



ALBERTA OIL

The Business of Energy

What Does the Anti-fracking Movement Mean for Canada?

The anti-fracking movement continues to pile up victories, even scoring one in the heart of Texas. Is Alberta next?

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Tom Mullikin is at the podium, his voice rising and falling with the cadence of a revival tent preacher, extolling the glories of the American energy revolution and raining fire and brimstone on the great apostates, Environment Inc. and the local anti-fracking movement. The South Carolina lawyer knows his audience; a smattering of energy industry types, but mostly small town politicians from Texas and Colorado and other energy-producing states. This is the Energy Summit, put on by the Ports-to-Plains Alliance, a pro-industry group headquartered in Lubbock, the hometown of '50s rock legend Buddy Holly, and someone in the audience remarks that the presentation feels like church. But if Mullikin is raining hellfire and brimstone down on his audience, it's with good reason. In 2014, the City of Denton passed a bylaw banning hydraulic fracturing within city limits, and kicked off a jurisdictional debate over who really has the power to oversee the development of oil and gas.

The Texas situation is a microcosm of the American anti-fracking movement. Mullikin says local environmental activists oppose fracking because it's a noise or traffic nuisance, but once opposition rears its head, the professional activists aren't far behind, supplementing and in many cases supplanting locals. "Opponents of shale energy have urged a number of municipal governments to expand local regulation," says Mullikin via email. "The environmental community only has so much bandwidth. But they're going to try and tee these fights up in every state, county by county." New York is the only state with meaningful reserves to ban fracking, which it did in December. But fracking opponents are putting up a fight in plenty of other jurisdictions. Colorado prohibited local ordinances from banning fracking, but several municipalities passed them anyway, sparking lawsuits. In Pennsylvania, home of the prolific Marcellus Shale, a 2012 law stopping municipalities from restricting the location of drilling was struck down by the state supreme court. An anti-fracking bylaw in Mora County, New Mexico, was defeated in federal court, but state legislation to prevent further bans failed to pass.

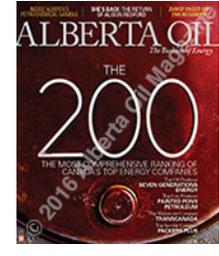
"I'm not an activist. I'm not part of a movement. I'm an ordinary Canadian citizen and an oil patch consultant and it is my responsibility to let the public know when there is serious harm happening."

— Jessica Ernst, environmental consultant

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Thus far, the states are persistent. But opponents are persistent and the battle is far from over, says Michael Whatley, a policy advisor for the Consumer Energy Alliance based in Washington, D.C. He says Canada should brace itself for similar strategies and tactics by environmentalists. “I believe you’re going to start seeing these same types of activities making their way north of the border,” says Whatley. In reality, they’re already here. “It’s a very hot issue,” says Emma Lui of the Council of Canadians. “And you can really see that concerns about water, public health impact, climate impact and stuff like that are at the forefront of these movements.” She points out that many Canadian activists were inspired by the American anti-fracking campaigns.

And while the clear Constitutional primacy of the provinces over resources makes the prospect of a municipality banning fracking the way Denton did unlikely, Canada’s anti-fracking movement has a card in its hand that its American counterparts don’t: aboriginal title. “People have to realize that there’s unfinished business across the country and it’s no longer business as usual,” says Bill Gallagher, lawyer and author of *Resource Rulers*, an analysis of the dozens of legal cases won by aboriginals in recent years. Water and aboriginal rights were at the forefront of a 2013 fracking protest that turned violent near the Elsipogtog First Nation in eastern New Brunswick. The issue divided the province and played a key role in the fall 2014 election, which Tory Premier David Alward turned into a referendum on fracking. Liberal Brian Gallant promised a moratorium and won a solid majority, and Gallagher says the new premier will soon be delivering on his fracking ban promise.

The example of Elsipogtog was not lost on Nova Scotia. After several reviews of hydraulic fracturing, last November the Liberal government passed Bill 6, placing a moratorium on hydraulic fracturing except when done for “research and testing” purposes. The only good news for the energy industry is that the moratorium is intended to be temporary while the government decides on a long-term strategy. Both Quebec and Newfoundland and Labrador took less dramatic routes to arrive at more or less the same place. Newfoundland declared a moratorium in 2013, followed by a five-person panel to review the “socio-economic and environmental implications of hydraulic fracturing” last fall. Quebec banned fracking along the Lowlands of the St. Lawrence River in 2013 because of a public outcry over the practice. Ontario has so far refused to ban fracking, but has committed to the seemingly standard practice of conducting a review, and it’s anyone’s guess where that may lead.



Ironically, the fiercest battle against fracking may be fought in the energy sector’s own backyard. Jessica Ernst, an oil patch consultant with a master of science degree, is the reluctant rock star of the Canadian anti-fracking movement because of her battle with Calgary-based Encana over her allegations the company contaminated the water well on her property near the village of Rosebud, 125 kilometers east of Calgary. Ernst has spent the last seven years pursuing Encana and the Energy Resources and Conservation Board (now the Alberta Energy Regulator) in court. And while she’s willing to fight, she bristles at the idea of being seen as an antagonist to industry. “I’m not an activist. I’m not part of a movement,” she says. “I’m an ordinary Canadian citizen and an oil patch consultant and it is my responsibility to let the public know when there is serious harm happening.”



A burned police vehicle in Rexton, N.B., where police tried to enforce an injunction to end a protest against shale gas exploration in the province in October 2013
CP Images

In late April she scored a major victory when the Supreme Court of Canada agreed to hear her appeal of an Alberta court’s decision to exempt the regulator from her suit. Encana denies it

fracked the shallow coalbed methane seams near Rosebud, saying it stimulated them with high-pressure nitrogen. The company's statement of defense claims it tried several times to test Ernst's well water but was denied access. Encana also claims it "complied with or exceeded the requirements of all relevant laws, directives and regulations in respect of its coalbed methane." But Gallagher says that if Ernst does score a win in the highest court in the land, it would give the anti-fracking movement a huge boost in credibility and public visibility.

That visibility, meanwhile, would be seen through the eyes of a new premier who has historically been skeptical about the safety of fracking. Three years ago in Lethbridge, while she was the NDP's environment critic, Rachel Notley called for an independent scientific review of fracking, not unlike the reviews that led to fracking bans in the Maritimes. "If we don't get a better ... understanding of what's safe for Albertans, we run the risk of doing some really long-term damage," she told reporters. "In Alberta, we have no regulation that specifically covers fracking activity." The question that the energy sector will be asking is whether it will be the aggressive environment critic or the cautious new premier who steers the NDP government's approach to fracking going forward.

Either way, though, Mark Salkeld has a plan. He's the CEO of PSAC, the organization representing oilfield service companies, including all of Canada's frackers. For the past few years Salkeld and his staff, aided by academics, scientists and the regulator, have been hosting meetings in halls all across rural Alberta – about 20 a year, he figures – to talk about fracking. People often arrive upset, sometimes very angry, and they come armed with a lot of questions. "As an industry, we need to get out in the communities, explain what we do and answer their questions," he says. "Just have that open and honest conversation – with facts, and indisputable peer-reviewed research by academics across Canada."

Salkeld doesn't claim that community consultation converts everyone to the gospel of fracking. There will always be some who oppose the practice on strict environmental or moral grounds, he says, but the large majority of those who have arrived at his town halls have left with answers. And he believes the same general approach – sound science, respectful dialogue and honesty – will work with Premier Notley and her merry band of political rookies. The former heavy-duty mechanic knows how to get his hands dirty and get the job done. He's as passionate as Jessica Ernst in his own way, but he echoes Michael Whatley, the Washington lobbyist, when he sums up the industry's strategy in one word: engagement. It worked in Texas, Salkeld says, and it will work in the heart of the Canadian oil patch, too.

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