Shale Gas Controversy and Environmental Rights, Part 3

Michel DesNeiges' EnviroLaw Blog Extra

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In the final instalment of this three part series on the shale gas controversy in New Brunswick, I propose to look at the future and reconciliation.

As things stand today, public skepticism toward the shale gas industry and the provincial government is at a record high. Recent public opinion surveys tend to confirm this. The latest survey shows that a large majority of New Brunswickers believe shale gas development should stop until stronger regulations are in place and they are concerned about the environmental impact of hydro-fracturing.

These regulations are at long last about to be introduced in the Provincial Legislature. It remains to be seen what they will contain and if they live up to the billing of “strongest regulations in North America” for the protection of the environment and the public.

I have my doubts since elsewhere in North America captive government agencies and political leaders have been doing the opposite; that is, reducing already meager enforcement measures and resources in order to allow greater unimpeded access to shale gas reserves.

Skepticism is also fueled by recent studies that have raised doubts about many of the shale gas industry’s fundamental presumptions about the economic viability of the industry and the environmental consequences associated with hydro-fracking.

For example, claims that the use of shale gas will reduce our dependency on oil, reduce CO2 emissions and thus fight climate change are being contradicted by findings that releases of methane from shale gas exploitation may counterbalance virtually all the benefits of CO2 reductions projected to result from substituting gas power for oil and coal.

Meanwhile, local communities in several American states are finding the costs of irresponsible drilling to be ruinous. Contaminated well water, poisoned air, nuisance noise and dust, diminished property values and collapsing quality of life are becoming trademarks of the shale gas industry in those areas. It is also becoming clear that industry cannot afford and is refusing to pay localities the costs of roads damaged from the thousands of truck trips per wellhead, leaving those costs to local taxpayers.

There is of yet no reason to believe that those scenarios will not play out in New Brunswick thus making public opposition to shale gas development completely understandable. And, with an army of highly motivated anti-fracking activists in New Brunswick, popular mistrust of the industry and government is bound to present a daunting impediment to the expansion of the industry in the picture province.

So what should be done? Is it too late? Are we on an inevitable collision course that will lead to a fractured province? (no pun intended)

It is often said that once trust is lost, it is hard to recover. Far from praying that industry and government heed the signs and change their ways so that shale gas exploitation can proceed, I do hope that lessons can be learned and that fundamental changes can be brought to the business-as-usual approach adopted by these resource development “players”.

For example, attempts by government to consult New Brunswickers in this debate have been so ineptly done as to be laughable. Public consultations via the Internet and meet and greet open houses with industry have been for many people quite insulting, especially for those truly concerned about the impacts of shale gas development and for those who want an honest debate.

These types of consultations seek to placate people. Industry and government set up tables, offer brochures and thank people for coming out. They may explain what they are attempting to do but no meaningful discussions can occur because there is no commitment required by anyone to bring changes to their approaches.

And when I say “anyone”, I mean it. Those opposed to development often take advantage of these types of meetings to vent their anger in very unconstructive ways. One can say: “how can you blame them?”, but too often the frustration expressed by opponents becomes counterproductive. I believe in public protest but only to a certain extent. Opponents must be constructive and propose alternatives.

Bottom line, there has to be a change in the way these controversies are dealt with in New Brunswick. This is not the first controversy of its kind (think of the uranium mining issue and the proposed sale of NB Power) and it won’t be the last. There seems to be developing in this province a pattern of shady government proposals and a win-at-all-costs opposition to those proposals. We cannot afford to perpetuate and widen the growing chasm of mistrust between the people and their government.

It is also worth noting that many of these controversies have an environmental dimension. That is, they concern economic development versus environmental impacts. Indeed, the two are well intertwined in New Brunswick. We have always known we are a natural resource dependent economy. What has become clearer in more recent years is that New Brunswickers equally value environmental integrity and they are prepared to put up a fight to guarantee it.

Like most New Brunswickers, I believe this province’s future will be forever linked to environmental issues and to our natural resources. We must find a balance between the exploitation of resources and the preservation of the environment. If our government leaders have not realized this, it is time they do.

At the NBELS, we have since the very beginning made it our mission to contribute to the attainment of equilibrium between these competing interests. We do this by proposing new ideas and new legal frameworks. Our most important contribution has been the proposal of an Environmental Bill of Rights for New Brunswick. We believe it is a law whose time has come. We believe it proposes a structure that will allow New Brunswickers to trust their government because it will put in place a legitimate and proven legal framework that assures transparency, reliance on good science and clear procedures for decision making.

Among the major components of the New Brunswick Environmental Bill of Rights (NBEBR) is the creation of an Environmental Commissioner who could take on major environmental controversies such as shale gas development. As we see it, the Environmental Commissioner would be appointed in much the same way that the provincial Ombudsman is appointed, that is by naming an impartial, well-respected individual to represent the public interest. The commissioner could prepare reports, hold hearings and address the citizens of New Brunswick with the stated purpose of articulating the issues and proposing the balancing of competing interests. The legitimacy of the Environmental Commissioner would be assured by other provisions found in the NBEBR such as clearly stated obligations for government transparency as well as a series of values and principles for maintaining a healthy environment.

In the end, the NBEBR is a proposal for a new social contract between the people and its government. It seeks to put legally binding principles and procedures in place but, most importantly, it offers a vision for the future, one that New Brunswickers can count on for generations to come, one that clearly states that our government will respect its citizens and its environment.

In the final analysis, the NBEBR has to be seriously considered because controversial issues such as shale gas development are not going away and the costs of maintaining the status quo are untenable. Many say we must proceed with shale gas development to save our economy. I believe that by going about it in the present way we are jeopardizing not only our environment but also the social cohesion of the province. That is bound to have an even greater impact on our economy.

For more on the New Brunswick Environmental Bill of Rights, click here.

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