Closure of the Morgentaler Clinic and the rule of law in New Brunswick

did not deal with the exclusion of abortion from insured services.

In New Brunswick, the concern about these developments was that an abortion would not be funded by Medicare unless it is performed in a hospital by an obstetrician after a doctor certifies that the abortion is medically necessary. New Brunswick’s aim in past legislative efforts was clearly not to be medically. The legislation neither protected patients (it did not prohibit clinic abortions just refused to fund them) nor the taxpayer (clinic abortions are about $1,000 cheaper than hospital abortions).

New Brunswick’s goal has always been to create a serious impediment to women accessing abortions. Hospital abortions are refunded by Medicare, but many women are not eligible. Thousands of New Brunswick women are completely without a family physician. They lack timely access to a doctor to provide the necessary referrals and certifications. So, they must pay out of pocket for clinic based abortions.

In 2002, Dr. Morgentaler challenged the law excluding abortion from insured services. The provincial government’s response was to delay a hearing on the merits. Dr. Morgentaler was 79 at the time. When the province lost, they appealed. Then, anti-choice organizations sought intervener status and were allowed in. Not until seven years later, in 2009, did the Court of Appeal finally rule that Dr. Morgentaler had standing, relying on his extensive experience as a clinic’s doctor and his work as an obstetrician. By the time the Court of Appeal ruled, Dr. Morgentaler had spent roughly $600,000 dollars on litigation. In 2008, the Clinic sustained $100,000 in food damages. Other downtown businesses were reimbursed by the city. Not the Clinic. Dr. Morgentaler stopped his legal battle and no further action was taken on the lawsuit.

Using the less costly human rights process, another New Brunswick physician sought to challenge the discriminatory laws. Again, the province sought to delay through procedural barriers. Again, this tactic was successful as the courts took over a year to decide the standing issue, and then held the physician to strict timelines, effectively blocking the appeal.

When the closure of the Clinic was announced, the Minister of Health refused to comment because the matter was before the courts. Ultimately, despite clear law on the right to access funded abortions, New Brunswick has made plain its intent to continue its discrimination against women. Who is able to hold it to account? There is no litigant who can match the litigation power of the government, no court willing to step in to preserve the rights of the most vulnerable women in the province and no administrative entity willing or able to protect women from doctors who believe their license to practice medicine includes the licence to coerce a woman to carry a pregnancy to term. This failure makes a mockery of the rule of law. It creates a crisis for women – poor, rural, immigrant, and raising children – in a small province far away from the power centres of the country. They cannot afford to leave the province to have the abortion they need and go through a fundamental freedom of choice that other Canadian women have relied on for decades. There are many justice failures in this country, but this one sits in our office, crying with fear and rage.

Jules Hughes is an associate professor of law at the University of New Brunswick.

500 youth gather
to strategize for a just climate future

By TRACY GL YNN

K’jipuktuk/Halifax – About 500 youth interested in climate justice from across unceded Wabanaki territory of Atlantic Canada had gathered in K’jipuktuk, Mi’km’aq territory on the weekend of March 26-30 to listen to stories and advice from elders and seasoned organizers, strategize about a more just future and make friendships that will likely last a lifetime.

PowerShift Atlantic situated its gathering in the moment of local struggles against a push to frack for shale gas, oil in offshore waters and develop a pipeline to pump diluted bitumen from the Alberta tar sands across the country to Saint John.

Participants listened attentively to a stellar force of speakers including Crystal Lamaper, Suzanne Patles, Winona LaDuke, Vanessa Gray, Jasmine Thomas and Amanda Lickers, all indigenous women on the frontlines of resistance to dirty fossil fuel development on the Friday and Saturday nights of the gathering.

Crystal Lamaper, a mother of two from Beaver Lake Cree Nation and energy campaigner with the Sierra Club of Canada, Alberta, spoke of her community’s court case against the Canadian government for failing to follow through with the duty to consult with her Cree Nation on over 17,000 permits and leases granted to big oil.

Suzanne Patles, a member of the Mi’km’aq Warriors Society, was one of many attacked during the Oct. 17 raid on their re-rising shale gas near Elsipogtog. She was arrested three times but never charged during the summer and fall of shale gas resistance near Elsipogtog. Patles argued for the normalizing of resistance and encouraged the audience “to find something that you are good at and do it.”

Mi’km’aq women and other indigenous women across Turtle Island survived Vanessa Gray, a 20 year old activist from Aamjiwnaag First Nations in Sarnia, Ontario, who spoke quite simply, from the heart. Speaking, The Trent University student spoke through the tears to describe her home community and her work with Aamjiwnaag First Nation’s local fracking opposition. “I will never leave my homeland because Shell Oil says I should. I will never give up,” said Gray whose community is surrounded by more than 60 refineries and chemical plants operating near Sarnia’s air is the most polluted in Canada, according to a 2011 World Health Organization. More toxic air pollution from Sarnia’s smokestacks than in all of the provinces of New Brunswick or Manitoba. The city of Sarnia “boils” with asthma, cancer and childhood asthma, the city of Sarnia, is likened to a mixture of gasoline and melting snow, with something in the water being called “cancer in a bottle.”

Sarnia and Aamjiwnaag residents blame cancer, learning disabilities and other health problems on the surrounding industries. The Aamjiwnaag First Nation is the first community in the world to have a birth rate of two girls to every boy.

“I’ve gotta give a shout out to this month of destruction,” said Ammanda... (continued on page 2)