

Who pays when your well is sucked dry and your home is contaminated?

Supreme Court denies Port Colborne class action victory, quashes compensation hopes for communities affected by industry across Canada



Herman and Rena Hawthorne lost their water in 1999. "When I was 7, I used to have to go down to the spring to get water for the family. Now, 60 years later, I still have to go to the spring to get good drinking water. Is that progress? I used to have good water that came out of my tap," says Herman Hawthorne who has lived in Penobsquis most of his life. Photo by Tracy Glynn.

By TRACY GLYNN

Penobsquis/Fredericton - Wilf Pearson, a jovial and straight-shooting retired truck driver who painted Christmas murals on downtown business windows in the small city of Port Colborne on Lake Eerie never lived to see the day that the Supreme Court of Canada denied his community a hearing. Pearson like many others who lived on Rodney Street in the shadow of a nickel refinery felt the city's largest employer, the refinery, was responsible for contamination and sickness in his working-class neighbourhood and surrounding farmlands.

Pearson, the original claimant on a historic class action lawsuit filed over 10 years ago, died in March of this year at the age of 80 years old. Pearson and the claimants on the suit made the difficult decision of going after Inco for only the devaluation of their properties and not a list of other impacts they connected to the refinery like sickness because of legal advice on how the courts work. In their class action suit, Port Colborne residents claimed that their property values were diminished by the nickel emitted from Inco's refinery over a 66-year period prior to 1985.

On July 6, 2010, an Ontario Supreme Court sided with the residents and awarded \$36 million to 7,000 Port Colborne households including Pearson's in what was Canada's largest environmental class action lawsuit award. In their appeal, Vale, formerly Inco, questioned whether the trial judge had erred on different accounts including whether the nickel discharge by Inco onto the property of the claimants had actually constituted an actionable nuisance. In April, the Supreme Court of Canada sided with Vale and ruled that the claimants had failed to establish Vale's liability.

Diana Wiggins, a mother who pulled her son out of a Port Colborne elementary school in 2001 because she suspected that it was making her son sick, says she is not surprised by the court ruling given that three of the judges on the case had recently been appointed by the Harper government. "Harper won't be happy until this country has third world standards," says Wiggins.

Beth Norrad argues that her farming community of Penobsquis, New Brunswick has been living under such standards for years. Norrad's house was one of the first to lose its artesian spring water in 1999. Her well and her neighbours' wells went completely dry in 2004. Their homes are situated directly above the potash mine workings. Norrad and others in Penobsquis have been watching the Port Colborne lawsuit closely and thinking

about what it could mean for their community in their pursuit for compensation for devalued property.

Beth Nixon, spokesperson for the Concerned Citizens of Penobsquis and mother of four children under the age of 12 years old, says that 60 wells in Penobsquis were lost at the same time that PotashCorp and Corridor Resources were conducting rounds of seismic testing. Penobsquis residents reported hearing and seeing the seismic blasts, and noticing dirty water, or total loss of water not long afterwards.

Penobsquis residents have expressed their frustrations of feeling abandoned by their government. Chris Bell, a Penobsquis woman who lost her well water in 2006, attended an open house on natural gas in nearby Sussex in January 2011 to voice her opposition to shale gas and fracking to then Environment Minister Margaret-Ann Blaney. "Blaney said to me, 'you people in Penobsquis are just so angry.'" Bell says she was shocked by the comment. "I responded with, don't you think I have the right to be angry? I have lived here for years without water. I have been manipulated, lied to and no one seems to care, especially the government." In May, Blaney left politics to accept a position as the Chief Executive Officer of Efficiency New Brunswick, a position that many including the Opposition says is a patronage appointment.

The Concerned Citizens of Penobsquis are taking their case to the Mining Commissioner, a public mechanism set up to deal with grievances related to mining in New Brunswick. They are asking for compensation for a long list of impacts they say are caused by potash mining including the loss of water wells, plunging property values, the sinking of land that is damaging their homes, dust, noise and light pollution, and stress. The hearings before the Mining Commissioner, which started in the spring of 2011, are ongoing in Sussex.

New Brunswick was recently ranked as the top jurisdiction to mine anywhere in the world by mining companies in an annual survey published by the Fraser Institute. But mining has left Beth Norrad and other residents of Penobsquis, about a 2 hour drive from Fredericton, wanting to pack up and leave their communities forever.

A civil disobedience workshop was held on Saint Mary's First Nation on May 26th. Many people who have never organized a protest, or even joined a protest, are doing so and quickly learning that the government and the courts are not there to protect them and that they need to take bold and decisive action that defies the current legislative and court frameworks to protect their families, communities and the entire planet from the devastating impacts of fossil fuels.

Heather Whalen, an organizer against shale gas in Durham Bridge near Fredericton, says that the prospects of shale gas development in New Brunswick has had one positive side-effect, "It has made some people who never fought anything in their life stand up and fight or what they believe in."

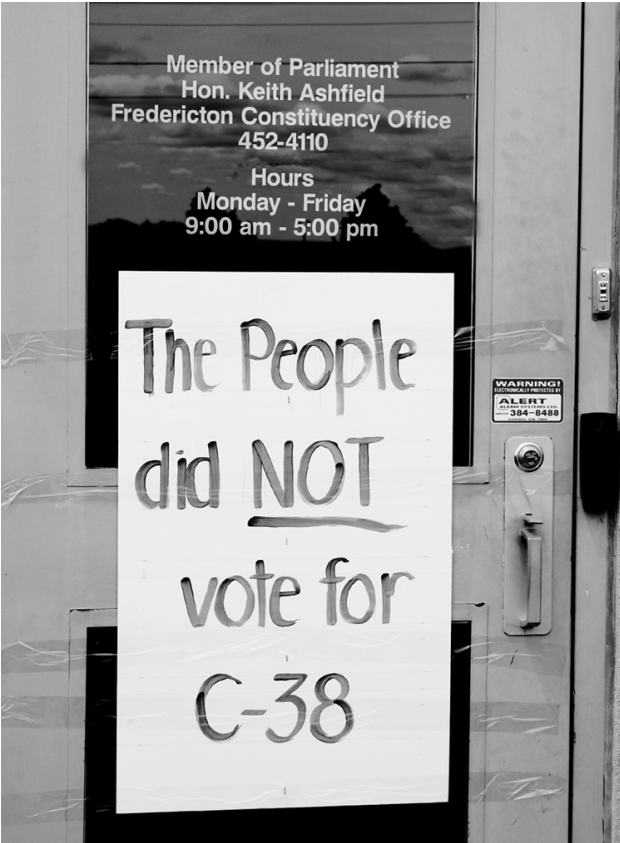
For more a detailed account on struggles in Penobsquis and Port Colborne, read the full article at: nbmediacoop.org.

In Brief...

- The shale gas industry took a hit in May when the Royal Planning District Commission reported that **New Brunswick's groundwater** from the Bay of Fundy to Grand Lake is vulnerable to contamination. "This study is the only case of mapping of aquifers done in recent memory in the province of New Brunswick. We need groundwater mapping in order to assess future developments. They did this study not only for planning, but also because of the Penobsquis situation and the threats from the proposed Salt Springs gas storage, fracking, and the proposed Millstream mine. We should be insisting that all Planning Commissions undertake studies like this around the province," says Beth Nixon, spokesperson for the Concerned Citizens of Penobsquis. Nixon's group is currently arguing its case before the N.B. Mining Commissioner. They are requesting compensation from PotashCorp for the loss of 60 water wells, sinking of land, diminished property values and other impacts that they feel are associated with potash mining in their rural community.
- Jordan Graham, a former Fredericton city councillor, who recently took a position as national spokesperson for the oil and gas industry-backed **Ethical Oil**, recently opined in the Globe and Mail, "By asserting that choosing Canadian oil is choosing ethical oil, who might we offend?" Margo Sheppard, one of his former constituents in Fredericton's Ward 11, says she is one of many who are offended. "When I learned my own City Councillor, Jordan Graham, had become National spokesperson for the oil-lobby funded Ethical Oil, I couldn't believe it. His first few press releases denigrated groups like the Suzuki Foundation, who fight for the future of young people just like him--and touted the tar sands. How he made this leap of logic is bizarre, and frankly very disappointing," says Sheppard, a long-time advocate for nature. Graham resigned from Ethical Oil in May with the reason that he was choosing to stay in Fredericton because of his wife's career.
- On May 11, 2012, a moving ceremony was held in Saint John to unveil a life-sized red wooden silhouette for **Melanie Davis** and commemorate her life. Davis, 28, was brutally killed just over two years by her estranged husband. Over 200 people looked on as Melanie's mother draped a necklace around her silhouette which then joined more than 20 other silhouettes. These silhouettes represent other women who have been killed by their intimate partners around NB and are part of the Silent Witness Project. Several speakers shared their memories of the beautiful, vibrant young woman who loved animals, daisies and fish and chips.
- Emera, the parent company of **Nova Scotia Power**, is asking that Nova Scotia ratepayers pay another 6% on their power bills. A community-labour coalition organized a rally in Halifax

(In Brief continued) ...and Sydney on June 7th to oppose rate hikes and restore NS Power to democratic and public ownership. "Nova Scotia Power made \$121 million in profits in 2010, while paying their executives millions. With democratic public ownership, that money would stay here in Nova Scotia and be used for public priorities, like hospitals, schools and roads," says Kyle Buott, President of the Halifax-Dartmouth & District Labour Council.

- In March 2011, Jean Charest's Quebec Liberal Party announced plans to increase university fees by \$325 per year over 5 years. The current average tuition would increase by 75%. Students began striking on February 13, 2012. **Striking students** from universities and colleges are demanding that the government rescind the planned fee increases and place a freeze on fees before returning to class. Over 2,500 people have been arrested during the student protests and at least 3 protesters and a police officer have been seriously injured. There have been nightly marches of 1,000-3,000 people taking place in Montreal since April 24th, as well as a march of 300,000 to 400,000 in Montreal on May 22. Law 78 was passed on May 17th to in an attempt to quash the protests, but the law's infringements on the Canadian and Quebec charters of rights and freedoms have only resulted in increased protests. Casserole Nights, during which people bang on pots and pans, are occurring in solidarity with the Quebec student movement across the country on Wednesday nights at 8:00pm. About 200 people gathered in Moncton to show solidarity with the Quebec student movement on May 30th. Frederictonians joined the pot and pan protest a week later on June 6th. Negotiations between Quebec student representatives and the provincial government resumed at the end of May, but were quickly brought to a halt by the Charest government, stating that the gulf between what the students wanted and the government was prepared to offer was too great.



On June 2nd, Frederictonians rallied outside the office of their MP Keith Ashfield, who is also the Fisheries Minister, to protest the attacks on workers and the environment found in Bill C-38 as well as the anti-democratic nature of the bill. **Bill C-38 makes sweeping changes to over 70 laws including the eradication of the Fair Wages and Hours of Labour Act, the rolling back of vital social services like Employment Insurance (EI) and public pensions, and the scrapping of fish habitat protection regulations, to name a few. Critics say that the bill will make it easier for employers to drive down wages and for mining, oil and gas companies to make more profits from pillaging the environment**

Community Calendar

For details and updated event listings, visit nbmediacoop.org To list your event or to receive the community calendar by email once per week, email: community@nbmediacoop.org.

Public health impacts of shale gas and fracking. Tues, June 19 at 7 p.m. MacLaggan Hall, Room 53, 33 Dineen Dr., University of New Brunswick, Fredericton. Speaker: Barbara Harris, Environmental Health Association of Nova Scotia. Contact Jean Louis Deveau at jlpdev@nbnet.nb.ca Sponsored by: Masters of Environmental Management, UNB's Dept. of Forestry and Environmental Management, Canadian Association of Physicians for the Environment and the Taymouth Community Association.

Because we all need to laugh in New Brunswick: Go to youtube.com and search: I'm from Sussex and I know it.

- union printed on 30% recycled paper -

Membership Options

☐ \$3/month

☐ \$10/month

☐ \$25/month

☐ \$10/year

☐ \$25/year

☐ \$50/year

☐ Other _____

☐ I would like to be a member, but I cannot be a sustainer at this time.

Payment Options

☐ cash

☐ Please send me an application form to establish monthly pre-authorized payments from my bank account.

☐ cheque

Please mail application forms and cheques to the NB Media Co-op at 180 St. John Street, Fredericton, NB E3B 4A9. Thank you!