Submission to the

New Brunswick
Commission on Hydraulic Fracturing

by

Notre environnement, notre choix
Our Environment, Our Choice

"...members of organizations in the social economy that we interviewed are worried by the possible installation of the shale gas industry ... 'sustainable development' is a theme, even a primordial value underlying all the responses of participants."

From a M.A. thesis by Tim Bell,
University of Moncton, 2014

October 15, 2015
Richibucto, New Brunswick

Notre environnement, notre choix / Our Environment, Our Choice is a citizens group, based in Kent County, whose members and supporters are drawn mainly from the St. Louis, Kouchibouguac, St. Charles, St. Ignace, Aldouane, Rogersville, Acadieville, and surrounding areas. It plays a significant role in educating people about the actual negative impacts of shale gas development elsewhere and helping to mobilize opposition to the shale gas industry.

Prologue: New Brunswickers vote on shale gas development.

*On September 22, 2014, New Brunswickers went to the polls in a provincial election. The defining issue of that election was whether to develop shale gas in the province. Indeed, the governing Progressive Conservatives sought re-election on the slogan '*Say YES to Shale Gas.*' The other three parties campaigned against shale gas. The Liberal Party promised a moratorium, the NDP a two-year ban, and the Green Party a permanent ban.*

*When the votes were counted, the '*Say YES to Shale Gas*' campaign received only 34.6% of votes cast. The Liberal Party that had campaigned for a moratorium, without offering any detail, received 42.7% of the votes and formed a new government. When the voters of the other two parties are factored in, parties opposed to shale gas development had received just over 65% of votes cast.*

By a margin approaching 2-1, New Brunswick voters had decisively rejected shale gas development. It wasn't long, however, before the newly-elected Liberal government began exploring ways and means of abandoning the moratorium that got it elected.

A moratorium as promised, but with 'conditions'

In December 2014, the newly-elected Liberal government of Brian Gallant put in place the moratorium on shale gas development it had promised during the provincial election campaign three months earlier. Three months after that, in March 2015, the Gallant government appointed the *New Brunswick Commission on Hydraulic Fracturing.* The new government was already talking about 'conditions' for lifting its moratorium.

The Commission was to study fracking and report back to the provincial cabinet within one year on whether the government's conditions for lifting the shale gas moratorium, and thus allowing development, could be met. The Commission was given the task of studying "the issue of hydraulic fracturing in New Brunswick to determine whether the following five conditions can be met:

- The social license to proceed;
- Clear and credible information about the impacts of hydraulic fracturing on public health, the environment and water, allowing the government to develop a country-leading regulatory regime with sufficient enforcement capabilities;
- A plan in place that mitigates the impacts on public infrastructure and that addresses issues such as waste water disposal;
- A process in place to respect the duty of the provincial government to consult with First Nations; and,
- A mechanism in place to ensure that benefits are maximized for New Brunswickers, including the development of a proper royalty structure."

It's outrageous to *Notre environnement, notre choix / Our Environment, Our Choice* that a mere six months after 65% of New Brunswick voters said 'no' to shale gas development in a provincial election, the Province would need to ask a Commission to determine whether there was 'a social license to proceed' with the industry! Further, references in the Commission's mandate to developing a 'regulatory regime' and a 'proper royalty structure' and 'a plan that mitigates the impacts' look suspiciously as if the Province is using the Commission to give the illusion of 'due process' before allowing shale gas development.

Notre environnement, notre choix / Our Environment, Our Choice is deeply suspicious of the provincial government's motives in establishing the Commission. It is a matter of public record that, following the 2010 election, the Conservatives who had spoken out against shale gas while in opposition became, in the twinkling of an eye, fierce promoters of shale gas. Meanwhile, the Liberals, who had been promoting the industry while in government, also reversed their policy and became shale gas opponents once in opposition after 2010. Such political shenanigans have done much to increase cynicism about the integrity of the political process.

Between 2010 and 2014, opponents of shale gas development, including *Notre environnement, notre choix / Our Environment, Our Choice* were confronted by a government that vilified us in the media as a dangerous minority while attempting to impose its will on us by force alone. *Notre environnement, notre choix / Our Environment, Our Choice* fervently hopes a new day has dawned in New Brunswick but, as the adage puts it, 'the proof will be in the pudding.' We are here today to put yet again our unequivocal opposition to shale gas on the record.

The job of the Commission on Hydraulic Fracturing

Let us turn our attention to the five 'conditions' set by the Gallant government for lifting the moratorium on shale gas development it put in place in December 2014.

1. The social license to proceed

The question of a 'social license' for an industry rejected by 65% of the voters as recently as September 2014 is itself cause for concern. We also note that even prior to 2013, 20,000 residents of New Brunswick signed a petition opposing the development of shale gas. Such support for a petition dealing with public policy is unprecedented in New Brunswick! One doesn't need to be a political scientist to understand that there simply is no social license for shale gas development in New Brunswick today. If the concept of a 'social license' for developing an industry is to have any meaning at all, it must surely entail having the support of at least a majority of voters in areas affected by the proposed development.

Notre environnement, notre choix / Our Environment, Our Choice does recognize that one area of a province might favor an industry while another area rejects it. If such an approach is taken, the issue of a social license becomes one of sorting out what areas in our province support shale gas development, and what areas do not.

Whatever may be the case elsewhere, there is not even a hint of a 'social license' for shale gas in Kent County and its adjacent areas. *Notre environnement, notre choix / Our Environment, Our Choice* draws the following facts to the Commission's attention:

1. The Zone 6 Regional Services Commission, which includes all local governments in Kent County, has formally voted 15-1 in favour of a moratorium on shale gas development in Kent County.

2. The Association of Francophone Mayors and Municipalities, which includes all local governments in Kent County, has twice formally voted for a moratorium on shale gas development.

3. Kent County is home to New Brunswick's largest First Nation, and the Elsipogtog First Nation's Band Council has unanimously rejected shale gas development.

4. In 2013, a year before the provincial election, petitions circulated in Kent County showed a veritable tsunami of opposition to shale gas. In St. Louis de Kent, for example, 613 people or 66% of the village's total population of 930 people signed the petition against shale gas. When children are 'factored out,' the level of voting-age opposition to shale was in the 80% – 90% range. In St. Ignace, 15 kilometers west of St. Louis, an astounding 93.5% of people on the voters list signed the petition. In Rogersville where 75% of the population signed the petition. Like St. Louis, 'factoring out' children in Rogersville showed the level of opposition to shale gas among the voting population to be even higher. Similar indications of overwhelming opposition to shale gas are came in from other communities, including the Bass River.

5. In the September 2014 provincial election in Kent North, the governing Progressive Conservative Party, the only party campaigning for shale gas development, received a mere 16.6% of the popular vote (a rejection of shale gas by more than a 5-1 margin). In Kent South, the Progressive Conservatives received only 33% of votes cast. When the results of the two ridings in Kent County are combined, one sees that shale gas had been rejected across the County by slightly more than a 3-1 margin!

6. Less easy to quantify, but clearly evident throughout the struggle against shale gas in Kent County and its adjacent areas was the widespread support for protesters from all quarters. Local priests and religious visited protest camps, supporting their parishioners and bringing gifts of food. Local business owners also contributed food and, when the winter came, warm winter clothing. Many businesses had the ubiquitous 'Say No to Shale Gas' *(Disons non au gaz-de-schiste)* signs in their windows. Public meetings called to mobilize opposition to shale gas consistently over-flowed the host community centres with the crowds spilling out into the parking lots.

7. Similarly, hundreds of ordinary citizens, including many in this room today, put their lives on hold to take part in public protests expressing the outrage they and their neighbors felt day after day, week after week, month after month. Some went to jail rather than acquiesce to an unwanted industry that posed a grave threat to the health and safety of themselves, to their children and grandchildren and to the environment which sustains all life. The depth and determination of the opposition to shale gas in Kent County and adjacent areas was unprecedented in New Brunswick's history.

Kent County residents have clearly and repeatedly put their unequivocal and determined opposition to the development of shale gas on the record. When the Commission makes its report to the Gallant government, residents of Kent County and adjacent areas have every right to expect that the Commission's report will also have a clear, unequivocal and unambiguous statement that '*there is no social license for the development of shale gas in Kent County and its adjacent areas.*' To state otherwise would be to ignore four years of

determined struggle by the entire County and its adjacent areas to prevent shale gas development, and would make a charade of the Commission's process while standing the concept of a 'social license' on its head.

2. *Clear and credible information about the impacts of hydraulic fracturing on public health, the environment and water, allowing the government to develop a country-leading regulatory regime with sufficient enforcement capabilities;*

There is a wealth of data available on the negative impacts of shale gas development, including it's serious damage to public health and well-being, the environment and water. This portion of the Commission's mandate has embedded within it the presumption that '***a country-leading regulatory regime with sufficient enforcement capabilities'*** can, in fact, be developed, but this presumption is utterly without foundation!

Notre environnement, notre choix / Our Environment, Our Choice cannot emphasize too strongly that *the only data that can be accepted as both legitimate and valid is data contained in independent peer-reviewed scientific studies!* The recognition that only independent, peer-reviewed studies can be regarded as trustworthy when dealing with issues of public health and safety is the cornerstone on which the integrity of any process studying the impacts of shale gas development must rest.

We wish to stress that *data that is not derived from independent scientific studies is automatically suspect, and must not be regarded as more then merely anecdotal in nature*. The examples of false and misleading information flowing, deliberately or otherwise, from companies whose first priority is to generate a profit for their owners/shareholders are legion. Further, any industry providing a product of service clearly has a vested interest in promoting itself as 'safe' while minimizing or denying its harmful effects.

This is nothing new! Recently, the systematic and on-going falsification of emissions data spanning several years by the Volkswagon Corporation has been exposed, but such examples of false data provided by corporations on their products is as old as the profit motive itself.

Since World War II, the public has been told by the manufacturers and marketers of such diverse products as DDT, thalidomide, tobacco, asbestos, PCBs, urea formaldehyde insulation, lead in paint and gasoline, Biphenyl A and breast implants, to name but a few, that these products were safe and harmless. Numerous food additives have been developed in corporate laboratories and proclaimed to be safe, only to be revealed as quite unsafe after long term, peer-reviewed studies had been carried out. A listing of all the products over the years that were approved by governments as safe, without having waited for adequate research on their effects, but subsequently shown to be hazardous would take many pages.

The shale gas industry is no exception! Its claims about the safety of developing shale gas have been called into question in many places for many reasons. We will not review here the data collected by the *New Brunswick Anti-Shale Gas Alliance* (NBAGSA) and made available to this Commission. Members of *Notre environnement, notre choix / Our Environment, Our Choice* have worked closely with NBASGA, and are familiar with the voluminous and excellent information it has gathered and made available to the Commission.

We urge Commission members to familiarize themselves with both the *Citizens Guide to Shale Gas* produced by NBASGA and that group's Statement of Claim in its 'Science Suit' against the Province of New Brunswick. Both these documents rely on independent scientific studies.

We note the support for a moratorium on shale gas offered by the New Brunswick College of Family Physicians. Attempts by the industry to down-play, dismiss, and discredit the very serious concerns of medical professionals, including doctors, nurses, and the chief medical officer of the Province, about shale gas are reprehensible. When it comes to our health, the health of our children and grandchildren, and the health of the communities in which we all live, the considered opinion of medical professionals is far more trustworthy than that of persons with no medical training who have a vested interest in generating profit for themselves and the corporations that employ them.

Notre environnement, notre choix / Our Environment, Our Choice also insists that the Commission must acquire and study reports from other jurisdictions that have banned shale gas, including France and New York state. Ignoring the reasons and rationale for sanctions taken against shale gas in other jurisdictions would be irresponsible.
The Government of France, for example, has far more financial and scientific resources to bring to bear on assessing the hazards posed by shale gas development than does New Brunswick, and it is essential for the Commission to take advantage of the work done elsewhere on this issue. It would simply be absurd for the Province of New Brunswick to suggest that it can bring more scientific resources to bear for studying the question of the negative impacts of shale gas than the Government of France.

We also underscore the importance of the 2014 report by The Council of Canadian Academies. Their report, entitled *Environmental Impacts of Shale Gas Extraction in Canada: The Expert Panel on Harnessing Science and Technology to Understand the Environmental Impacts of Shale Gas Extraction,* represents the work of the top scientists in Canada on this issue. The voice of The Council of Canadian Academies must be heeded if New Brunswick's assessment of shale gas is to be more than an empty political exercise designed to reach a pre-determined conclusion.

We reproduce here only a few quotes from the Academies' report on shale gas to illustrate the fact that there are simply no grounds for claims by industry proponents that shale gas development is safe and poses no hazards. On the contrary, as The Council of Canadian Academies notes in these quotes from its 2014 report:

> The health and social impacts of shale gas development have not been well studied.
>
> Some of the possible environmental and health effects of shale gas development may take decades to become apparent. These include the creation of subsurface pathways between the shale horizons being fractured and fresh groundwater, gas seepage along abandoned wells, and cumulative effects on the land and communities. Similarly, monitoring strategies, data, and information on the effectiveness of mitigation measures take time to develop, acquire, and assess.
>
> Appropriate environmental monitoring approaches for the anticipated level of shale gas development have not yet been identified.
>
> The Panel notes that the research needed to support improved science-based decisions concerning cumulative environmental impacts has not yet begun, except in Quebec ...
>
> Other impacts, however, such as cumulative effects on land, fugitive GHG [*greenhouse gases*] emissions, and groundwater contamination, are more problematic. This is the case because available mitigation technologies are untested and may not be sufficient; scientific understanding is incomplete; and the design of an adequate regulatory framework is hampered

> by limited information.
>
> ... it is not clear that there are technological solutions to address all of the relevant risks, and it is difficult to judge the efficacy of current regulations because of the lack of scientific monitoring.
>
> Full disclosure of chemicals and the chemical composition of flowback water is a necessary but insufficient step in the assessment of the environmental risks associated with drilling and fracturing. Information is also required on potentially hazardous chemicals produced down-hole by chemical interactions under high temperature and pressure. This includes information on concentration, mobility, persistence in groundwater and surface water, and bio-accumulation properties, for each chemical on its own and as a mixture. This represents a major gap in understanding of the potential environmental and human impacts of hydraulic fracturing, and of how to mitigate accidental releases of chemicals or flowback water to the environment

Surely it is not too much to ask that the Province of New Brunswick, and this Commission, to heed the advice of Canada's top scientists. No government committed to protecting the health and safety of New Brunswickers can do otherwise.

3. A plan in place that mitigates the impacts on public infrastructure and that addresses issues such as waste water disposal.

Once again *Notre environnement, notre choix / Our Environment, Our Choice* wishes to draw to the attention of the Commission the excellent work done by NBASGA on the issue of documenting the negative impacts of shale gas that need to be 'mitigated.' It is critical that the Commission be fully cognizant of *all* the negative impacts that come with so-called shale gas development, and not underplay the hundreds of millions of dollars other jurisdictions have had to spend trying, often unsuccessfully, to 'mitigate' the impacts' of shale gas on public infrastructure. It would take a naiveté bordering on willful blindness to suppose that New Brunswick can somehow miraculously escape the ravages of shale gas on public infrastructure, health and the environment, as well as damage to established industries such as tourism, agriculture and aquaculture that have been experienced elsewhere and documented by NBASGA.

Indeed, the *Citizens Guide to Shale Gas* provides examples from the United States where the cost of repairing the damage to public infrastructure caused by shale gas development exceeded the revenue state governments received from the industry. In effect, in many states, the industry has been subsidized by taxpayers being forced to pick up the tab for the great damage done by the industry to public infrastructure.

We trust it is not necessary to duplicate here the information contained in NBASGA's *Citizens Guide to Shale Gas* on the great damage shale gas has done to public infrastructure in other jurisdictions. We urge you to study the *Citizens Guide to Shale Gas* very carefully indeed!

Similarly, it is an established fact that drilling and fracking bring naturally-occurring radioactive materials, known as ' NORM's', buried deep in the earth to the surface in the waste water produced. Waste water from fracking is a highly toxic brew of carcinogens and other hazardous materials. Expecting communities to house these toxic, radioactive chemical cocktails whose long-term health effects are not known is unreasonable. Dumping these kinds of chemical conglomerations in open storage lagoons or in holes in the ground is comparable to raw sewage being dumped in the streets of cities long ago, except that fracking waste water is far more dangerous than raw sewage.

Notre environnement, notre choix / Our Environment, Our Choice is also concerned that here, as elsewhere in the Commission mandate, the ability to overcome the negative impacts of shale gas development is simply presumed. Such presumptions are unfounded. Indeed, as the Council of Canadian Academies report cited a few paragraphs earlier notes, the research necessary for such work has not yet been done.

There is no known way to clean up a polluted aquifer, and techniques for dealing with waste water do little more than store the toxic, radioactive wastes and wait for the inevitable leakages and spills. All the impacts of the industry need to be determined and assessed first, and then studied, before it is rashly presumed that those impacts can, in fact, be mitigated. How does one mitigate the fact, as established by the Colorado School of Public Health, that babies born near gas fields consistently have lower birth weights and a higher incidence of congenital heart problems?

Further, we are concerned that the Commission's members simply do not have the high degree of scientific expertise to be in a position to make such a plan, or to disregard the considered opinion of such august groups as the Council of Canadian Academies. The already identified gaps in knowledge and lack of critical research needed for such a plan is very evident indeed. It's time for the provincial government and industry proponents to stop deluding themselves that all New Brunswick needs is a 'plan' for dealing with shale gas development. The research needed for such a plan simply doesn't exist because it hasn't been done.

Indeed, the absence of long-term, peer-reviewed studies on the pubic health impacts of shale gas development means data essential to the Commission to carry out its mandate has not yet been gathered. To talk of developing plans for mitigating the impacts of an industry before the full extent of those impacts on both public infrastructure and on public health have been identified and fully evaluated by scientists with the necessary training and experience for such work is to put a very dangerous cart before the horse.

Again, *Notre environnement, notre choix / Our Environment, Our Choice* is concerned that the provincial government has already decided to allow fracking in New Brunswick, and will assert that the Commission's report, whatever it may say, provides a guide for proceeding with development and, not incidentally, a way around keeping the election promise that got it elected. We do not doubt the integrity of individual Commission members, and we also do not doubt that the provincial government may only pay lip service to your report and use it as a rationale for a decision already made.

Nor is such a scenario far-fetched! This is precisely what happened in New Brunswick in 2012 with the infamous LaPierre report commissioned by the Province to examine shale gas. The previous government used this report for its shale gas development blue-print. Even after the scientific credibility of the LaPierre report was destroyed by the revelation that its author did not have the scientific credentials he had claimed to have, the government never paused to even reconsider the discredited report. Rather, it continued on its 'pre-determined course,' even though to continue meant to rely on junk science. Quite simply, the decision on shale gas had been made before the LaPierre study was commissioned. There never was any attempt objectively to evaluate shale gas development.

Given the vast catalogue of negative experiences with shale gas elsewhere, it remains extremely questionable whether it is even possible with current technologies to mitigate the negative effects of shale gas without seriously compromising in some degree public health and the health of the environment on which all life depends.

We note that during the four years the Progressive Conservative government tried to force shale gas development on New Brunswick, it never, ever released a single peer-reviewed study to back up it's claim the industry was 'safe' - not a single one! During the same period, NBASGA was able to identify and catalogue a veritable library of scientific data vindicating the concerns of people opposed to shale gas development.

Of particular concern to *Notre environnement, notre choix / Our Environment, Our Choice* is the presumption that there is some way to develop a plan that will magically fix the negative health impacts associated with the industry and make everything alright again? How do you fix cancers for those who get sick and their families, or babies with congenital heart defects, and so on? Do proponents of the industry ever go beyond denying the reality of such problems and actually propose solutions? So far as we can determine, industry advocates simply follow a policy of 'deny, deny, deny' whenever any negative impacts associated with the industry are discussed.

4. A process in place to respect the duty of the provincial government to consult with First Nations.

The constitutional duty of governments to consult with Aboriginal people about proposed economic and industrial development on their traditional territories is well known. What may be less well-known, but critical to New Brunswick, is a June 26, 2014 decision of the Supreme Court of Canada in a case brought by the Tsilhqot'in People in British Columbia. We urge the Commission members to study that decision (*Tsilhqot'in Nation v. British Columbia* 2014 SCC 44) very carefully.

That June 26 Supreme Court decision notes that, in Canada, "Aboriginal land rights survived European settlement and remain valid to the present unless extinguished by treaty or otherwise." It also says that "the right to control the land conferred by Aboriginal title means that *governments and others seeking to use the land must obtain the consent of the Aboriginal title holders.*"

There is no disputing the well-known historical fact that in New Brunswick and much of the Maritimes, most Aboriginal land was never ceded or sold to either the Crown or to third parties. Indeed, the Royal Proclamation of 1763 forbade such sales or ceding of traditional Aboriginal land.

Simply put, the Supreme Court of Canada says that Aboriginal people in New Brunswick (and elsewhere in Canada) today still retain lawful title to their traditional territories never sold or ceded to the Crown. In New Brunswick, the Province has granted leases to shale gas companies on Aboriginal land never sold or ceded by any treaty, despite having no legal right to grant such shale gas (or timber) leases without the consent of the lawful owners.

Notre environnement, notre choix / Our Environment, Our Choice also notes the utter failure to date of the Province of New Brunswick to meet its legal obligations to Aboriginal people. Amnesty International is the world's foremost human rights organization and is justifiably a voice that 'speaks with authority on the world stage.' In 2013 Amnesty International was sharply critical of the Province of New Brunswick for its failure to meet its international and national legal obligations to Aboriginal people in New Brunswick.

Amnesty International's critique of New Brunswick's failures in meeting its legal obligations to Aboriginal people serve to demonstrate that no consultations with Aboriginal people on shale gas have taken place in New Brunswick. That means *New Brunswick has yet to even*

begin consultations with Aboriginal people about shale gas and is, in effect, starting at the very beginning. Canada is a signatory to the international agreements mentioned by Amnesty International which state that the legal obligations of governments toward Aboriginal peoples include having their "free, prior and informed consent" to any use of their lands.

The 2012 Supreme Court decision for the Tsilhqot'in People in British Columbia is a very clear statement that, when dealing with proposed developments on traditional Aboriginal land in New Brunswick, the legal duty of our provincial government extends beyond consultations to obtaining their consent. This is the first principle that must be publicly acknowledged by this Commission and by the Province of New Brunswick in fulfilling its legal obligations to the First Nations of our province.

To date there has been no consultation with the Elsipogtog First Nation, and the Elsipogtog First Nation has declared formally its opposition to shale gas development. Indeed, the Province of New Brunswick seems to be pretending it does not need the consent of Aboriginal people to allow industry access to Aboriginal land. Such an approach is regrettable and simply shows a cavalier disregard for the law. To proceed without Aboriginal consent would be both illegal and immoral.

Notre environnement, notre choix / Our Environment, Our Choice notes that our Aboriginal allies on the Elsipogtog First Nation are currently raising money to assert their legal ownership of their traditional territories here. Indeed, because we stand with our First Nation allies, we have helped to raise money for that lawsuit. We beseech the Commission to advise the Province of New Brunswick to acknowledge publicly what lawyers are telling us privately, namely that Aboriginal people in New Brunswick, and elsewhere in Canada, still retain legal title to their un-ceded, un-sold traditional territories.

Thus, the cornerstone of future Provincial-Aboriginal relations in New Brunswick must be the recognition that Aboriginal People here are still the lawful owners of their traditional lands that are often euphemistically termed 'Crown Land" . Anything less by the Province of New Brunswick is a denial of justice and the rule of law.

5. A mechanism in place to ensure that benefits are maximized for New Brunswickers, including the development of a proper royalty structure."

Yet again, the mandate given the Commission by the Province of New Brunswick seems to betray a hidden agenda. It also presumes the Commission has the necessary training, expertise and experience to evaluate and develop a taxation and royalty structures appropriate for a resource extraction industry. It also assumes, again with no basis, that the revenues from shale gas will be sufficient to deal with all the negative public health impacts, environmental degradation, and damage to public infrastructure from shale gas development.

Further, what constitutes a 'proper royalty structure' is itself a matter of dispute. Norway, for example, captures the lion's share of revenue from its oil and gas resources for the public treasury, while other jurisdictions closer to home seem to prefer a 'fire sale' approach to developing resources. The Commission is here being asked to make political decisions which the Province is free to disregard.

Rather than discussing the technical details of royalties and fiscal policy, *Notre environnement, notre choix / Our Environment, Our Choice* simply wishes to propose

guidelines and principles for royalty structures that should apply to all resource extraction companies operating in our province.

The starting point for any royalty structure must be a recognition that *it is the people of the province of New Brunswick who are the rightful owners of provincial resources and, as such, it is the people of New Brunswick who must reap the majority of revenue from the development and marketing of their resources*. Embedded in such a recognition that 'the resources belong to the people' must be the acknowledgement that Aboriginal people are still the lawful owners of any and all of their traditional lands not sold or ceded by Treaty.

Thus, *Notre environnement, notre choix / Our Environment, Our Choice* urges the Commission to formally state in its report that:

1. Taxation and/or royalties on any resource development initiative must apply to all revenue generated by the sale of that resource from 'Day 1';

2. While a provincial government may decide to give companies 'a break' in taxation and royalty rates during the start-up phase of their operations to cover capital and related costs, at no time should the revenue received by the Province from the marketing of a resource fall below 20%;

3. Once a resource company has recovered its 'start up' costs, the revenue received by the Province from the marketing of the resource in question should not fall below 50%; and

4. When resource companies begin production, 50% of the revenue the Province of New Brunswick receives in taxes and royalties should be held in trust for attempting to deal with environmental damage and for the development of renewable resources in New Brunswick.

The taxation and royalty levels recommended by *Notre environnement, notre choix / Our Environment, Our Choice* are based on the experience of countries like Norway where government takes seriously its obligation to maximize the benefits from resource development for its people. Canadian royalty structures tend to be far too low and are simply giving away the rightful heritage of future generations. The notion that resource companies must have low royalties lest they leave has long since been demonstrated to be fanciful myth perpetrated by the resource companies themselves. In other jurisdictions, it has been demonstrated that so long as a company can make a fair profit, it will continue on.

Notre environnement, notre choix / our environment-our choice **again states its unequivocal opposition to shale gas development. No revenue can compensate for ongoing damage to people's health, environmental devastation, and the desecration of our children's heritage**.

Conclusion

Notre environnement, notre choix / Our Environment, Our Choice wishes to thank the Commission for coming to Richibucto to meet with us. Since the shale gas controversy began five years ago, we are acutely conscious of the fact that provincial cabinet ministers, that is, the people with authority, have consistently refused to meet us. Similarly, the Province of New Brunswick has not been able to release a single independent, peer-reviewed study that says shale gas development is safe and does not pose a serious threat to the health and well-being of New Brunswickers and the communities we all live in.

In our submission to you we have asked that, as well as our submission, you carefully study several other documents. We have assumed the Commission already has the documents, and we would be happy to provide them to you if you don't have them.

Those documents are:

1 *The Citizens Guide to Shale Gas,* available on the NBASGA website;

2 NBASGA's Statement of Claim in its lawsuit against the Province of New Brunswick, available on the NBASGA website;

3 The Supreme Court of Canada decision of June 26, 2014 in the case of *Tsilhqot'in Nation v. British Columbia* 2014 SCC 44, available on-line.

4. Documentation used by other jurisdictions to explain their bans and moratoria on shale gas development.

5. *Environmental Impacts of Shale Gas Extraction in Canada: The Expert Panel on Harnessing Science and Technology to Understand the Environmental Impacts of Shale Gas Extraction* produced by the Council of Canadian Academies

Notre environnement, notre choix / Our Environment, Our Choice notes that NBASGA's lawsuit against the Province of New Brunswick (#2) asserts that shale gas development poses such a grave threat to people's health and well-being that it is unconstitutional. The Province of New Brunswick has been dragging its feet for more than a year with the result that the case still has not gone to trial.

Given the extensive, detailed compilation of evidence gathered by NBASGA and summarized in its Statement of Claim, if the Province of New Brunswick believes shale gas can be developed safely, it is incumbent upon the Province to prove its case in court. It would be sheer folly to proceed with any development that has the potential to be declared illegal by the courts.

Similarly, the Province is forcing the people of Elsipogtog to go to court to assert their title to Aboriginal land not ceded or sold to the Crown. The fact that the Province of New Brunswick has failed to recognize their ownership in the wake of the Supreme Court's decision in *Tsilhqot'in Nation v. British Columbia* is an unwarranted denial of justice to all Aboriginal people in New Brunswick. A denial of justice to one is a denial of justice to all.

We urge the Commission to predicate its report by stating that the Province of New Brunswick has a moral and political duty either to dispute the lawsuits against it in court or concede the case brought by the respective plaintiffs. These cases must be settled before any question of shale gas development is considered. Government attempts to defeat these serious challenges to the legality of shale gas development by financial attrition occasioned by dragging out court proceedings are reprehensible. *Notre environnement, notre choix / Our Environment, Our Choice* expects the Commission to urge the Province to deal expeditiously with any and all legal obstacles to developing shale gas before any other action is taken.

Again, *Notre environnement, notre choix / Our Environment, Our Choice* wishes to thank Commission members for taking the time to consider our submission and urges you to, as the adage puts it, '*speak the truth to authority*.'