complètes sur les questions de ressources publiques relatives aux sociétés énergétiques, comme la liste des prélèvements d'eau dont il a parlé.

Cette longue liste publiée par la B.C. Oil and Gas Commission concernant les compagnies qui exercent leurs activités dans le bassin de Horn River n'a pas fourni d'informations exactes, laissant faussement entendre que peu d'eau avait été nécessaire pour les opérations de fracturation de 2009 à 2010.

Dans mon dernier rapport, j'ai écrit qu'Encana avait apparemment mené les activités de fracturation les plus importantes au monde sur le site multi-puits 63-K, dans le bassin de Horn River, près du lac Two Island, doublant ainsi le chiffre qu'Apache Canada avait donné auparavant, lorsque la société avait annoncé qu'elle effectuait la plus grande opération de fracturation au monde, à quelques kilomètres de là.

J'ai estimé qu'Encana avait utilisé environ 1,8 million de mètres cubes d'eau douce, soit l'équivalent de 700 piscines olympiques; environ 78 000 tonnes de sable de fractionnement spécialement excavé, soit environ 800 wagons; et environ 35 000 mètres cubes de toxines. Et j'ai indiqué que cette opération pourrait être un modèle ou indiquer qu'il y aura beaucoup plus d'activités à l'avenir.

Le gouvernement de la Colombie-Britannique n'oblige pas les sociétés énergétiques à publier ces données et d'autres données connexes, mais il le devrait. L'agent de relations publiques d'Encana, au quartier général de Calgary, m'a dit au cours d'une conversation téléphonique qu'Encana s'inquiétait des informations contenues dans mon rapport. Je lui ai répondu que rien ne me ferait plus plaisir que de modifier ces informations si Encana me fournissait ses propres statistiques complètes relatives au site 63-K. J'ai ensuite posé un certain nombre de questions par courriel à Encana; je les ai jointes à ce rapport et je pourrai vous les montrer plus tard. Mais je n'ai reçu aucune réponse. En lisant la transcription des délibérations du comité, j'ai constaté qu'Encana avait promis de fournir au comité les données relatives à l'eau et au sable de fractionnement pour le site 63-K, mais il semble qu'elle ne l'ait pas encore fait.

L'absence de planification stratégique, intégrée et à long terme relativement aux effets cumulatifs, le fait que la Oil and Gas Commission n'a pas de données exactes sur l'utilisation des ressources et le peu de surveillance par le gouvernement des projets d'exploitation énergétique dans le Nord-Est de la Colombie-Britannique ne sont pas les seules préoccupations. Bien des propriétaires immobiliers qui sont directement touchés par l'exploitation des ressources énergétiques m'ont dit s'inquiéter d'avoir si peu de droits et de privilèges en tant que parties concernées. Ils affirment, par exemple, que les installations de gaz toxique haute pression ne devraient pas être situées si près des résidences. Les normes de qualité de l'air sont déficientes. Il y a peu ou pas de systèmes de surveillance de la qualité de l'air. On modifie les niveaux phréatiques pour les habitants et l'agriculture. La loi de la Colombie-Britannique relative aux activités minières donne la priorité aux promoteurs pour avoir accès aux terrains privés et pour les exploiter.

Le 25 novembre, Dave Core, de la Canadian Association of Energy and Pipeline Landowner Associations, a parlé au comité de certaines de ses préoccupations.

Les préoccupations que j'ai soulevées devant le comité au sujet des lacunes législatives et réglementaires et de la surveillance en Colombie-Britannique ne sont pas isolées. Dans le mémoire que nous avons soumis à l'Office national de l'énergie en juin 2006, concernant le projet Kinder Morgan's Anchor Loop, j'ai signalé que le gouvernement albertain a négligé de donner suite aux recommandations d'un comité spécial créé par le cabinet exécutif de l'Alberta en 1972. Ce comité recommandait que l'exploitation des sables bitumineux soit faite sur une période de 750 ans et non de 50 ans.

Le gouvernement de l'Alberta a empêché la publication du rapport jusqu'à ce qu'il soit communiqué à Mel Hurtig, qui a ensuite publié l'étude. Le comité spécial du gouvernement, dirigé par le ministère de l'Environnement de l'Alberta, a compris l'ampleur des conséquences environnementales associées aux compagnies de l'industrie de l'énergie, qui proposaient d'exploiter les sables bitumineux. Dans ce même rapport, le comité a exprimé de vives inquiétudes concernant les sociétés énergétiques multinationales et la sécurité énergétique du Canada, puisqu'elles sont liées à la protection de l'environnement et à l'approvisionnement énergétique à long terme au Canada, pour que les Canadiens puissent utiliser les ressources durant de nombreuses années.

Merci.

TAB - B

Email Response from Richard Dunn (English and French)

Mr. Nathan Cullen:

You might not have this with you today, but can you submit to the committee later on how much water and how many chemicals were used in this fracturing (63-K pad)?

There were fourteen (14) wells completed on the 63-K pad with a total of 316 stimulations performed on the 14 wells

A total of 1,488,560 m³ of water were used in the entire course of the operations, resulting in an average use of water of 4,710 m³ per fracture stimulation

Over half (~ 55 %) of the water used was sourced from deep saline otherwise non useable / non potable water sources (sourced from the Debolt formation at ~ 800 m depth). The use of the saline non useable Debolt water reduced the fresh / surface water requirements to some 670,000 m³ for the entire course of the operations, which equates to an average use of water of 2,120 m³ of surface water per fracture stimulation

It is noted that we commissioned our deep saline water plant during the course of our 63-K pad completions operations. Today we source in excess of 90% of our frac water requirements from the Debolt deep saline otherwise non useable / non potable aquifer.

*A total of ten different chemicals were used during the course of operations, comprising **0.174% of the total fluid volume pumped** (which equates to less than 2 parts of chemical for every 1,000 parts of water pumped)*

The chemicals were used in the following applications:

- Water treatment / friction reduction package - required to treat sour gas content in the saline water prior to pumping (for stimulation operations personnel safety purposes) and increase slipperiness of the water in order to reduce pumping power requirements

% of total fluid volume pumped - 0.06%

Chemicals include: FR8 (Friction reducer), Acroclear (H₂S scavenger), Nalco 6574A (scale control)

- Linear gel package - required to increase fluid's ability to carry proppant (sand)

% of total fluid volume pumped - 0.004%

Chemicals include: Trican WG 111-L (Water gellant), Trican GBO-1 (Fracturing fluid breaker)

- Acid package - required to assist in initiating fracturing

% of total fluid volume pumped - 0.11%

Chemicals include: Trican IF-85 (Formic acid), Hydrochloric acid, Trican AI-7 RN (corrosion inhibitor), Trican DF-1 (anti foam), Trican S-6 (surfactant)

Please note that, in order to ensure integrity of operations and protection of useable (potable) surface and subsurface waters, all government regulations (OGC, Transport Canada) were strictly adhered to throughout all phases of the process; those phases including transportation of chemicals, testing of wellbore integrity prior to pumping operations and deep saline aquifer disposal well disposal operations.

M. Nathan Cullen :

Vous n'avez sans doute pas ces renseignements aujourd'hui, mais pourriez-vous communiquer au comité la quantité d'eau et le nombre de produits chimiques utilisés dans cette fracturation (site 63-K)?

Il y a eu quatorze (14) puits achevés sur le site 63-K, avec un total de 316 stimulations effectuées sur les 14 puits.

Un total de 1 488,560 m³ d'eau a été utilisé au cours des opérations, soit une utilisation moyenne de 4 710 m³ d'eau par stimulation de fracture.

Plus de la moitié (~ 55 %) de l'eau utilisée provenait de sources salines profondes autrement non utilisables ou non potables (provenant de la formation Debolt à ~ 800 m de profondeur). L'utilisation de l'eau salée Debolt non utilisable réduit les frais / les besoins en eau de surface à quelques 670 000 m³ pour l'ensemble des opérations, ce qui équivaut à une utilisation moyenne d'eau de 2 120 m³ d'eau de surface par stimulation de fracture.

Il faut noter que nous avons mis en service notre usine d'eau salée profonde au moment de terminer nos opérations sur le site 63-K. Aujourd'hui, nous obtenons plus de 90 % de nos besoins en eau de fracturation de la source saline profonde Debolt dont l'eau n'est pas autrement utilisable ou potable.

*Un total de dix produits chimiques différents ont été utilisés au cours des opérations, comprenant **0,174 % du volume total du fluide pompé** (ce qui équivaut à moins de 2 parties de produits chimiques par 1 000 parties d'eau obtenue par pompage)*

Les produits chimiques ont été utilisés dans les applications suivantes :

- Traitement de l'eau / plan de réduction de friction - nécessaire pour traiter les gaz acides contenus dans l'eau salée avant le pompage (pour assurer la sécurité du personnel pendant les opérations de stimulation) et augmentation de la viscosité de l'eau afin de réduire les forces de pompage

% du volume de liquide pompé - 0,06 %

Les produits chimiques comprennent : FR8 (réducteur de friction), Acroclear (décapant H2S), Nalco 6574A (contrôle de l'échelle)

- Ensemble gel linéaire - nécessaire pour accroître la capacité du fluide de transporter des agents de soutènement (sable)

% du volume de liquide pompé - 0,004 %

Les produits chimiques comprennent : Trican GT 111-L (gélifiant de l'eau), Trican GBO-1 (fluide de fracturation)

- Ensemble d'acides - nécessaires pour amorcer la fracturation

% du volume de liquide pompé - 0,11 %

Les produits chimiques comprennent : Trican SI-85 (acide formique), l'acide chlorhydrique, Trican AI-7 RN (inhibiteur de corrosion), Trican DF-1 (antimousse), Trican S-6 (surfactant)

Note : Afin d'assurer l'intégrité des opérations et la protection des eaux de surface et de sous-sol utilisables (eau potable), tous les règlements gouvernementaux (Administration fédérale du Canada, Transports Canada) ont été scrupuleusement respectés pendant toutes les phases du processus (transport de produits chimiques, test de l'intégrité des puits avant les opérations de pompage et disposition des aquifères salins profonds).