

FRACKING AND THE ENVIRONMENT: Landmark Fracking Lawsuit starts with Twist in Alberta

By [Andrew Nikiforuk](#)

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A landmark lawsuit against an energy giant and two Alberta government regulatory agencies concerning water well contamination by hydraulic fracturing started with an unusual twist in Alberta's Court of Queen's Bench yesterday.

Judge B. L. Veldhuis began the proceedings in a Drumheller courtroom attended by 20 landowners from across the province by admitting that she was going to do something unexpected: she then asked for a shorter statement of claim.

Jessica Ernst, a 54-year-old oil patch consultant and scientist from Rosebud, Alberta, is suing EnCana, one of the continent's largest unconventional gas producers, for negligence causing water contamination and the Alberta Energy Resources Conservation Board (ERCB), the province's energy regulator, for breaching the Charter of Rights.

The lawsuit alleges that the regulator "banished" Ernst, now a celebrated landowner in the province, from contact with the board after she publically spoke out about water well contamination and noise pollution.

In addition, the \$33-million lawsuit alleges that Alberta Environment, one of two agencies responsible for groundwater protection, failed to uphold its regulatory responsibilities.

The lawsuit effectively puts on trial the practice and regulation of hydraulic fracturing: the controversial blasting of coal, oil and shale formations with toxic chemicals, sand and water.

North America's fracking boom has increased natural gas supplies, lowered gas prices and weakened the bottom line of many gas companies. The poorly studied technology, which can also cause earthquakes, has sparked moratoriums, debates and regulatory investigations from New Brunswick to Wyoming due to concerns about groundwater contamination, air pollution and methane leaks.

Neither EnCana nor the Alberta regulators have fielded statements of defence on shallow fracking incidents that took place eight years ago during a frenzied coal-bed methane drilling boom in central Alberta.

Instead, lawyers for both EnCana and the ERCB came prepared to argue a variety of motions to dismiss the entire case or strike out entire paragraphs from Ernst's highly readable 73-page statement of claim as "inflammatory" and "embarrassing."

In particular, the ERCB, whose mission is to develop oil and gas "in a manner that is fair,

responsible and in the public interest,” was prepared to argue that it has “no duty of care” to a landowner with contaminated water.

Toronto lawyer Murray Klippenstein, who represents Ernst, agreed with the judge’s request and says he will submit a shorter claim within a month. (Klippenstein, a no-nonsense litigator on critical justice issues, successfully represented the family of slain First Nation activist Dudley George against the Ontario government of Mike Harris.)

“We know that EnCana and the Board and the government did not like the detailed description of Jessica’s case and were trying very hard to have parts removed,” explained Klippenstein outside the courtroom.

“The judge wanted a more concise description and that can be easily provided.”

The lawsuit alleges that an experimental and shallow drilling and fracking program into coal seams contaminated Ernst’s water source with so much methane that she could light her tap water on fire.

“EnCana refused to address Ms. Ernst’s concerns or answer her questions; failed to investigate Ms. Ernst’s water contamination problem; refused to disclose the chemicals used in fracturing, drilling and servicing operations,” adds the claim.

The U.S. Environmental Protection Agency has linked fracking activity by EnCana to the contamination of groundwater in Pavillion, Wyoming. EnCana, which is losing money and shareholder confidence due to its extreme dependence on industrial scale shale gas plays, calls the EPA investigation flawed.

Landowners at the courthouse said they came to support Jessica Ernst as a champion of the public interest and groundwater protection.

“Jessica is doing what we all want to do but don’t have the balls to stand up and do,” said Shawn Campbell, a Ponoka area rancher who also has water contamination problems related to fracking. “Water is the key issue. If you don’t have clean water what are you going to do? You won’t live long.”

Dairy farmer Jan Slomp, a board member of the National Farmer’s Union, which has called for a moratorium on fracturing, also attended the first day of the trial because of his admiration for Ernst’s courage.

“I’m here to support Jessica. This issue needs to be brought into the public arena. People are concerned and know something is wrong.” [. . .]

Andrew Nikiforuk wrote the first stories on hydraulic fracturing and the Ernst Case for ROB Magazine and Canadian Business magazine.

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Articles by: **Andrew
Nikiforuk**

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