

December 3, 2015

Grace C. Visconti
Alberta Environmental Writer
First Published on Digital Journal



Ecojustice Executive Director Devon Page discusses 5 vital issues

Enbridge NG Court Case

Regarding the approval of the Northern Gateway Pipeline in addition to 209 conditions, what is the major controversy surrounding the review panel report, why do your clients suggest it is flawed, and how will the majority Liberal government make the difference in the outcome of this case?

Our clients said that the panel did not consider all of the necessary science. While challenging Enbridge's Northern Gateway pipeline, there were 4 points that we made in court:

- 1) They failed to comply with the Species at Risk Act. The panel did not address the needs of endangered species in their assessment. (As illustrated by another Ecojustice lawsuit, the federal government was failing generally to produce recovery strategies for endangered species, including those who critical habitat overlay the Enbridge pipeline route. After winning that lawsuit which forced the federal government to produce recovery strategies, Ecojustice asked the panel to incorporate those in their planning. The panel refused, which was part of the grounds for the lawsuit challenging the pipeline).
- 2 + 3) One of the ultimate outcomes of the environmental assessment is to ask what are the potential harmful effects and what are the benefits of this project. Not only do they

have to consider the risk posed by carrying bitumen by pipeline but they also have to consider the greenhouse gases that come with increased production. While the panel noted increased economic benefit associated with expansion enabled by pipeline construction, they failed to consider the increased environmental harm of tar sands expansion. Essentially, they failed to balance the economic benefits and environmental impact.

- 4) When we were before the panel, it became clear to us that Enbridge had not fully investigated what happens to bitumen when it enters the marine environment. They didn't know the full impact of a diluted bitumen spill. In spite of not knowing this, the panel still concluded that the pipeline was unlikely to result in significant adverse environmental impacts.

We are asking the Court to set aside the National Energy Board (NEB) recommendation and the federal approvals until the flaws in the report are fixed. We are also challenging the Cabinet's failure to provide reasons for its approval order.

A win in this case would mean that the National Energy Board panel would have to start over and produce a complete environmental assessment before the project can proceed and not ignore key evidence, whether this major development is in the national interest.

Regarding Liberal government, I don't know what they'll do but I do know from Prime Minister Justin Trudeau's recent actions that he publicly stated he directed his Minister to restore legally, a moratorium for off shore tanker traffic off of BC's coast. That appears incompatible with construction of the Enbridge Northern Gateway Pipeline.

What will the implications mean if Ecojustice wins this case for your clients or if you don't win, and why is it important that this environmental assessment is done right from the beginning?

A win would mean that the NEB would have to go back to the drawing board and produce a complete environmental assessment before the project could proceed. It would delay the project and then the question will be if they incorporate all of the environmental considerations would they still approve the project so this would be uncertain.

Can you explain this comment on the Ecojustice website, "Pipelines, no matter how safe, are never foolproof." What are the implications of an inadequate environmental assessment for such a huge project?

No industry representative has been ever able to guarantee that pipelines won't ever leak. The huge Kalamazoo river spill was very harmful to the environment and hard to clean up. The risk posed of a spill is huge and the results would be devastating to the environment in Canada too.

Kinder Morgan and Trans Mountain Pipeline Paths

Describe the controversy over Kinder Morgan's Trans Mountain pipeline path for its expansion. Will Ecojustice appeal the decision made by a B.C. Supreme Court judge on November 23, 2015 where Kinder Morgan won the case against the City of Burnaby to expand the pipeline?

The Enbridge Pipeline review process was started before the Conservative Omnibus bill, but the Kinder Morgan pipeline is under the new assessment scheme for pipelines. The changes made by the Omnibus bill considerably weakened the environmental assessment process for pipelines.

The changes in the Omnibus bill did this:

- Shortened the process to the point where the panel may not have the time to gather information to inform a decision about what's in the public interest.
- It narrows who can participate so it's less likely that all necessary information can be placed before the panel.
- It simplified the review process so for example, cross-examination on behalf of our clients could not be done. The changes removed a more extensive review process.

Here's what we want modern environmental assessments to include so that there will be stronger legislation:

- 1) Require that the upstream and downstream climate change impacts are considered;
- 2) Remedy the limitations on public participation implemented by the 2012 Omnibus bill;
- 3) Impose a mandatory requirement for oral cross-examination in NEB reviews of complex, major project applications such as Kinder Morgan. Ironically, recently, the opposite is the case – the more significant and contentious a project is, the less likely it is to be subjected to oral cross-examination;
- 4) Remove or extend time limits in the NEB Act, which would enable complex, major project reviews to take the time required for a satisfactory review; and
- 5) Ensure meaningful and adequate aboriginal consultation.

Charter of Rights for the Environment

If a plan such as the Manitoba NDP government's environmental bill of rights is implemented for Canada as well, what would the framework look like? Can Ecojustice be part of the process and how would your framework be a balance for rights of the public and industry?

Canada is the second largest country on the planet with 20% of the world's fresh water, 20% of the world's remaining wilderness, and 25% of the world's wetlands. A 98% majority of Canadians view nature as essential to human survival. By enshrining the right to a healthy environment in the Canadian Charter, we will be aligning our highest law with our most deeply held values, thereby respecting our environment and our health. Norway, the Philippines, and Portugal have already implemented this type of Charter and more countries are following. In the last 50 years, the right to a healthy environment has gained recognition faster than any other human right. ([The Right to a Healthy Environment, Canada's Time to Act](#)) Canada's current environmental framework falls short.

Effective change would start with strong laws based on these principles:

Cumulative Impacts

Have fair environmental assessments while considering the cumulative pollution load to determine impacts and help prevent toxic hot spots.

Equity

Strong environmental laws ensures that no one community suffers from a disproportionate pollution burden and regulators must consider the impacts of air, water, and land on future generations.

Polluter Pays

Ensure that when actions of an individual or corporation degrade our water, air or land, the polluter not taxpayers pays to clean up the mess.

Public Participation

Governments give concerned citizens meaningful opportunities to be part of environmental decision-making that affects their community and step in when those governments fail to enforce their own laws.

Precautionary Principle

Decision-makers should 'look before they leap' where our air, land and water is concerned and have a thorough understanding of the environmental risks associated with a project or plan, impose safeguards, and determine harmful effects before they happen.

Sustainable Development

Protecting and restoring the quality of our air, water and land for future generations will benefit the economy and our environments.

Promoting equity is part of a concerted effort to enforce environmental standards where there is inequity so that every Canadian is entitled to a minimum standard of environmental quality. Protecting health should be a priority especially among all provinces and territories. Currently, Canada has no legally binding national air quality standards and has weak laws about drinking water safety and the use of toxic substances.

A right to a healthy environment would stop harmful law rollbacks where the implementation of a “standstill principle” would only allow a fundamental environmental Charter of rights to be strengthened not weakened. A fair framework for Canada would ensure that environmental rights would improve human health, restore damaged ecosystems, and protect natural resources for all communities.

Outcome of Climate Change Legislation in Alberta and Canada

What economical, social, and innovation opportunities will Climate Change legislation have on the provincial and Canadian economies going forward? How will this benefit the public and industry?

They’ve only introduced the targets. When the Climate Change legislation comes, I’d be happy to talk about. Oil and gas are a dying industry. The future is sustainability. The Climate Change legislation will move us toward an industry which focuses on producing green energy and that’s a future that will benefit both the environment and the economy. We have to find alternatives to oil. Although it’s true that we are currently dependent on oil economies, the shift is already happening in other parts of the world. Secondly, we don’t have a choice. The sooner we commit to alternatives the better our environment and our economies will be.

Endangered Species Legislation

Describe the Endangered Species Act and how it protects biological diversity. Can there be a balance where industry also benefits?

The Endangered Species Act protects biological diversity by:

- 1) Identifying endangered species and protect them individually from harm
- 2) Require an assessment of the reasons for their decline
- 3) Requiring preparation of a plan to protect the species and their habitat so their populations can recover

Implementation of the federal species act not about balancing the needs of species at risk and industry. By the time a species is listed as endangered, the situation is in crisis and long past the balance point - many species are at risk because of the lack of balance between industrial and environmental needs. The only reason we need the Endangered Species Act is because Canada's laws generally tend to favor industry needs over environmental needs, including species at risk. Setting up a triage – what needs to be saved first – is the purpose of the Endangered Species Act – the balance that is needed must occur long before a species become identified as at risk of extinction. The issue is Canada has a weak regulatory regime resulting in us needing endangered species legislation. By the time you get to the Endangered Species Act, the problem is already ingrained.

With respect to Species at Risk regulation enforced by the PC Cabinet in 2013 that exempts major industries - including forestry, mining, energy, and residential development – from the responsibility to protect these species, will Ecojustice present a plan to the Liberal government to change this regulation in favor of full compliance with the Endangered Species Act?

Yes, we will.