

**FORM 16A  
NOTICE OF ACTION WITH STATEMENT OF CLAIM ATTACHED**

COURT FILE NO.:

IN THE COURT OF QUEEN'S BENCH OF  
NEW BRUNSWICK

TRIAL DIVISION

JUDICIAL DISTRICT OF SAINT JOHN

BETWEEN:

**NEW BRUNSWICK ANTI SHALE GAS  
ALLIANCE, ROY L. RIES, JAMES DAVID  
EMBERGER, and CAROL ANN RING**

-and-

**HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK**

Plaintiffs,

Defendant.

COUR DU BANC DE LA REINE DU  
NOUVEAU-BRUNSWICK

DIVISION DE PREMIERE INSTANCE

CIRCONSCRIPTION JUDICIAIRE DE

ENTRE:

-et-

**DEMANDEUR,  
  
DEFENDEUR.**

**NOTICE OF ACTION WITH STATEMENT OF  
CLAIM ATTACHED  
(FORM 16A)**

**AVIS DE POURSUITE ACCOMPAGNE  
D'UN EXPOSE DE LA DEMANDE  
(FORMULE 16A)**

**TO: HER MAJESTY THE QUEEN IN RIGHT OF  
THE PROVINCE OF NEW BRUNSWICK**

LEGAL PROCEEDINGS HAVE BEEN  
COMMENCED AGAINST YOU BY FILING THIS  
NOTICE OF ACTION WITH STATEMENT OF  
CLAIM ATTACHED.

If you wish to defend these proceedings, either you  
or a New Brunswick lawyer acting on your behalf  
must prepare your Statement of Defence in the  
form prescribed by the Rules of Court and serve it  
on the plaintiff or the plaintiff's lawyer at the  
address shown below and, with proof of such  
service, file it in this Court Office together with the  
filing fee of \$50:

(a) If you are served in New Brunswick,

DESTINAIRE:

PAR LE DEPOT DU PRESENT  
AVIS DE POURSUITE ACCOMPAGNE  
D'UN EXPOSE DE LA DEMAND, UNE  
POURSUIE JUDICIAIRE A ETE  
ENGAGEE CONTRE VOUS.

Si vous desirez presenter une defense dans cette  
instance, vous-meme ou un avocet du Nouvea-  
Brunswick charge de vous représenter devrez  
rediger un expose de votre defense en la form  
prescrite par les Regles de procedure, le signifier  
au demandeur ou a son avocet a l'adresse  
indiquee ci-dessous et le déposer au greffe de  
cette Cour avec un droit de depot de 50\$ et une  
prevue de sa signification:

(a) DANS LES 20 JOURS de la signification

WITHIN 20 DAYS after service on you of this Notice of Action With Statement of Claim Attached, or

qui vous sera faite du present avis de poursuite accompagne d'un expose de la demande, si elle vous est faite au Nouveau-Brunswick ou

(b) If you are served elsewhere in Canada or in the United States of America, WITHIN 40 DAYS after such service, or

(b) DANS LES 40 JOURS de la signification, si elle vous est faite dans une autre region du Canada ou dans les Etats-Unis d'Amerique ou

(c) If you are served anywhere else, WITHIN 60 DAYS after such service.

(c) DANS LES 60 JOURS de la signification, si elle vous est faite ailleurs.

If you fail to do so, you may be deemed to have admitted any claim made against you, and without further notice to you, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE

Si vous omettez de le faire vous pourrez elre repute avoir admis toute demande formulee contre vous et, sans autre avis, JUGEMENT POURRA ETRE RENDU CONTRE VOUS EN VOTRE ABSENCE.

You are advised that:

Sachez que:

(a) you are entitled to issue documents and present evidence in the proceeding in English or French or both;

(a) vous avez le droit dans la present instance, d'emettre des documents et de presenter votre prevue en francais, en anglais ou dans les deux langues;

(b) the Plaintiffs intend to proceed in the English language;

(b) le demandeur a l'intention d'utiliser la langue; et

(c) your Statement of Defence must indicate the language in which you intend to proceed.

(c) l'expose de votre defense doit indiquer la langede que vous avez l'intention d'utiliser.

THIS NOTICE is signed and sealed for the Court of Queen's Bench by \_\_\_\_\_, Clerk of the Court at Saint John on the \_\_\_\_ day of June, 2014.

CET AVIS est sign et scelle au nom de la Cour de Banc de la Reine par greffier de la Court a ce \_\_\_\_\_, 2014.

\_\_\_\_\_  
(clerk)

\_\_\_\_\_  
(greffier)

Court  
Seal

Sceau  
De la Court

\_\_\_\_\_  
(address of court office)

\_\_\_\_\_  
(adresse du greffe)

## STATEMENT OF CLAIM

### The Parties

1. The Plaintiff, **NEW BRUNSWICK ANTI SHALE GAS ALLIANCE (NBASGA)**, has an address for service c/o Roy Ries at [address]. NBASGA is an alliance of twenty-two community organizations in New Brunswick that joined together to provide a common strategy for educating the public about unconventional oil and gas, and for non-partisan lobbying the government on energy and environmental policy. NBASGA relies upon volunteers to carry out its mission of researching the science and policy relating to unconventional oil and gas development in New Brunswick. The organizations and individuals within this alliance live in and/or are affected by land in New Brunswick that has already been leased to unconventional oil and gas companies. The individuals who are part of this alliance are tax-paying citizens of New Brunswick. NBASGA is incorporated under the New Brunswick's Companies Act for the purposes of educating the public about unconventional oil and gas, and to do fundraising to bring to the attention of government and the public these issues on behalf of individuals and organizations without the financial means to do so themselves. This organization has evolved through work done by the individual groups over three and ½ years. NBASGA sought to influence the government through petitions, demonstrations, proposed debates, and meetings with the government's ombudsman, various Ministers and the Chief Medical Officer for Health. Despite all of this work over 3 ½ years the failure of the government to respond has left NBASGA with no other effective, peaceful recourse other than litigation. All individuals represented by NBASGA and their future generations are affected by climate change. A dramatic increase in the activities of this industry is imminent, including the granting of recent permits to commence operations as early as this summer.
2. The Plaintiff, **ROY L. RIES**, resides in Harvey Albert County in the Province of New Brunswick at .... He is retired and his interest in this suit is to stop climate change and protect future generations including his own progeny.
3. The Plaintiff, **JAMES DAVID EMBERGER**, resides in Taymouth in the Province of New Brunswick at.... He is retired and his interest in this suit is that he resides in an area that has been leased by the government of New Brunswick to a developer of unconventional oil and gas.
4. The Plaintiff, **CAROL ANN RING**, resides in Rothsay, New Brunswick.... She is a retired nurse whose interest in this statement is to protect the health of her family from the threats of the unconventional oil and gas industry.

5. The Defendant, the Honorable **HUGH FLEMMING, Q.C.**, Minister of Health and Attorney General, on behalf of **HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF NEW BRUNSWICK**, has an address for service at Chancery Place, Rook 2078, P.O. Box 6000, Fredericton, New Brunswick, E3B 5H1.

### **Material Facts**

6. Her Majesty the Queen in Right of the Province of New Brunswick ('The Government of New Brunswick') has been in the process of granting licenses for exploration and testing for unconventional oil and gas deposits on land held by the Crown, such as those granted to Southwestern Energy Resources Canada. These licenses involve 1.4 million hectares of Crown land.
7. Conventional gas is extracted from soft, porous rock formations that allow the gas to flow through the rock formation, and so enable a single well to drain gas from a large area. Unconventional gas is extracted from shale, a hard, non-porous rock, through which the gas cannot flow, and is instead trapped in the rock in microscopic amounts. Because the gas cannot flow through the shale, the extraction process requires the drilling of many wells in every part of the non-porous shale formation.
8. Because of the hard, non-porous nature of shale, unconventional oil and gas development requires a number of processes, including hydraulic fracturing (also known as 'fracking'). While the basic principles of hydrofracking have been used for some time, their application to unconventional oil and gas is a relatively recent development. The modern process of unconventional oil and gas fracking, known as "*high-volume, slickwater fracturing of horizontal wells with long laterals on multi-well well pads,*" has evolved over time with the addition of a number of new technologies, beginning with the first horizontal well in 1991. The use of 'slickwater' (which are chemical additives) in drilling was introduced in 1996. These two techniques were combined with multi-stage fracking in 2002 and later combined with the use of clustered, multi-well pads in 2007. Thus, the industry as currently conceived is less than a decade old.
9. This new fracking technique involves the injection of millions of liters of water, mixed with tens of thousands of liters of chemicals, some of which are toxic and/or cancer-causing, and sand, into gas wells under extremely high pressure in order to fracture the hard shale rock and release the gas.

10. The new requirements for vast amounts of clean water and chemicals for the hydraulic fracturing of unconventional gas and oil wells, in addition to the need for many more wells than conventional gas formations require, results in the creation of numerous pathways that enable toxic and cancer-causing chemicals and hydrocarbons to reach and contaminate the air, water and soil. This contamination causes serious harm to both the environment and human health.
11. The creation of these pathways for contamination includes processes that are part of the unconventional oil and gas industry's standard operating procedure for extracting unconventional oil and gas. Some of these unconventional oil and gas extraction processes have inherent and so far unsolvable problems that, along with accidents both above and below ground, allow toxic chemicals and hydrocarbons to escape into the environment, which in turn results in serious human harm, including but not limited to, cancer, birth-defects, skin rashes, respiratory problems and neurological effects.
12. The chemicals used in the fracking process are chosen from a list of about 650 chemicals, 90% of which have been shown to have adverse health effects, and 30% of which have been linked to cancer.
13. As well, none of the chemicals discussed above have been tested to see what their effects would be when mixed in the numerous actual and potential combinations that exist during the fracking process, nor what their effects would be when the fracking process brings them into contact with the naturally occurring chemicals (of which many are toxic) located within the earth.
14. Further, the health effects of any potentially new chemical combinations that may form under the heat and pressure conditions present during the fracking process have not been tested. There has been neither evidence submitted nor any scientific basis that these new combinations are safe for human exposure.
15. People living in close proximity to unconventional oil and gas wells are exposed and will be exposed to toxic and cancer-causing chemicals at various times in unknown quantities on an ongoing basis. Purposefully exposing the Plaintiffs, and the peoples of New Brunswick that the Defendants serve and represent, to hundreds of toxins and cancer-causing chemicals through the water they drink, the air they breathe, and the food they eat without their knowledge is unconscionable. It violates both the ethical standards governing informed consent and the Plaintiff's legal rights under the Canadian Charter of Rights and Freedoms. Scientists have overwhelmingly stated the need for further research to establish the true, full and long-term health and environmental effects from the unconventional oil and gas industry. Until his research

is done, the development of unconventional oil and gas is the equivalent of an uncontrolled experimental study using uninformed human subjects without their consent.

16. The Plaintiff's and the citizens of New Brunswick will have no information about the chemicals to which they will be exposed, nor any actual or potential threats to health associated with those chemicals. Allowing an uninformed public to be exposed to the harmful chemicals used in extracting unconventional oil and gas stands in stark contrast to the carefully controlled process governing the approval of even a single pharmaceutical compound for human use. The governments of Canada and New Brunswick have established rigorous scientific testing processes to ascertain the safety of chemical compounds (drugs) that are intended for human consumption. And yet, in logical opposition to these sensible and universally accepted safety precautions, the unconventional oil and gas industry will expose human populations to known toxic and cancer-causing fracking chemicals and other unknown compounds without any required testing, and without the knowledge or consent of those being exposed.

i. **Unconventional oil and gas contamination of water and drinking wells**

17. As a result of unconventional oil and gas extraction, groundwater, surface water and drinking wells have been contaminated in a number of ways, including:

- Well casing failures and leaks are an acknowledged industry problem that has defied solution for decades. The failure or breach of the cement seals on wells allows gas and fracking fluid to escape the well bore.
- A hydraulic fracture created by the fracking process may intersect with a pre-existing natural fracture and/or well of any type, providing a new pathway for unconventional oil and gas to enter groundwater, wells and surface water.
- 'Blowouts' of wellheads that occur when pressure is not properly handled result in substantial releases of contaminated water that can find its way into groundwater, surface water or water wells, thus contaminating clean water and/or soil.
- Leaking from storage tanks, pits or pipelines also introduces chemicals and hydrocarbons into the environment and thus into groundwater, wells and surface water.
- Accidents at well pads are a common source of contamination.
- Accidents involving trucks carrying either fracking chemicals or contaminated wastewater introduce fracking chemicals into the environment and can find their way into groundwater, wells and surface water.

- The illegal dumping of wastewater is a known source of contamination along with improper disposal of contaminated drill tailings and contaminated soil.
18. Leaking and spilling incidents can and do occur, and are illustrated by the leakage documented in a peer-reviewed study that found that a wastewater spill into Kentucky's Acorn Fork Creek contaminated the creek with hydrochloric acid, dissolved minerals and metals and other contaminants, which "*killed virtually all aquatic wildlife in a significant portion of the fork.*"
  19. Another study found that when fracking fluids were spread on land, within a few days almost 100% of ground vegetation within the perimeter of the fluid application area had died. A year later 51% of the trees within the perimeter had no foliage, and after 2 years 56% of the trees within the fluid application area were dead.
  20. In Pennsylvania, more than six percent of unconventional oil and gas wells have reported leakages, which are consistent with the January 7<sup>th</sup>, 2011, inspection of unconventional oil and gas wells by the Quebec Ministry of Natural Resources that found sixty-six percent, or two out of every three wells inspected, were emitting natural gas into the air and water. A recent study found that 500,000 Canadian wells, of all types and both operating and abandoned, are leaking.
  21. Methane concentrations in drinking water wells of homes in Pennsylvania less than one kilometer from natural gas wells were six times higher on average. While most of the wells had some methane, the water samples taken closest to the gas wells had on average 17 times the levels detected in wells further from active drilling. Ethane, another component of natural gas, and other hydrocarbons were detected in 81 percent of water wells near active gas drilling, but in only nine per cent of water wells further away. The average concentration of the methane detected in the water wells near drilling sites fell squarely within a range that the U.S Department of Interior says is dangerous and requires urgent "hazard mitigation" action, according to the study, to deal with the threats of asphyxiation and explosion.
  22. Contaminated wastewater is produced in great quantities by unconventional oil and gas extraction. As this wastewater contains toxic and cancer-causing fracking chemicals as well as natural toxic elements from within the earth, and is often radioactive, it has few disposal options and presents one of the main sources of contamination when introduced into the environment by accidents, leaks and illegal dumping. Wastewater contamination of land and fresh water causes extensive environmental damage to aquatic ecosystems, vegetation, animals (both domesticated and wild), and human health and has harmed will continue to harm the Plaintiffs and the people of New Brunswick if it is allowed to take place here.

23. The wastewater and solids removed from unconventional oil and gas wells often contain NORMs (Naturally Occurring Radioactive Materials) that render the waste materials radioactive. Processes for handling radioactivity are inadequate, thus there is a long-term, potentially very serious problem of radioactive waste and there appears to be no plan in place to safely store the radioactive waste.
24. The disposal of fracking wastewater into deep-injection wells has been identified as probable causes of earthquakes for several years. However, recent earthquake events in England, Ohio and British Columbia have pointed to the fracking process itself as the cause of earthquakes.
25. The contamination of water from unconventional oil and gas extraction has led to serious detrimental health effects on humans, livestock, pets and wildlife. Studies show that there is a supportable link between fracking operations and a variety of negative health consequences, including findings of respiratory problems, cancers and birth defects in humans.
26. The aquifers in New Brunswick, which supply a significant amount of clean water, are particularly vulnerable to depletion, contamination and the spreading of contamination, which is the direct result of hydraulic fracturing. A principle of the Canada-New Brunswick Saint John River Basin Agreement states that, "The Government of New Brunswick should not give approval to any major projects having an effect on water availability (including quality), flows or levels until their total effects on the economy. The social structure and the environment have been appraised to the satisfaction of the Cabinet.
27. In November 2013 a surface puncture of a shallow aquifer was discovered at an unconventional gas seismic testing borehole in New Brunswick. Water from the aquifer was flowing to the surface, flooding the woods surrounding it. The exploration company had not reported it nor had the government discovered it via monitoring. Months later, no remediation by either party has taken place, and the water continues to flow to the surface. This demonstrates that even the most preliminary and innocuous steps in unconventional oil and gas development can threaten aquifers and groundwater,
28. One-third of the population of New Brunswick, including plaintiffs and the citizens of New Brunswick live within the areas leased by the government of New Brunswick for unconventional oil and gas development. There is a need protect the aquifers, which supply a defined and limited quantity of clean water, for the wellbeing of those citizens and for future generations.



29. The exploration for, and extraction of, unconventional oil and gas, including the use of hydraulic fracturing, cause serious harm to human life by permanently contaminating and depleting finite clean water and air supplies for both present and future generations.
30. Only 2 ½ percent of the water on earth is freshwater, and only 1% is accessible as potable drinking water. The process of fracking uses a very significant amount of fresh water, which is permanently removed from the hydrologic, or water, cycle. This removal of great volumes of potable water is happening at a time when the world is facing a growing fresh water shortage crisis.
31. This significant use of fresh water has created problems in other places where unconventional oil and gas has been developed because the volumes of water used for unconventional oil and gas extraction create conflicts over competing needs for clean water, such as used by agriculture, fishing and aquatic systems, and drinking water requirements for people.

ii. **Contamination of air**

32. The chemicals involved in unconventional oil and gas development include:
- Volatile Organic Compounds (VOC's), which are defined by Environment Canada as, "carbon-containing gases and vapors. Many individual VOCs are known or suspected of having direct toxic effects on humans, ranging from carcinogenesis to neurotoxicity.
  - Among the VOC's is the BTEX family of Benzene, Toluene, Ethylene, and Xylene, which have been assessed to be toxic under the Canadian Environmental Protection Act, 1999 (CEPA 1999), and are associated with the operations of the oil and gas industry.
33. The activities of unconventional oil and gas extraction contaminate the air with these toxic and cancer-causing chemicals and other gases and pollution in many ways, including:
- Normal operations require the burning of large volumes of diesel fuel, and thus the pollution associated with burning diesel fuel is added to the contamination associated with other processes used to extract unconventional oil and gas.
  - The processes used by the unconventional oil and gas industry release significant amounts of nitrogen oxides and VOC's, two of the primary constituents of ground-level ozone. Chronic ozone exposure leads to premature death, asthma, chronic obstructive pulmonary diseases and is particularly damaging to children, young adults who spend time outdoors, and the aged, and is irreversible. Public health authorities in locations such as Texas,

Arkansas and Pennsylvania estimated that this harm has increased health care costs by tens of millions of dollars annually.

- Ground level ozone has been found to travel hundred of kilometers from its source.
- Ground level ozone is also destructive to trees, plants and many crops.
- Escaping emissions of methane and other pollutants occur at every stage of normal production and distribution.
- The use of chemicals in the drilling process.
- Flaring of wells during normal maintenance procedures release contaminants directly into the atmosphere.
- Blowouts of wellheads (when pressure is not properly handled) result in substantial releases of gas and contaminated water directly into the atmosphere.
- Leaking or venting of storage tanks and leaking of pits or pipelines.
- Accidents at the well pad.
- Accidents involving trucks carrying either fracking chemicals or contaminated wastewater introduce fracking chemicals into the environment that can find their way into the air.
- Spills and illegal dumping of wastewater.
- Improper disposal of contaminated drill cuttings and contaminated soil

34. The special type of fine grain sand necessary for fracking causes health problems similar to those caused by inhaling asbestos. This has created concerns all along the supply chain from the mining of the sand, to its transportation, to its use at the well site, to its final disposal. The industry recognizes this danger to the extent that they attempt to minimize it by providing protective gear to their employees. However, the general public, and in particular those living near unconventional oil and gas operations, including the Plaintiffs and the citizens of New Brunswick, do not have such protection.

35. The contamination of air from unconventional oil and gas extraction causes physical and economic harm, including serious, detrimental health effects on humans, livestock, pets and wildlife. Methane, the principle component of natural gas, causes asphyxiation and is explosive. When present in sufficient quantities.

36. The contamination from polluted water and air is deposited on soil, spreading the health and environmental damages further into ecosystems and food chains, including the human food chain.

37. All life including human, animal and plant life is impossible without clean uncontaminated water and air.

38. The thousands of heavy truck trips required for each well pad have resulted in the fatality rate from truck accidents skyrocketing in communities hosting the industry.
39. The industry is highly disruptive to the lives of those living nearby, especially in rural areas that become industrial zones. There is massive truck traffic, continuous noise from diesel engines, lights, gas flaring, noxious odors and a segmentation of farmlands and forests that restrict their historical usage. The cumulative, negative effects on rural people's mental health, due to increased stress, anxiety, fear, and depression, leads to physical health problems. Public health officials are alarmed that the areas leased for unconventional oil and gas development include densely populated urban areas. The increases the extent of immediate harm to a far greater number of people in New Brunswick.
40. Physicians, professional medical associations and medical academics in large numbers around the world have called for a moratorium on the development of the unconventional oil and gas industry until adequate long-term research can establish beyond reasonable doubt that there will be no harm to public health, air, water and climate change. In New Brunswick itself, these medical groups have called for a moratorium:
- New Brunswick College of Family Physicians
  - Medical Doctors of the Moncton Hospital
  - Medical Doctors at Georges Dumont Hospital, Moncton
  - New Brunswick Nurses Union
  - Medical Staff at Sackville Memorial Hospital
  - New Brunswick Lung Association
  - Concerned Physicians of Rexton and Richebucto

The government of New Brunswick has ignored, not accepted and not acted on the opinions of these experts.

### iii. Climate Change

41. The fugitive emissions of methane gas from both normal operations and accidental leaks are a potent source of global warming gases that are the driving force behind climate change. Methane released into the atmosphere as a gas, is 105 times more powerful than CO<sub>2</sub> (carbon dioxide) as a global warming gas over a 20-year period, and 25 times more powerful over 100-year period. If more than 3.2 percent of the volume of extracted methane leaks into the

atmosphere, its clean burning benefits (it produces less carbon dioxide when burned than other fossil fuels) are lost. Recent studies found that leakage from several unconventional oil and gas fields (wells, pipelines, tanks, etc.) ranged from 4 percent to 12 percent to orders of magnitude greater than accepted estimates. This makes it a greater contributor to global warming and climate change than is the burning of dirty fuels such as coal.

42. In addition, the extraction of unconventional oil and gas requires the burning of large amounts of fossil fuels, such as diesel and oil, producing little more energy than is used to extract the gas. This contributes to both air contamination and to climate change.
43. The surface of the earth is in the middle of what scientists define as climate change. Climate change is an altering of the temperature of the surface of the earth caused and/or accelerated by the exploration, production and use of non-renewable fossil fuels resulting in dangerous changes to weather patterns and the earth's atmosphere, and rising sea levels, all of which can lead to a serious and potentially irreversible threat to human, animal and plant life.
44. One of the main contributors to climate change is carbon emissions from the extraction and burning of fossil fuels, such as unconventional oil and gas. Scientists have concluded that the only potential way of halting climate change is to leave fossil fuels in the ground and replace our energy needs with renewable energy alternatives using solar, wind and water.
45. This requires the government to divert capital, resources and funds away from the development of the fossil fuel industry and invest instead in the economic development of the renewable energy industry. It also requires governments to halt all economic support for and to revoke all laws and policies permitting shale gas exploration and development.
46. The Defendant, the Government of New Brunswick, has the ability at this moment to choose to refuse any further potential acceleration of climate change and to act earnestly and responsibly to reverse New Brunswick's contribution to climate change.
47. The Defendant can choose not to gamble with the lives of the Plaintiffs and the present and future generations of New Brunswick's people by:
  - halting all financial and political support for shale gas exploration and use
  - removing all tax concessions for shale gas
  - revoking all laws, regulations and policies enabling exploration and production of shale gas industry.

48. Nova Scotia, Quebec, Newfoundland, the American states of New York and Vermont, as well as several nations including France, have all imposed moratoriums on the process of unconventional oil and gas.

49. The following municipalities of New Brunswick have requested a ban or a moratorium on exploration and development of unconventional oil and gas within their communities:

- Association Francophone des Municipalites du Nouveau-Brunswick (51 municipalities)
- Kent Co, Regional Service Commission (14 municipalities)
- Moncton
- Hillsborough
- Alma
- Sackville
- Memramcook
- Hampton
- Minto
- Stanley
- Bathurst
- Sussex Corner
- Quispamsis
- Port Elgin
- Dorchester

50. The Wolastoqiyik First Nations Chiefs and Band Councils of New Brunswick and the Maliseet Grand Council have called for a moratorium on fracking, as has the Miramichi Regional Aboriginal People's Circle.

51. The following New Brunswick organizations have requested a ban or a moratorium on fracking:

- Canadian Union of Public Employees
- New Brunswick National Farmers Union
- Maritime Conference of the United Church of Canada
- The Federation of Rural New Brunswickers
- Public Service Alliance of Canada, Atlantic Region
- Really Local Harvest Co-operative
- KAIROS – Saint John and area chapter
- UNIFOR

- Fredericton and District Labour Council
- Community Forests International
- Elgin Eco Association
- New Brunswick Federation of Labour

52. The following New Brunswick community organizations have requested a ban or a moratorium on fracking:

- Citizens Coalition for Clean Air, Saint John
- Concerned Citizens of Penobscis
- Corn Hill Area Residents Association
- Conservation Council NB, Fredericton & Moncton
- Council of Canadians, Atlantic, Fredericton, Moncton, Saint John
- Darling Island Fracking Intervention
- Friends of Mount Carleton
- Hampton Water First
- Harvey Action Team
- No Shale Gas, Cocagne
- Maliseet Grand Council
- Memramcook Action
- Moncton Anti-Fracking
- New Brunswickers Against Fracking
- Our Environment, Our Choice, Kent County
- Parents Against Everyday Poisons, Memramcook
- Penniac Anti-Shale Org.
- Petitcodiac Watershed Alliance
- Quality of Life, Hampton/Norton
- Sierra Club, Atlantic NB
- SikniktukMikmaq Rights Coalition
- Stanley Area Action Group
- Sustainable Energy Group, Woodstock
- Tantramar Alliance Against Hydro-Fracking
- Taymouth Environmental Action
- Upper Miramichi Stewardship Alliance
- Upriver Environment Watch
- Water and Environmental Protection for Albert County

53. In 2008, the Defendant, the Government of New Brunswick, placed a moratorium on uranium mining anywhere within municipal boundaries, watersheds, and near any private wells. This same set of restrictions also places a buffer zone of 300 meters around any residence or institutional buildings where no mining claims may be staked. At this time, the Legislative Assembly of New Brunswick is considering Bill 86, *the Uranium Moratorium Act*. Unconventional oil and gas development is at least as harmful in terms of depletion of the local water supplies as uranium mining.

## **Legal Issues**

### **I. Section 7 of the Canadian Charter of Rights and Freedoms ("the Charter")**

54. The Plaintiffs submit that the actions of the Defendant, the Government of New Brunswick, have violated their rights under Section 7 of the Charter, the right to life, liberty and security of the person through their investment of social, political and economic capital and resources owned by the people of New Brunswick in unconventional oil and gas development.

55. In New Brunswick and Canada, our common future is dependent upon a healthy environment in which to live; and both individually and collectively within which we are all responsible for preserving the natural environment for all people and our future generations.

56. Where a particular government action, in this case the action of the Defendant, is undertaken that poses a risk to the health of citizens through environmental contamination including the air that we breathe, the water which is essential to all life and the land upon which we live, a moratorium on the practices, actions and decisions that cause such contamination is necessary to reconcile the Defendants' legal and moral obligation to comply with the constitutional protections of Section 7 and its' required duty to consult with all citizens affected.

57. The duty to consult requires the free, prior and informed consent of the citizens affected. 'Free' means that citizens are consulted and participate in the decision-making process in the absence of coercion, intimidation and other forms of influence (such as intentional exclusion from the discourse). The Defendant has not permitted the Plaintiffs, nor in general, citizens who they believe or anticipate in opposition to their unconventional oil and gas development, policies and plans.

58. 'Prior' consultation means the citizens affected have been consulted before the government contemplates, commences and/or is committed to a course of action which infringes and/or

implicates Section 7 rights of its citizens and including those of the Plaintiffs and their future generations. The Defendant has already committed the province to unconventional oil and gas exploration without having satisfied the duty to consult of the citizens affected or potentially affected, including those of the Plaintiffs.

59. The '*informed*' element of the duty to consult includes the right of citizens to all information available to the Government, in a manner capable of being understood by the citizens affected. This element includes the concomitant right of citizens to have their information heard and to have that information made available to the public. The Defendant has not complied with this element.
60. The element of '*consent*' requires the citizens affected to agree once the previous elements have been satisfied. No such consent has been given by the citizens of New Brunswick including the Plaintiffs.
61. The duty to consult is guaranteed and protected by the Charter and international law, upon which the Plaintiffs rely.
62. The Plaintiffs assert that their right to life and security of the person includes the right to clean and potable water for themselves and future generations under Section 7 of the Charter. Water, above and beyond being a necessity for the life and survival of New Brunswick citizens, also serves as a conduit for environmental contamination and can affect the land, property and health of the citizens of New Brunswick, both privately owned and held by the Crown on behalf of the citizens they represent.
63. The Plaintiffs further assert that their right to life and security of the person includes the right to clean and breathable air for themselves and future generations under Section 7 of the Charter. The requirement of clean, breathable and uncontaminated air is necessary for life, liberty and security of the person under the Charter. As with water, air is a conduit for environmental contamination that can affect the land, property and health of the citizens of New Brunswick, on both their privately held land and land owned by the Crown on their behalf.
64. The exploration for and development of unconventional oil and gas and its use contributes to climate change and threatens the very existence of the Plaintiffs, their future generations and all New Brunswick people and as such violates our individual and collective rights as guaranteed and protected by Section 7 of the Charter, the right to life, liberty and security of the person.
65. The Plaintiffs therefore submit that the authorizations granted by the Defendant in regards to unconventional oil and gas exploration and/or fracking activities are contrary to Section 7 of the Charter, and cannot be saved under Section 1.



## II. International Law

66. Canada has adopted *The International Covenant on Economic, Social and Cultural Rights*, *The Convention on the Rights of the Child*, and *The Universal Declaration of Human Rights* (as amended by resolution 64/292), enshrining the right to clean potable water.
67. International law is binding on the Defendant to the extent that it establishes the minimum interpretation of rights guaranteed under the *Charter*, which include Section 7.
68. The Plaintiffs submit that the exploration of unconventional oil and gas, the use of hydraulic fracturing and the use of unconventional oil and gas seriously impair the right to clean potable water, contrary to international law.

## Remedy

69. The Plaintiffs therefore claim the following remedy against the Defendant:
  - a. Pursuant to Section 52 of the Charter, a declaration that the Defendant has violated the Section 7 rights of the Plaintiffs by its actions and decisions and laws which support unconventional oil and gas development in New Brunswick.
  - b. Pursuant to Section 24 of the Charter, an interim, interlocutory and/or permanent injunction in the form of a moratorium against unconventional oil and gas exploration, development and fracking until the Defendant can establish beyond a reasonable doubt and with scientific certainty that unconventional oil and gas development cannot and will not contribute to climate change nor to the contamination of the water, air and land use which causes harm to the health of the Plaintiffs and their future generations in New Brunswick.
  - c. Pursuant to Section 24 of the Charter an Order that the Defendant Government of New Brunswick in the meantime divert the social, political and economic resources at its disposal for unconventional oil and gas development into the development of an energy supply system that is based upon renewable energy sources that do not contribute to climate change.
  - d. The costs of this action.
  - e. Such further and other relief as counsel may advise and this Honourable Court shall allow.

DATED at Saint John, New Brunswick, this 23 day of June, 2014.

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