



# The Brief

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## Clearing a path for fracking: strategic use of arrests and charges



**Suzanne Patles and Clayton Thomas Muller, an environmental justice campaigner with Idle No More, along Highway 11 on December 2, a day after the highway was closed for hours and five more were arrested for breaching their injunction order to stay away from the shale gas protest site. “The system continues to oppress us, and continues to undermine our status as a Nation. They use their political and judicial tools of oppressive genocide to kill the ‘Indian’ within us,” argues Patles. Photo by Tracy Glynn.**

By ASAF RASHID

Fredericton - SWN Resources Canada's exploration equipment currently sits silent in New Brunswick, but shale gas development creeps forward through the removal and neutralization of people opposed.

Since SWN, a subsidiary of Houston-based Southwestern Energy, set out in Kent County to explore for shale gas in June 2013, almost 100 fracking opponents have been arrested. Arrests have continued into January, long after demonstrations have ended, and two Mi'kmaq men, Germain Junior Breau and Aaron Francis, have remained in jail since October 17, the day of the violent raid by RCMP on the blockade of SWN's thumper trucks.

Suzanne Patles is a Lnu treaty scholar from Eskasoni and member of the Mi'kmaq Warriors Society. She has been arrested twice and detained and charged on a third occasion. “For me the arrests, charges and conditions violated my treaty rights and my Aboriginal rights and my title to the land,” says Patles who points to the 1999 Supreme Court of Canada ruling that reaffirmed the Peace and Friendship Treaties of 1760-61 between the Mi'kmaq people and the Crown. The treaties reveal that the Mi'kmaq and other indigenous people in New Brunswick have never ceded land or resources in New Brunswick.

Patles' first arrest was on June 9. She had drawn a circle with tobacco and was in prayer in front of police, who were attempting to make way for SWN equipment. She was nabbed for obstruction and mischief and put under conditions to stay one kilometre away from SWN equipment, preventing her from access to her own traditional territory. Nineteen RCMP officers surrounded her in Moncton on September 11 for breaching the “one kilometre” condition on July 28. The charge was subsequently dropped.

Miles Howe, a journalist with the *Halifax Media Co-op*, has been arrested three times while covering shale gas resistance. Each time he has been released without facing charges, leading many to conclude he was really arrested for his critical coverage. After his last arrest on November 26, Canadian Association of Journalists (CAJ) president Hugo Rodrigues responded, “RCMP behaviour suggests they are unfamiliar with the Charter rights of a free press and the allowances those rights permit journalists while covering controversial and volatile situations.”

Charges and restrictive conditions have also been used as bargaining chips, to SWN's advantage. In a deal between Mi'kmaq negotiators and the RCMP on July 30, it was agreed that charges would be dropped on 25 of the 35 people who had been arrested (up to that point) in exchange for allowing SWN to complete summer

exploration work.

Fracking opponents are disadvantaged in this process. Once arrested and charged by police, the charges are treated as legitimate, with restrictive conditions lasting for perhaps many months or longer.

Hope Levi, a Mi'kmaq woman from Elsipogtog, was struck by a SWN truck on December 2. She intended to pursue a formal complaint, but she backed down when she was reminded by an RCMP investigator on December 8 that she had breached conditions stemming from her October 17 arrest. “I want to make a statement, but I don't want to go to jail,” Levi told Jorge Barrera of the Aboriginal Peoples Television Network (APTN).

Threats of litigation and having to pay penalties have also been used to try and ward off opponents. In October 2013, SWN filed a lawsuit for an unknown sum of damages in the New Brunswick Court of Queen's Bench. The statement of claim named 10 people as well as Jane Doe and John Doe placeholder names for others they may wish to go after later for damages.

Ann Pohl is one of the people named to the suit and sees it as a groundless Strategic Lawsuit Against Public Participation (SLAPP), designed not necessarily to win but to financially dry up or intimidate opponents. The organizer with Upriver Environment Watch in Bass River, Kent County, explained why she and the others were targeted, “My theory is that [we] are strong and effective cross-cultural communicators who are ethically very strong and utterly committed to ending the threat of fracking in New Brunswick, so they wanted us scared into giving up. It did not work.”

Three more people have been arrested since December 20 for allegedly threatening the media on October 19. “It goes to show that what they are trying to do is continue to intimidate the people who have their feet on the ground [...] why didn't they deal with it on [October 19] when it allegedly happened,” says Patles.

Perhaps raising the most alarm is that two Mi'kmaq Warriors, Germain Junior Breau and Aaron Francis, remain in jail more than three months after their October 17 convictions. They pleaded not guilty to an almost unbelievable total of 35 charges on December 20.

The Crown is using all three grounds for pre-trial confinement: the possibility that an accused will not attend court, protection or safety of the public and the rarely used “maintaining confidence in the administration of justice,” essentially to make examples of them.

Alison Menard, lawyer for the Warriors, expressed concern about their treatment. Menard told the *Halifax Media Co-op* on October 22, that “Our system is based upon not punishing people prior to trial. If you believe in that system, if you believe in the presumption of innocence and the importance of our Charter values, [then] we don't punish people pretrial.”

“It's like they're being convicted prior to being found guilty or not,” says Patles. “The system has developed in a way that has allowed for the [continued] incarceration and political imprisonment of our people.” She encourages people to write letters to the jailed warriors to show solidarity and support.

*Asaf Rashid is a regular contributor to the NB Media Co-op and hosts the weekly radio show, From the Margins, on CHSR 97.9 FM, a volunteer owned and operated campus/community non-profit radio station in Fredericton.*

**Letters to Aaron Francis and Germain Junior Breau can be sent to:**

**Southeast Regional Correctional Centre  
345 Lino Rd.  
Shediac, NB  
E4P 0H6**

## Chief Justice McLachlin: “It is not a crime in Canada to sell sex for money”

**Supreme Court strikes down prostitution laws**

By NICOLE SAULNIER

Fredericton - The Supreme Court of Canada struck down Canada's prostitution laws in a unanimous decision in late December, giving the Canadian government one year to come up with new legislation. The laws considered unconstitutional include those that prohibit brothels, living on the avails of prostitution and communicating in public with clients.

"Parliament has the power to regulate against nuisances, but not at the cost of the health, safety and lives of prostitutes... It is not a crime in Canada to sell sex for money," wrote Chief Justice McLachlin in a statement that called Canada's laws on prostitution lacking in “constitutional muster.”

The ruling was in response to a court challenge brought forward by women who have worked in the sex trade, Terri-Jean Bedford, Amy Lebovitch and Moncton native Valerie Scott, who now resides in Toronto. The women argued that the law prevented them from safely working in the sex trade.

Scott believes that the court decision will not completely change our society but it will ultimately improve the safety of sex workers. “Even if new laws are now rewritten, this does not mean there will be a brothel next door to you, or that the streets will be flooded with sex workers,” says Scott.

“It's important to know that we left 90% of the procuring law (Sec. 212 of the Canadian Criminal Code) intact,” says Scott. “[W]e did not challenge two thirds of the law that affect the street. Nor did we touch any of the human trafficking, and child exploitation laws.”

The laws that were challenged specifically address issues of safety for sex workers concerning living on the avails of prostitution and working in a bawdy house. “What it has to do with is working alone. We would like to work together,” states Scott.

Scott is concerned that Canada will adopt laws similar to Sweden and Iceland. According to Scott, “the Nordic style of laws that Parliament is talking about are equally as dangerous for us because they force us to work secretly, independent of each other, and untraceably.”

The federal governments of countries that have the Nordic laws publicize them as criminalizing the people who abuse and control sex workers. “[The government] already has 90% of the procuring law to go after people who exploit us. They don't need anymore,” argues Scott.

Scott and her organization, Sex Professionals of Canada, have not given up hope that this decision can improve the lives of sex workers for the long term. “We are going to begin lobbying the federal MPs. We are speaking to anyone who will listen,” says Scott.

Dr. Julia Hughes, a professor in the Faculty of Law at the University of New Brunswick in Fredericton welcomes the decision. “The current legal regime is dangerous to sex workers. It needed to go and in the absence of legislative action, the Supreme Court did entirely the right thing,” says Hughes.

The high court's decision leaves the federal government a lot of control over the way this decision will affect Canadian society. According to Hughes, “The court decision does not tell Parliament how to solve this problem, it just says that whatever legal regime is adopted, it cannot put people's lives at risk, nor can it make a pre-existing risk worse.” Hughes points out that there are many other factors... *(continued on page 2)*



**Sex worker, Terri-Jean Bedford, and her supporters celebrate the Supreme Court's ruling that struck down Canada's prostitution laws. While sex work had not been illegal, brothels, living on the avails of prostitution and communicating in public with clients were. This limited the possibilities for sex workers to have safe working conditions. Photo courtesy of Sex Professionals of Canada.**