

Supreme Court File Number: 36167

**IN THE SUPREME COURT OF CANADA**

(ON APPEAL FROM A JUDGEMENT OF THE COURT OF APPEAL OF ALBERTA)

BETWEEN:

**JESSICA ERNST**

**(Appellant)**

-and-

**THE ALBERTA ENERGY REGULATOR**

Respondent

(Respondent)

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**MOTION RECORD OF THE PROPOSED INTERVENER  
RUPERT RICHARD FRANCIS GÉRARD HERON GOODHART**

*Pursuant to Rule 55 of the Rules of the Supreme Court of Canada*

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# TAB 1

**IN THE SUPREME COURT OF CANADA**

(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN

**JESSICA ERNST**

**Appellant**

-and -

**THE ENERGY RESOURCES CONSERVATION BOARD**

**Respondent**

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**NOTICE OF MOTION OF THE PROPOSED INTERVENOR**

**Rupert Richard Francis Gérard Heron GOODHART**

**(motion for Leave to Intervene)**

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**TAKE NOTICE** that the applicant,

RUPERT RICHARD FRANCIS GÉRARD HERON GOODHART (Rupert GOODHART) hereby applies to a Judge of this Court pursuant to Rules 47 and 55-59 of the *Rules of the Supreme Court of Canada*, for an order granting Rupert Goodhart leave to intervene in the present appeal and, if granted, permitting Rupert Goodhart to make both written and oral submissions, and for such further or other order as the Judge may deem appropriate.

**AND FURTHER TAKE NOTICE** that the motion shall be made on the following grounds:

- a) Rupert Goodhart is a self-represented Intervenor.
- b) Rupert Goodhart has a long standing interest in Safety, respect for Human Rights and Civil Liberties, from an early age, due to Family influences.
- c) In WWII, my Father was City Solicitor in the City of Leeds, Yorkshire. He taught his Articled Clerk, the ways of the Law and the Legal Profession. Later as a leading Town & City Planning Lawyer, Desmond Heap, was Knighted for his leadership in Town Planning

and to the Legal Profession. Sir Desmond Heap later became the President of the Law Society, London, for many years.

- d) My Father was appointed Military Governor of the Oldenburg Region of Germany and was responsible for trying to find the least Nazi of the Administrative officials, including the appointment of Judges, Lawyers, Court Officials, down to water works engineers, and all the people of the Civil Administration.

So under his charge also were the “Displaced Person Camps” – Death and Slave Labour Camps. As many as 150,000 people were in such camps and often ten thousand or more perished even after liberation, due to being too far gone. So he saw the extremes of abuse of Human Values and what happens when governments get on the slippery slope of the abuse of civil rights.

I was the only child, at the age of about 16, that my Father could ever tell what he had seen and experienced. This has left me with an indelible imperative never by my actions, or as far as possible allow any others, to cause or allow harm to occur to a human being.

- e) Later he was appointed as one of the about 200 International Lawyers at the Nuremberg War Trials after WWII. He worked largely for the Prosecution, but sometimes for the Defence, of many important Nazi War Criminals. This also included those who “asked” for “volunteers” for Medical Experiments: Each child had paperwork meticulously filled out and signed, often stamped by Court Officials and witnessed by Lawyers or Justices of the Peace, as a “Volunteer”. The other “choice” was the Gas Chambers.
- f) My Grandfather was British Ambassador to many Countries, including Switzerland. As Chamberlain to the Pope after he retired, he arranged with other ambassadors of now non-existent countries in Eastern Europe, overrun by the Nazis, to issue Identity & Travel Papers and a ‘Laissez Passer’ to allow the people to travel across Italy to be smuggled by clandestine channels, to about 100,000 people and Jews to allow their escape via Brindisi to the Holy Land. The exact number will never be known, as these events never “Officially” occurred
- g) My paternal Grandmother’s Father designed and built the Base of the Statue of Liberty and the installations on Staten Is in New York Harbour. His Grandfather wrote the Patriotic Song, “Hail Columbia” and designed the Great Seal of the State of New Jersey. His father, Francis Hopkinson, was one of the Signatories of the Declaration of Independence, for New Jersey. His portrait, along with the other signatories, was painted a few months after signing and stayed in our family. The Goodhart Family gave the original portrait to the Congress and People of the United States of America, at about the occasion of the Bi-Centenary. It is the only such original portrait of a Signatory of the Declaration of Independence in England to our knowledge. It is now in the American Museum in Bath, England.

- h) Hence you can see that I have respect for Freedoms and the Law truly in my blood.
- i) ***“Life, Liberty & the pursuit of Happiness”*** sums it up and is not prolix.
- j) I wish to make sure that the abuses that have occurred due to the excesses of ***“Absolute Immunity”*** at the AER be placed on the ***“Straight Path”***, and the many good things the AER has accomplished to be maintained and strengthened, along with the many good people the AER also has on staff
- k) My experience of the Oil Industry Internationally, a rather too intimate knowledge of toxic effects of petrochemicals and fracture patterns in rocks, a strong appreciation of proper and practical Safe working practices, a love of the Law and respect for human dignity, gives me a clear picture of the kinds of the things which need to be done.
- l) I would appreciate if I could assist the Honourable Court in any way it so chooses.
- m) I shall not ask for any costs and request the Honorable Court to Intervene pursuant to Rule 55
- n) I also request of the Court to file a factum in accord with Rules 37 and 42.
- o) Permission to make Oral argument of such length as the Honourable Court shall decide and
- p) Such other order as the Honourable Court may deem just.

AND FURTHER TAKE NOTICE that the said motion shall be made on the following grounds:

- a) I have a significant interest in the issues raised in this appeal
- b) I have worked all my life to promote proper Safety and respect for sensible Regulation and human dignity.
- c) My International Experience in the Oil Industry places me in a somewhat unique situation to assist the Honourable Court, in the areas of which I have knowledge,
- d) I take no position on the disposition of this appeal
- e) Rules 47 and 55-59 of the Supreme Court of Canada
- f) Such further or other grounds as may seem fit and may be permitted.

Dated at Cochrane, Alberta, this 29<sup>th</sup> Day of November 2015

Signed by



Rupert R. F. G. H. Goodhart



# TAB 2

Court File No 36167

**IN THE SUPREME COURT OF CANADA**

(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)

BETWEEN

**JESSICA ERNST**

**Appellant**

-and -

**THE ENERGY RESOURCES CONSERVATION BOARD**

Respondent

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**AFFIDAVIT OF  
RUPERT RICHARD FRANCIS GÉRARD HERON GOODHART**

***Pursuant to Rule 57 (1) of the Rules of the Supreme Court of Canada***

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I, RUPERT RICHARD FRANCIS GÉRARD HERON GOODHART (Rupert GOODHART), residing in Rockyview County, Alberta, do make oath and swear that what is stated in the following pages of TAB 2 pages 11 to 36, covering a period of before 1974 and to the present, are true to the best of my belief, knowledge and memory, as I personally experienced or heard them.

Other Information I have received over the years since about 1974, was from those I believe to be reliable and honest.

## SUMMARY

### RUPERT GOODHART'S INTEREST IN THIS APPEAL, HIS QUALIFICATIONS & BACKGROUND TO MAKE A USEFUL CONTRIBUTION TO THE COURT'S DELIBERATIONS

I bring to the Court insights concerning a broad spectrum of often severe adverse consequences stemming from AER's Provincially granted absolute immunity. AER's standards dropped from the 'best in the world' in ~1974 to the present situation:

- 1) I have International experience in Oil & Gas Exploration & Production worldwide. Safety & complying with Regulations were vital to my job. I wrote & ran Safety courses. I wrote Safety & Work Regulations, initially for Alberta WCB, now used worldwide. Throughout the course of about 1,000 crew management or consulting assignments, I supervised directly about 250,000 people in 25 countries on land & did projects in 60 countries & worldwide at sea.
- 2) I worked in the High Explosives Industry worldwide, where Safety & Regulatory compliance is the Number One priority. Most of my patented inventions (in 35 countries) were for Oil & Gas use. Expert witness: Federal Parliamentary Enquiry, Beloeil Québec plant explosion where 7 men died.
- 3) I did seismic surveys in underground coal mines to find crack & fault structures ahead of a coal face. I know how water flows in coal seam cracks from my work done in several coal seams.
- 4) I had close contact, a working relationship, as an Intervenor, now as an interested party, since about 1974 to today, with the Alberta Energy Regulator (AER), Energy & Utilities Board (EUB) and Energy Resources Conservation Board (ERCB).
- 5) Limited "Immunity" may be needed for strictly regulatory functions. Inspections, enforcement, standards, compliance, etc., are similar to the concepts & practices of City Building Inspectors, etc, so don't need "absolute immunity".
- 6) AER's "absolute immunity" for: standards, enforcement & relations with public or land-owners results in lack of accountability & openness. AER's "In-house Mediation" mechanism infringes on Freedom of Speech. Both have lead to low AER morale, poor ethics & "sloppy," unsafe oil-field work practices.
- 7) For "persistent" effects which last centuries (harm to aquifers, persistent toxins, long term pollutants) the "Precautionary Principle" must apply. Legal principles applying to things "fixable" by the award of money (e.g. mortgage fraud) cannot repair health, or reverse death. Responding to health or ground-water complaints, after the damage is done is far too late.
- 8) A Commission of Enquiry into AER's Standards and Accountability, with oversight by International Jurists & Experts is called for. Some AER activities remain world class or truly excellent; others are abysmal, even criminal.
- 9) Twice chemically poisoned, I bring insight into recovery from 'sloppily' used petrochemicals.

**a) My work history (emphasizing contact with the Oil & Gas Regulator & Safe Working Practices )**

I have always felt the people I was responsible for must WORK SAFELY & have FUN. Everything flows from these principles. So the Health & Safety of employees, sub-contractors & contractors and Health & Safety of the General Public around the operations I was in charge of is at the TOP of the list. A job well done & good profits then flow naturally. I had the responsibility in many Oil & Gas projects or shipments of High Explosives at home & overseas, to conform to several differing International or Country Regulatory & Legal Regimes, so as to ensure the Safety of the General Public & act in the Public Interest.

I have worked in the Oil & Gas Business in ~25 Countries. I have supervised, advised on or travelled to projects in ~60 Countries on land & everywhere worldwide at sea.

I have worked on projects across Canada, in the High Arctic, McKenzie Delta, Yukon, BC, Alb, Sask, Man, Ont, Qué, NB, Sable Is. (NS) & in many US States from Alaska to Texas, New England to Calif.

These projects have frequently been at the limits of known technologies & of extreme difficulty.

I often brought simple solutions; improving safety, cost effectiveness and the quality of the results.

**I specialised in solving “insoluble problems”, mostly in the Oil & Gas Industry.**

The “best” so-called “accident” to have, is the one that never happens !

- Whilst at Birmingham University UK, I was responsible for Radiation & Nuclear Safety of all undergraduate labs. I adhered to Regulations & sent results to the Regulator: The UK Atomic Energy Authority, Harwell. Later, I was on the Residents Committee of Hunterston Nuclear Power Station, Ayrshire. In Canada, Goodhart International Ltd designed studies for Atomic Energy of Canada, to establish parameters for the safe storage of Nuclear Waste in the Canadian Shield.
- Employee of companies working in Oil & Gas Exploration & production worldwide (28 yrs),
- Employee of, or lent to several Companies in the International High-Explosives Industry. I was the top inventor of the ICI Explosives Group worldwide, with ~ 10% of their Patents, which were registered in ~35 countries. My Patents were mainly for Oil & Gas applications.
- One exceptional job was to find ways to locate faults & cracks ahead of the coal face in a working coal mine. Part of the problem was that we were 15 miles under the North Sea: we could hear waves above us! So finding cracks & faults was needed to prevent disaster & loss of the mine. We used seismic waves travelling along the interface between the slow velocity coal & faster shale.
- Calgary 1974/5: I shared offices with Mr. J Harbourne, who was appointed by CIL Explosives to act as liaison with the Medical Officer of Health, the Coroner & especially with the families of the 5 men killed in CIL’s Calgary-Ogden Nitroglycerine plant, which exploded when filling Geogel cartridges. I had helped improve Geogel packaging earlier. There were no human remains: even weddings rings were removed for work. This posed especially difficult family sadness, legal & life insurance problems.

This unsolved accident, even now, is a reminder of my unceasing commitment to Safe Work Practices

- Regulation of Explosive handlers ('Blasters') in the Canadian Oil Industry was miserable. An Oil Industry Blaster incensed with the lack of proper Regulation, obtained a 'Blaster's Permit' for his pet dog. So his dog had the legal right to purchase, transport, store & use High-Explosives in Alberta !
- So I wrote "Explosive handling Regulations & General Safe Work Practices" that I thought should be followed for the Oil & Gas Industry. I used the 300 -500 word Calgary SUN Newspaper "dictionary". Even those with a poor command of English, or those tired after 16 hr work days, would be able to grasp easily. At the same time, it had to be clear for supervisors, executives, lawyers or even Judges in the event of Accidents or Deaths.
- The Alberta Worker's Compensation Board (WCB) accepted my draft for totally new Regulations for the Oil & Gas Industry. Then it spread to WCB in Sask, Manitoba, BC, Yukon & NWT.
- Mr Harbourne & I started safety courses for Oil Industry workers & Supervisors. WCB & Insurance fees & accident rates dropped for contractors who attended our courses. Crew morale, staff turnover, quality of oil prospecting results & productivity; all improved. Equipment wear & tear were less.
- **SAFETY PAYS and not just in fewer injuries. It pays equally for the Private & Public Interests**
- To provide visual impact to these courses, I took photos of poor safety practices. I would project the photos onto the screen, saying '**WE DON'T DO THIS, DO WE?**'
- I showed some photos of a Sun Oil operation to the supervisor of Sun Oil. The incident shown could lead to massive loss of life. So I told the Sun Oil Supervisor that corrective action was required, immediately. The supervisor told me to surrender my photos and not to speak to anyone about the situation. I told him that if the Explosive magazine blew up with 100 tons of Explosive, the whole crew could perish. The camp location was on thin first year sea-ice, with 300+ ft water depth, so the whole camp would slide through the broken ice, the aircraft landing strip would be destroyed and the only snow ploughed access to the camp rendered impassable.
- I told him that all Magazine fatal incidents came under Federal Jurisdiction. A Federal parliamentary public enquiry had to occur. He told me I must not give evidence. He told me that they would never buy again any more supplies from CIL. I opened my brief-case and took out my competitors' brochures & literature. I told him the best products to buy, who working for my competitors to ask technical questions & the proper safe use of my competitors' explosives !
- True to his word, he placed no more orders. Every few months, I called on him uninvited, making a general nuisance of myself and asked him if he was carrying out the safety rules that I had showed him. I told him, that being the customer, he had the absolute right to buy from whom-ever he wished: I just wanted to make sure Explosives were used safely.

- I impressed on him that the good name of Sun Oil was in play. I said Sun had a responsibility towards their contractors' staff & to the general Public. Parts of their operations still remained poor.
- About a year + later, when manning CIL's booth at the Geophysicists' annual convention, I was approached by a stranger, who looked at my name tag and said "***I would like to thank you for what you have done for my Company***". I asked what his name was, the Company he worked for and what exactly I had done that he felt he needed to thank me.
- He said he was the President (or V-P) of Sun Oil. He said all the items of poor safety would never occur again, as all of the safety corrective actions I had raised were now part of Sun Oil's Company policies, and they were written into the Contracts with contractors. He was profuse in his thanks and said '***Here is the first order of a continuing fruitful relationship!***'
- My 'Explosive Handling Regulations & Safe work Practices' were incorporated into Sun Oil's Safety Procedures & Contract provisions. I was given an office in their building and helped them plan their High Arctic Sea Ice exploration programmes, while still remaining an employee of CIL! I also helped formulate Safety Policy & Standards for their staff in other departments.
- Previously, nearly all Oil Companies in Canada at that time more or less disavowed responsibility for Safety in their operations, saying Safety was solely a concern & liability for their contractors. This sea-change in attitude by Sun was a first in Canada. With Sun Oil as a shining example, in a few years nearly all Oil Cos incorporated Safety Policies of all of their operations (including contractors & responsibility to the Public), into their operating manuals.
- I helped with new Safety Policies for several major Oil Companies, which included working in the Oil Companies' own offices on confidential data and attended meetings with these Oil Companies Executives & the ERCB /EUB, as many Oil Cos wanted to go beyond the minimums laid down by the Regulator (both EUB/ERCB and WCB)

**Close relationship with Energy & Utilities Board (EUB) from 1974 to 1976, & ongoing later.**

- At this time, the EUB's activities were of an excellent to very high standard for everything I came into contact with. Their staff were well qualified, were motivated, worked long hours, were diligent and were cognisant of a strong duty to the public, both individually & collectively, especially including private land-owners. The EUB was 'First Class' and better in every way than any equivalent organization I had come into contact with, worldwide, in other countries.

- 1976: 3 days after I started a new post in CIL's Explosives Research Laboratory (ERL) in Beloeil, Quebec, a plant Explosion occurred killing 7 men. This new plant employed entirely new technology (water gel explosives) and was still under the supervision of the ERL.

I was the only person who investigated the debris, so I was asked by a member of the Commission, to present my findings to the Federal Parliamentary Enquiry set up under the Explosives Act. My evidence was contrary to explanations the Enquiry Commission favoured. The Commission had International members from Explosives companies worldwide. As a result of my evidence, the Commissioners requested I head a 10 man team to investigate the safety, design & operation of all new & old CIL Explosive plants.

I think no-one else felt able to look at the debris, partly as everybody working at ERL had had a hand in its design and operation, they felt just so sad. I felt I owed a duty to those who had died - guys I had never met - to make sure this never happened again and to honour their memories. Some of the debris was found **over 5 miles away**, such was the forces of the blast. The crater was 30-50 ft deep by 100 yards. Nothing remained of the building or blast berms.

Since the technology was entirely new, we had no historic accident & fatality record, as existed for Nitro-Glycerine Explosives from the time of Alfred Nobel, the inventor of "Dynamite".

So we had to decide "***What is the acceptable risk of death of workers of a profit making Company?***" CIL said "*we want our employees to be safe*". The Unions said "*we will not allow our members to work in unsafe situations*". But no-one could or would put a number on it. Some acceptance of increased risk inherent in Explosive manufacture, was evidenced by the higher pay paid by the Company and accepted by employees. But without a fatality number, we could not even start a proper risk analysis. We were at a total impasse: no-one could even bear to put a number on a human life. One evening at home, I thought: '***Where is about the safest place we can be, where nearly all of us spend hours every day?***' Next day I asked this of the 10 member group, who did not know the answer. I told them: "***It's being at home***".

So I asked the question '***Can we ever do better safety-wise, than being at home?***' No-one thought we could. So I asked the question '***How much extra risk with explosives manufacture can we never hope to get below?***' The figure we agreed as our target was TWICE the risk of "***being at home***". We removed risks of adverse weather, flooding or lightning, as Explosives plants are shut-down at such times. Electric shock was deducted: electricity around Explosives must be '*intrinsically safe*'. Theft & break-ins were deducted also. So "***being at home***" was safer than in our actual homes.

- **Twice the risk of 'being at home' became accepted worldwide for the new Explosives technologies.** This task was both very interesting & mind-numbingly tedious. I also had to 'keep the peace' between plant Managers, workers & the Union. Every item had to be verified to the minutest detail. With 50+ causes, each had to be well below 1 in 50 million. When we found excess fatality risk, designs were re-done, again & again, until we found safer options. Exactitude was imperative as people's lives relied on us being right. The responsibility was heavy on all of us.

Each 6 months we redid everything. It was shocking to find items we had totally overlooked !

- After I left CIL, I started my own Consulting Company; Goodhart International Ltd, in 1977, working for 20 Oil clients across Canada & in the Dominican Republic, Yemen, Libya & Texas, .
- Pro-Bono, I helped J Harbourne put on courses for the unemployed entering the Oil Exploration Industry. The Workers' Compensation Board (WCB) statistics showed ~50% of all lost-time accidents occurred in the first 14 days of a new employee on Oil Exploration crews. There were no training courses for new employees, then. After starting these courses, with a major emphasis on Safety, accident rates of new employees fell to almost nil. This was the first training courses specific for new workers in Oil Exploration, I think, worldwide. What we started later became part of the "Petroleum Industry Training Service" (PITS), now subsidised by the Alberta Govt. & the Oil Industry.
- We gave "new life" to many who had been on very long term unemployment, most of whom had lost all human dignity or hope of ever working again. Quite a few had criminal records, but in follow-up later, not one we had trained had offended again. Quite often for the first time in their lives, they felt good about being on the "*Right side of the Law*". I felt very good about this too.
- In '87-'88, I was lent by the Government of Canada, Canadian International Development Agency, (CIDA) Department of External Affairs, to the Government of Jordan, to further their Oil Industry. Part of the Contract was under Petro-Canada International Assistance Corporation (PCIAC).
- The Safety Manager of Petro-Canada came to our operations in the Field, in Eastern Jordan, by the Iraq border, and handed me PCIAC's Safety Manual. I was pleasantly surprised to see that most of it came from my previous safety manual. Quickly perusing it to see how much had changed since I wrote it, fully 80% was taken from my "Regulations" of 1974/75 or later additions. Only items specific to Petro-Canada's style of organization were new.

He told me, my work on Safety Regulations, which I had originally done 'pro bono' for the Alberta WCB, had been taken up by the Canadian Association of Geophysical Contractors & later by the International Association of Geophysical Contractors. My texts also became part of Regulations in Jordan & Morocco and other countries or places too, as well as across Canada.

I wonder how many lives, families and careers I have saved ?

- I was lent by the Government of Canada and also by ICI – Imperial Chemical Industries, (Britain's largest Company with interests in Chemicals & N Sea Oil) to the Governments / National Oil Companies of Jordan 1987-88, Morocco 1986-87 & Mexico 1971, to further their Oil & Gas Industries.
- I was also lent by ICI (UK) to 7 Explosive companies in the US, Canada & Mexico, some of whom were direct competitors with ICI.



**b) An “Active” Method of Protecting the Public During a Release of H<sub>2</sub>S (Sour Gas Emergency)  
An idea by Rupert Goodhart proposed to EUB & industry. Close relationship 1987 to 1993**

1986: Goodhart International Ltd. started a project with Dowty AeroSpace, Cybertronics Division & a Company making Activated Carbon filter cloth for UK’s Ministry of Defence, used in Nuclear, Biological & Chemical Warfare protection of soldiers. Our aim was to develop a “smoke hood” for evacuation from burning aircraft. I learned the US Federal Aviation Admin norm was an aircraft fault leading to a death, must be fixed if cost was less than US\$ 4.5 million per death (in 1988 \$), but not if cost was more. So rigorous risk vs. cost analysis had to be done on every aviation crash or fault found.

In ~1987, a Sour Gas well was proposed downwind of our house. Residents on long ‘Cul de Sac’ roads would be trapped and never be able to evacuate if a sour well blew out, as their houses were past the well locations. I thought if a furnace filter could be devised to filter Sour Gas, this would give protection for Emergencies. I told the EUB (now AER) + several Oil & Gas Companies involved in Sour Gas, of my H<sub>2</sub>S furnace filter project. I was a frequent visitor to EUB offices, to keep them up to speed on this project and asking for advice and technical planning too.

Activated Carbon Filters are very poor in capturing H<sub>2</sub>S. Over 4 more years, I spent \$100,000 of my own money, to see if a better military activated carbon cloth filter (specific for H<sub>2</sub>S) could be made. In 1992, we succeeded in making a special advanced H<sub>2</sub>S filter cloth, 20 times better than before, using a “doped Carbon”. This was tested at TNO, the Dutch State Testing Laboratory in Holland. It was very promising indeed for Emergency Situations. It would give good protection for low level but longer term “nuisance” odours. It also had useful adsorption of SO<sub>2</sub> & oil field hydrocarbons.

I wrote this up. I gave presentations to the EUB in June 2002 and to each of the Oil Companies involved. The roughly 25 EUB Staffers at one presentation told me that **“This is the best new idea to increase Public Safety for Sour Gas Wells that we have heard about in the last 25 years”**.

The EUB said to talk to the Oil Cos : the Oil Cos told me to talk to the EUB. Then they suggested to involve the University of Calgary. But no support was forthcoming. I was left with the strong impression that the EUB was not really greatly interested in better Public Safety. They seemed to ‘waffle on’ about safety, but do little.

One Company said this idea would **‘radically improve safety & reduce public complaints’** but ... **‘the present precautions were so good that no improvement was required’!** There was a total disconnect between these two statements, a situation far from rosy for residents often. This Oil Co. also enquired if a H<sub>2</sub>S furnace filter could be left in place, to reduce the many complaints of “nuisance odours”. Other companies were also concerned about ‘nuisance odours’. Larger H<sub>2</sub>S filters would be required for long term nuisance complaints (e.g. 4” deep by 20” „ 25” filter slots now available).

I spent about 6 years in work & discussions with the EUB, on a fairly constant basis, to no avail. The EUB never took up this idea, The current problems of people being poisoned or forced out of their homes due to reduced Sulphur compounds in Peace River Country air, could have been greatly reduced Somehow, the ‘oomph’ and enthusiasm of people at the EUB seemed to have lost something; it was no longer the same motivated and efficient organization as in the mid to late 1970’s.

e) **My First Poisoning in 1993/4 in a polluted Office Building undergoing extensive renovation.**

'93/4, I planned Oil Exploration programmes for 8 Oil Cos, in a building Down-town Calgary undergoing Renovation & fumigation of the A/C system Many of the products were very toxic, as I learned later.

I became very ill. I was treated by Dr L Stanfield MD, with various detox methods. I visited an old Dr who saw me years before, to make sure he kept my old records of when I was well. He said I should see Dr. Ken Corbet MD. Patients who had exposure to chemicals were sent to Dr Corbet by Insurers, WCB, EUB, etc.

I saw Dr Corbet as a 2<sup>nd</sup> opinion (late '94). I told him what had occurred & my symptoms, tests done etc.

***“Mr Goodhart, poisonous chemicals are NOT poisonous. Poisonous Chemicals are ENTIRELY safe. The symptoms you say you are suffering from are purely imaginary”.***

I gave him some of my tests. He glanced at each page for less than 2 seconds each, then declared:

***“I do not understand these new-fangled American tests”.***

Some of the tests were done with duplicate blood draw tubes, to be analysed a week apart, after the testing apparatus had been re-tested and re-calibrated. Three nurses drew the blood or were witnesses, in a thorough “Chain of Custody” procedure, as used for Evidence for Criminal Trials. The results of the two separate blood draws were compared for accuracy by Dr Lasseter PhD, the head of the Laboratory.

Dr Corbet said ***“The results MUST be wrong”***. When I told him of the above procedures and that the lab was recognized as a world leader and accepted in Criminal Cases, he then said

***“These levels MUST be safe!”***

Dr Corbet then recommended I take a certain Anti-Depressant drug (I forget the trademark). He told me that this drug was ***‘Scientific Medicine for depression for people imagining they had chemical exposure’***

Months before, a family friend Dr said this drug might help. I called the ‘professional help line’ of the drug company. I spoke to one of the two Drs who had developed this drug. 4 times he did not want to talk to me. The 5<sup>th</sup> time, I asked him a different question. Would he take an anti-depressant drug he had hypothetically developed if his CYP 1A2 & 3A4 (detox enzymes) were blocked? On that assumption, he told me that no anti-depressants marketed world-wide had ever been tested on victims of chemical exposure, so there were no scientific papers either: *‘as the market is far too small. In any case, my Company is a division of a chemical Company, so the Company Directors would never allow such tests’*. I asked about efficacy: he said *‘with 1A2+ 3A4 blocked, all you will get will be side effects & no benefits* In closing he said: *‘I wish you the best of luck you are going to need it!’*. He said NO drugs would work.

So Dr Corbet must have known that no scientific testing had been done of this drug for those chemically exposed. He went red. Then he shouted at me for ¾ hour. He said he was going to write a report to my ‘Family Dr’. I said this Dr hadn’t been my Family Dr for >5 years.

Three times I said I totally forbid him permission to write anything about me, as he had not examined me, nor run any tests, nor had he read or understood any of the tests I had shown him.

(I found out 5 years later that he did indeed write a report on me, stating he had “*briefly reviewed some American test results and they were all negative*”. This statement was simply totally false.).

I asked him if any of the patients in his testing room could tell me of their experiences with this drug. I pointed to a large door in his office, which I assumed led to his testing room. He told me it was a cupboard: he had no testing room and he had never actually treated any ‘chemical’ patient. So I asked him if he did any follow-up on the patients he gave opinions on. “No”, he told me, he had no patients, he sent them back to their family Drs. He did no later follow-up, either, to see which treatments worked and which did not.

I asked him how he had decided to see ‘chemical’ patients. He said his specialty was inoculations for business travel diseases. Somehow, other Drs sent him ‘chemical’ patients as they knew nowhere else to send them. He had no training in ‘chemicals’, nor their effects on people.

He calmed down a bit by that time. The visit ended with him shouting again at me at the top of his voice:

***“Mr Goodhart, Poisonous chemicals are NOT poisonous: they are ABSOLUTELY safe. The symptoms you are suffering from are purely imaginary. They may seem real to you but they do NOT exist.***

***If you think poisonous chemicals MIGHT be poisonous, you are suffering from Depression and you MUST take anti-depressant drugs.***

***If you are convinced poisonous chemicals ARE poisonous, then you are suffering from a MAJOR PSYCHIATRIC illness; you are suffering from DELUSIONS. You MUST take anti-delusional drugs.***

***I say again to you Mr Goodhart, POISONOUS CHEMICALS ARE NOT POISONOUS. POISONOUS CHEMICALS ARE ABSOLUTELY SAFE: THIS IS SCIENTIFIC MEDICINE!”***

He had no books on ‘chemical’ aspects in his book shelf, only on travel related topics.

In the U of C Medical School library, I later saw his book borrowing record. He had taken out no books or journals on ‘Chemical’ aspects, only a few travel related items. He had not studied toxic chemicals at all.

My Family Doctor mentioned ~12 years ago, she had sent a ‘chemical’ patient to him. I advised her against it, as I had talked to several patients who saw Dr Corbet and never heard of anyone getting good results from Dr. Corbet’s suggestions. About 6 years ago, my family Dr mentioned to me she had tried to send another ‘chemical’ Patient to Dr Corbet. He had called her back, to tell her he would not see her Patient and then asked her not to refer any more ‘chemical’ Patients to him. He told her that none of the Patients with ‘chemical’ complaints he had seen over the past many years or decades had received any benefit from his suggestions, none had recovered and he did not in fact know what to do with any chemically affected patients !

So by his own admission, Dr Corbet’s past tenaciously held beliefs about ‘chemical exposure’ were completely unfounded. How many thousands of people & their families in S Alberta have suffered, how many divorces, deaths or suicides have resulted?

Dr Kenneth J Corbet still remains the only 'Occupational Medicine Specialist' on the AER / ERCB list for Southern Alberta, whom those affected by Oil & Gas well emissions are supposed to consult. Surely the AER must know by now Dr Corbet cannot help people suffering from oil well emissions?

## f) Conversations with an “Occupational Safety & Health” Inspector, Spring to Autumn 1994

As mentioned before, in Summer ‘93 to early ‘94, I worked for a seismic consulting company. I designed about 10% of all worldwide 3-Dimensional seismic surveys for Oil Prospecting, probably more than anyone else worldwide. 3-D was at the cutting edge of Oil Exploration then, few people knew how to design them.

I suffered badly from the building air, so I asked for “Material Safety Data Sheets” (MSDS) which my boss, a member of APEGGA (Professional Engineers, Geologists & Geophysicists) refused to obtain for me. This was illegal (max \$50,000 fine /6 months in prison). My Treating Doctor Dr Logan Stanfield MD managed to get 3 MSDS of lacquer + 2 paints. I tried for 9 months to get the rest via an Inspector of Alberta Occupational Safety & Health, with no success.

The end of the final conversation went like this (from memory. I wrote it down, I don’t know where it is now):

- Rupert: I want the rest of the MSDS’s                      OHS Inspector: You will never get them
- R: But that’s against the law isn’t it?                      Insp: Yes, but you will never get them.
- R: I want an investigation.                                      Insp: You will never have an investigation
- R: I may not be able to work the rest of my life. Insp: That’s true. You likely won’t be able to work again.
- R: See here it says “*Causes permanent brain & nervous system damage. Highly toxic to the fetus...*” .  
There were probably about 20 pregnant mothers in the building and some are likely going from Doctor to Doctor to try to find out what is wrong with their little mite
  - Insp: You are right, there were likely about 20 ‘mothers to be’ in the building.
- R: and you won’t do anything?                              Insp: We won’t do anything about it
- R: a few people may have died or die early in the bldg                      Insp: You’re wrong
- R But surely a few people may die?                      Insp: You’re wrong !
- R: **But, but SURELY just a few will die...**                      Insp: **It won’t be a few, it will be more like 10 or 20**
- R: and you still will not investigate?                      Insp: We will never investigate
- R: Not to give the MSDS is a crime                              Insp: Yes, it is a crime
- R: Won’t you do something about it?                      Insp: We will never do anything about it
- R: But why will you not at the least do an Investigation?                      Insp: we will never investigate
- R: **But why not? (I asked this question several times)**
  - Insp: To get an Investigation I would have to report this to my superior, my superior will report it to the Deputy Minister, the Deputy Minister will report it to the Minister, the Minister will bring it up in Cabinet **and then Ralph Klein will SQUASH it.** I would likely be fired, or my career will go no-where **and you will NEVER get your MSDS’s.** [Ralph Klein was premier of Alberta 1992 to 2006]

At the end of this conversation, he told me that in his whole career, no Doctor had ever substantiated a case of poisoning by chemical exposure. Even when the symptoms suffered were identical to symptoms noted in the MSDS. Not even when the odours of petro-chemicals were easily remarked on the patient’s breath. He said I was wasting my time: even if blood tests showed the same Hydrocarbons as used in the building, no Doctor in Southern Alberta would ever say go out on a limb & say that toxic petro-chemical building chemicals must have caused my illness. The OSH Inspector predicted exactly what Dr K Corbet would do & had told me.

**No doubt most, or all, cases were sent to Dr K Corbet, who was also Occupational Dr. for the EUB/ERCB**

c) **As an Intervenor in the Canada 88 Lochend Level 4 Sour well  
(Intervenor relationship with EUB from 1998 to 2001 and in later years to 2003)**

From 1998 onwards, I was an Intervenor in the Canada 88 Lochend Level 4 Sour Well. I wrote letters to the EUB. I had numerous discussions with EUB Staff in the EUB Offices (in the old building), including the “Public Safety Officer” Ms. Marylin Craig. I was also a member of the Lochend Sour Well Intervenor Group, as well as being an individual intervenor for 3 subjects:

- 1) I Intervened for myself, as a sufferer of extreme “Chemical Sensitivity”
- 2) I intervened for patient safety & health and the continuing operation of Lochend Clinique
- 3) I intervened on the danger to the people of Calgary & Region from “Non-Accidental Interference”

Item 1) I personally told Marylin Craig (Public Safety Officer EUB) of my extreme sensitivity to chemicals at that time. In a meeting in Jan/Feb 2012, she remembered me well, saying in the late ‘90’s to early 2000’s, I was using oxygen, and wore a filter mask, plus I wore white cotton gloves, as even skin contact (e.g. with ‘No carbon required’ forms) was dangerous to me. My sensitivity was mentioned in the Public Intervention in front of the Board of the EUB, too.

Item 2) Many Lochend Clinique patients were very ill, some came from ‘Intensive Care’ a short while before, so safe operation of Lochend Clinique needed pollution levels far lower than so-called “Safe” levels. Probably 1,000 times lower would still be too high for some of our patients & me.

Item 3), I met with individuals of RCMP & Security Services to tell them of risks of sabotage of H<sub>2</sub>S Sour Gas wells, upwind of Calgary. My document was brought up at a Canada-wide City Security conference in CFB Suffield, Alberta. Several years earlier, when I first became concerned with this potential risk, I met with or called people from Oil Cos, several Govts, incl. the US, the Secretary General of the Arab League & others, to discuss aspects of protecting Oil & Gas facilities from sabotage.

The EUB (especially the Legal Dept.) seemed not to know of Middle East events as regards this risk. On advice of Canadian Security personnel, I removed my entire 35 page document on sabotage; with a “toned down” 4 page document entitled “*Non-Accidental Interference*”, for the Public Intervention. But in doing so, it lost nearly all of its impact. The EUB Legal Dept head lawyer, **told me they didn’t accept documents on a confidential basis.** As a Public Body everything the EUB did had to be open to the Public He said there were **NO ‘confidential agreements’** or ‘secret data’ in the EUB.

I was told that Dr Ken Corbet MD had been an advisor to the EUB on Public Safety of Sour Gas. I told several EUB people (including Marylin Craig, Public Safety Officer, EUB ) that Dr Corbet was ignorant that the trace element Molybdenum (Mo) was required for detoxification of H<sub>2</sub>S in the body. Those people with low or nil levels of Molybdenum (Mo) are unable to detoxify H<sub>2</sub>S, especially if they consumed Alcohol, or were exposed to Industrial alcohol vapours or Aldehydes.

Dr Corbet also lacked understanding of the action of Cytochrome (CYP) enzymes & how to treat poisoning. He had never treated anyone for any kind of poisoning. I was astounded that the EUB would choose this man as an “Expert”. It meant that those in the EUB knew even less than Dr Corbet. These EUB people have the lives of the Public in their hands, but know little about the risks this poses to the General Public. The enthusiasm & morale of people at the EUB, was at a low ebb.

**d) The Residents / Canada 88 / EUB committee to review the ‘Emergency Response Plan’ (ERP) (2001 to 2002 approx)**

The Canada 88 Sour Gas well was provisionally approved by the EUB, subject to review of the ERP by a committee of Residents, the Regulator & Canada 88. Over ~ 1½ years, we met one evening per 2 weeks and Residents spent extra time between meetings examining in detail the ERP, line by line.

With many on the Residents Committee being very knowledgeable as they worked in Oil, plus my experience in doing risk analysis, our analysis was thorough. The allowed maximum level of risk was 1 in 1 Million, which Canada 88’s Expert said was met. Our analysis showed it was wildly optimistic, with many items not even considered. The actual risk we calculated was 1 in 10,000 or worse. Canada 88, with 51% was the ‘Operator’: Can-Oxy had 49%. As time went by, Can Oxy, a reputable Oil Company with wide experience in Sour Gas, (I had worked for 3 yrs for Oxy in Libya + Yemen), got more & more concerned with the clearly wildly unacceptable risk of this project.

The EUB staff defended Canada 88 and never admitted that the risk was unacceptable. The well license was disallowed by the EUB, on the grounds that Canada 88 proposal had “*failed to satisfy the Public*”, not that Canada 88 (51%) had presented fraudulent risk figures, nor that the risk was unacceptable. Can Oxy (49%) breathed a great sigh of relief when the Well was disallowed.

We found out that Canada 88 was telling investors in Europe the projected size of the reserves and anticipated flow of Sour Gas per well were very substantially higher than Canada 88 had informed the EUB and our committee, in writing. So there was clear fraud here, either to European investors or to us, but still the EUB took no action. We also learned that Canada 88 had contravened EUB regs. with a pipeline built south of Calgary too close to a school, but again no EUB action resulted.

**e) Alberta wide “Public Safety & Sour Gas” Public Hearings.  
(I attended EUB meetings & was a participant also in Public EUB Hearings: date after approx 2002)**

As a result of the Public concern over Sour Gas just upwind of Calgary, there was pressure on the EUB to hold Public hearings across the Province. Most of those running the hearings were EUB staffers. One member was ‘Independent’ representing the Public Interest, but he was a retired Oil man. Only Dr. Brent Friesen MD, (Medical Officer of Health) brought an unbiased view to the Hearings.

The Enquiry got ‘an earful’ of severe complaints. But what struck even the retired Oil Industry man, were the number of Oil Industry Workers injured by Sour Gas, abandoned to their plight., often eking out a pittance doing odd jobs or occasional light construction work, in small towns. They had varying degrees of neurological injuries & brain damage. Often, their marriages, families & lives fell apart.

I attended Enquiry meetings in S. Alberta. Although concern was expressed about injured sour-gas workers, the unhelpful attitude of the WCB & aggressive Independent Medical Examiners (IME’s), I never heard that any help was given to these chemically injured workers. I told the Enquiry Molybdenum (Mo) is needed at 0.1 to 1 mg/day to detoxify H<sub>2</sub>S, as Mo is the nutritional co-factor of Sulphite Oxidase (SUOX) . Serum Mo tests (which cost in quantity a few \$ only) will show if enough Mo



is present. Vets have used 'Salt Licks' with Mo added, for years, to protect cattle from toxic effects of H<sub>2</sub>S. Mo tests were never organized. As of 2015, no Mo test is yet done in Alberta !

- **Request of the ERCB to provide MSDS's for the well N. of Hutchinson Fertiliser on Lochend Rd. (contact with ERCB over 2+ months mid 2000's)**

In the mid-2000's the single well just N of Hutchinson Fertiliser was undergoing some kind of "Swab Job" with a light service Rig. Driving past it on Lochend Rd (SR766), I breathed toxic solvent vapours. I called Marilyn Craig (Public Safety Officer ERCB Head Office, downtown Calgary), asking to be provided with the MSDS for the products used, so I would be able seek proper medical help, to mitigate the effects. I explained just how important it was for me to get the data sheets, as each chemical needs different treatments to remove them from the body. She told me to call the Midnapore field centre (at the far South of Calgary).

But despite over many weeks of calls, I never got the MSDS. Finally, the Inspector told me to drive to the well site, speak to the people there to find out what they were doing & using and let him know of the situation. I told him I had taken several years to a partial recovery from Chemical poisoning. Was he seriously telling me I had to go into a toxic contaminated area to find out what they were doing? He was serious as he said there were only ~16 Inspectors for all the roughly 160,000 wells of Alberta and he did not have the time. Neither the Midnapore, nor head office had any map of the wells in this area, so he asked me: could I find out which Oil Company was involved? He said I would have to find out this information myself. I called back to Ms Marilyn Craig, but nothing resulted.

It was clearly unsafe for me approach the well. I never got any information from anybody what the chemicals were. After about 2 months I gave up trying, demoralized,. I slowly recovered from this moderate level of poisoning.

It was clear the morale of the ERCB people I spoke to was poor. This wouldn't have happened in the mid 1970's.

- They no longer cared to do a good job,
- or they did not get support from their superiors,
- or they had the ground cut from under their feet by their Political masters,
- or a combination of all three..

- **The high level acute exposure incident of 18 Dec 2011 and subsequent events.**

As this incident & later events are at an early stage in lower Courts (Action No 1301-14884, Goodhart vs. AER ), I will discuss **only** those aspects germane to Ernst vs. ERCB before the Supreme Court which illuminate factors or aspects of what took place between the ERCB & Ms Ernst. (The SCC isn't the place to decide anything about Action 1301-14884. In any case, what I raise are only my allegations at this time) I will carry on Goodhart vs. AER (barring impecuniosity), regardless of any decisions of Ernst vs. ERCB.

More than anything else, I want the disaster which has descended on my family not to occur for anyone else. No powers that the Supreme Court has at its disposition, can ever bring my wife back to life.

There are other avenues to effect beneficial change in the events which lead to the death of my wife: These avenues may be more effective in certain areas. But it is certainly the case, the Supreme Court could cause meaningful beneficial changes to take place for others in the future.

**The 'deep rot' & malaise that "Absolute Immunity" has brought over the years, to the Regulator, to the Oil & Gas Industry itself, to the General Public & to many private individuals; is not beneficial for:**

- The Regulator, its staff & officials; as it has become lazy. It has lost much of the high respect it once enjoyed of those it regulates & of the Alberta Population as a whole. Many honest employees of the AER have become discouraged & demoralized. They know that significant harm is taking place, or harm will take years /decades to manifest itself, by which time the harm is irreversible. Those AER employees of high standards are easily undermined by those of poor or no ethics
- The Oil & Gas industry has not been well served by the "absolute immunity" of the Regulator, as this has encouraged "sloppy", dangerous & dishonest work practices, inefficiency and corruption of honest work ethics. Those Companies with high standards and a high ethic are disadvantaged by those with poor or no ethics who can under-cut them in the short term,
- Hundreds of millions of \$'s of gas have been lost in needless toxic flaring. Damage to reservoirs due to poor recovery practices will reduce total recoverable reserves by untold Billions, all for more short term income for Oil Cos, then they sell damaged reservoirs to unsuspecting foreigners ! Poor engineering practices lead to higher hazard & cost to new oil operators /landowners in the future
- Both as a group and as individuals, many losses landowners have suffered are easily avoidable: illness, disruption of their lives & sadness, loss of health of themselves, their livestock & crops
- Workers of the Oil & Gas industry (+ their families) have suffered ill health & death, from lack of enforcement, improper standards, use of unnecessarily toxic substances or risky procedures.
- The General Public has not been well served by 'absolute immunity' The cost of otherwise needless damages or Health Care costs are increased, the full burden of which may not be seen for decades or for generations to come. Many toxic chemicals liberated persist for generations. Health Care costs, already the largest cost item in the Provincial budget, will increase hugely.
- Alberta has many arid areas. In past times, areas of Alberta have been semi-desert. Loss or contamination of the water table, results in nearly irremediable loss of utility of affected lands, for hundreds of years to come. No amount of money can put back the lands to their prior utility.

- **Using ‘Confidential Mediation’ to limit Public Freedom of Speech by ERCB/AER & staff. 2011/2012.**

Shortly after the exposure incident, it became clear that I was getting no answers about gases liberated from the wells nor the chemicals used, from the ERCB or Oil Companies. I asked for a Hearing at the Board. As in 2000, I found no instructions how to ask for an appeal to the Board. No-one at the ERCB seemed to know. I told ERCB Inspector Brad Olive our Family Dr had told us to leave home as it was unsafe for us to live there. I asked for ERCB help. No help was given by the ERCB or Oil Cos.

Later in Spring 2012, I called on Marylin Craig (Public Safety Officer ERCB) to give her a copy of my report, I again asked for a hearing at the Board. She did not know the process: she would find out.

Ms Marylin Craig indeed remembered me, saying when she saw me in the late 1990's and early 2003.

Then I wore white cotton gloves, wore a breathing mask for chemicals and was on Oxygen. She told me there was NO system in place for those who declared themselves as “*sensitive to low or trace levels of toxic chemicals*” to be warned of new wells planned or approved & about to be drilled etc, so they could ask the well locations be moved or suggest counter measures to protect them. No new oil company coming into an area is ever warned by the ERCB of people who have suffered chemical injury, or were affected by other wells. Each new well application is considered & approved as if no other wells have ever been drilled anywhere near. No other sources of pollution are ever considered in a new well or facility application. Setback distances to determine which residents must be advised are not based on Scientific studies, only what has been used in the past based on resident complaints, most of which are then ‘Swept under the Carpet’ by confidentiality agreements, so no-one is any the wiser!

These admissions were from the ERCB / AER's Public Safety Officer! She later retired I was informed

The same day, I drove to Midnapore ERCB/AER Field Office to give Inspector Brad Olive 6 copies of my Report (1 each for each Oil Co. & 1 for him). I again asked for a hearing at the Board: I asked if he knew the procedures to follow. He said he would find out about a Board Hearing. He said my report was ‘*All lies*’ repeatedly & scribbled comments on several copies. He was very aggressive towards me.

Later, Mr Olive told me it would take 6 -9 months or more, to get a hearing at the Board. He said the Board **required** I have prior meetings with the Oil Cos, otherwise the Board wouldn't give a Hearing. So I agreed to a prior meeting, to take place rapidly. Mr Olive prevaricated, then weeks later, told me it would take until Autumn for the Companies to get everyone together. What I wanted was the MSDS, composition of chemicals used & measurements of gases liberated, so proper therapy could be given to my wife & me. Also there should be a halt to flaring upwind, so we could live at our house safely.

I was given a very late date for the meeting: 19 Sept 2012 by **Julia Fulford** (ERCB/AER). On 18<sup>th</sup> Sept, after business hours, I received an ERCB E-mail about ‘Mediation’. I had only been told it was to be a meeting. I did not require a ‘Confidential Mediation’ as I was making no compensation demands. I just wanted the MSDS's & compositions of chemicals & gasses exiting the incinerators / flares as measured by the ERCB or AESRD (Alberta Environment), which all should be public information. Also to be able to reside again at our house safely, which is surely a Right of everyone in Canada. It was

too late to call anyone or the ERCB/AER, in any case I had to do a detox treatment prior to bed, I only glanced at it. I didn't have time to read it, let alone understanding and taking it all in..

The next morning, at 5:00 am, I had to do a detox Treatment, then I left for the meeting, with no time to read it. I also had no time to read it just prior to the meeting. At the meeting, I was told every-thing had to be confidential. I said that all the things I wanted were or should be "public Info", so why did I have to sign a 'Confidentiality' document? I refused to sign it.

Over the next 1½ + hours there was talk back & forth of what was 'non-Confidential', with a great deal of pressure on me to sign it, which I refused. Julia Fulford wrote on the form several lines of 'Non-Confidential' items which she told me were '*completely excluded from the clauses of the document*'. She showed me the final line, but she held it so far away and moving it, that I couldn't really read it, without my reading glasses. The rest of what she wrote, she covered with her hand, so I couldn't see it. I asked for a 5 minute pause to read it, but she said there was not enough time left in the meeting.

Julia Fulford then immediately passed the form to her L, for the others to sign. (I sat on her R). ERCB staff on the L of the table signed it, then Oil Co people at the end & R of the table. Then the meeting got going in full discussion. I did not see where it got to later, as I was listening to what people were saying. I had no opportunity to read it during the meeting, even if I had known where it had got to. I don't know where it had got to after the meeting broke up in disarray. I never signed it. What Fulford actually had written wasn't what she told me she had written, so I wouldn't have signed it without changes anyway.

When I received a copy of it a few days later, read and absorbed it for the first time, I realized what Julia Fulford actually had written was NOT exactly what she had told me that she had written prior to the discussions starting in earnest. There was no opening statement that '*the subjects in the lines written below are totally excluded from any and all of the provisions of this agreement*', as well as other broader language, which is what she had told me. I wouldn't have signed it without such changes anyway, had I had a chance to read it before the discussions of the MSDS's, gases, incinerators, flares, etc., got going in earnest.

I asked about the "sweet spots" of the prospect area, which are the kind of thing which are often highly confidential in the Industry. The Oil Co representative, Larry Stewart, said they weren't confidential. No doubt, all the acreage over the "sweet spots" had been tied up in Oil leases a long time prior. So nothing discussed in the meeting was 'Confidential'. So ALL was excluded either by what she wrote down or explained to me she had written down, or by verbal admission by Larry Stewart or others. So there was no need, nor utility, whatsoever of ANY "Confidentiality Agreement" at all.

Sending me a 'Confidentiality' documents to me at the last minute by E-mail, with no prior advice, was unexpected on my part. When I asked Julia Fulford, she told me she '*had forgotten to send it to me before*'. Yet I had been trying to get a meeting to get public data for 10 months. There was plenty of time. This seemed underhand & in extreme 'Bad Faith'. It was an attempt to abolish my freedom of

speech of items which were all public info. The ERCB /AER & AESRD are Public Bodies. The MSDS's are supposed to be Public too. So why was any confidentiality agreement needed at all?

The only firm data given were the Frack Formulae & that no tests had ever been done on gases exiting the ground flares or 'incinerators' neither by ERCB, any Oil Co or the manufacturers. When I asked about precautions I should take, I was shouted at: **LEAVE HOME! GO!** repeated for my family & our business, by Larry Stewart (Oil Co rep), then the exact same words shouted even louder by Brad Olive (ERCB Inspector). The meeting broke up in disarray, with no conclusion & no continuation scheduled. The Oil People left mumbling excuses they had to leave. The rest, including me, were stuck dumb by the vehement and abusive shouting at me to **LEAVE HOME! GO!** Nobody spoke for a good five minutes.

The first paragraph of the "*Terms & Conditions of the Mediation Process*" reads in part:

***".... Providing impartial mediators / facilitators & staff (collectively ERCB Staff) independent from any application and / or hearing process..."***

In para. 8. b) it reads "*The Parties will conduct their negotiations in good faith, with due respect and consideration for the other parties and will make an honest effort to work towards resolution of the concerns/issues that are identified in the facilitation*".

In para. 8. d) it reads: "*The Parties will give honest and complete answers from their prospective (sic?) and be willing to listen to the other party*".

Hence the Oil Cos & ERCB staff, broke the terms of the supposed agreement (that I did not sign) at the most fundamental level. In my 1<sup>st</sup> Report, I suggested cost effective and several easy to implement solutions to the problems that became identified during the course of my literature and other study. Instead of being thanked for trying to make a positive contribution to resolve problems of toxic emissions, in return, I got just abuse & being shouted at by Larry Stewart, Oil Co Representative and by Brad Olive (ERCB Inspector).

When I first gave Brad Olive my 1<sup>st</sup> report, all I got was I was told I was "*a liar*". The actual meeting gave me no help at all in trying to keep my wife alive. The thought which went through my mind were:

- A) The cost of compensation is lower when someone dies
- B) Proving poisoning is more difficult when the subject dies
- C) In many cases the people are traumatised, so they do not go ahead with any legal action

Subsequently, after my wife died, I learned from an Oil Industry Insider who had become very familiar with the work planned and done in the Lochend Area, he told me that the work in the Lochend area was "*Experimental*" "*very risky*" and that the Oil Cos "*literally did not know what they were doing*". Also, I was told that these Oil Cos "*could not care less how many people die or are injured*".

Another Industry Insider I learned of (an Industrial Formulation Professional Chemist) considered the Frack Formulae used in Canada to be "*Very toxic & far too dangerous to use*".

He had tried for years to get the Fracking Company to reduce the hazard. They preferred to lie and if sued, pay people off with ERCB assistance, rather than change anything.

- **The Ranch House Public Meeting run by the ERCB & AESRD, Nov 2012**

Nov 2012: a public meeting in the Ranch House in Cochrane was organised by the ERCB. Their Chief Engineer told the crowd of hundreds of people present that the so-called ‘incinerators’ & the gases produced were “*entirely safe*”. This was repeated many times. Jessica Ernst was present, videoing the speakers. She asked if the Chief Engineer considered that a ‘Duty of Care’ existed on himself & the ERCB towards local residents. He said speaking for both himself as an Engineer & speaking as an official of the ERCB, that **indeed a “Duty of Care” DID EXIST** on both of them. He emphasized again that the operations were ‘*entirely safe*’. He was most emphatic on this point.

Mr Hutchinson, who was sitting on the same row as I, positively beamed at this statement, as it was clear he regarded those who said otherwise or were worried about the effects on them were crazy or rumour-mongers.

During a break, I talked to an ERCB Inspector of another area. I told him that my wife might die. He let slip the remark ‘*Oh, not another*’, his eyes were full of pain & remorse. He was lost for words. So ERCB staff, or at least some of them, knew for sure that mortally toxic gases were released in our area.

- **Looking from Upwind of the Hutchinson well Nov 1012.**

My wife & I visited our house for 1 hour in Nov ’12. We saw fine gray smoke was continuously emitted from PetroBakken’s (now Light Stream) ground flare adjacent to Hutchinson Fertilizer buildings & residence. The smoke was pulled **down** from the top of the tube by an incredibly strong N wind and travelled about 6-8 ft horizontally above the ground STRAIGHT towards the Hutchinson buildings, then on towards Hutchinson’s house.

I alerted both Dan Thomas & the Hawkwoods of the immediate severe hazard to Mrs. Hutchinson in particular. I was so sad, that I could not bear to talk directly to the Hutchinsons or the ERCB. I had previously talked to Mr Hutchinson, but he refused to believe me that any hazard existed. I thought the Hawkwoods & Thomases might manage to convince them & the ERCB. Both of them called Mr Hutchinson & the ERCB. My wife & I, (watching in a closed car, from a safer upwind location), said to each other that Mrs. Hutchinson would surely die in a few weeks from this terrible toxic hazard.

Mrs. Hutchinson died just a few weeks afterwards. Later, some of those working at Hutchinson Fertilizer began to lose their hair. Those affected at Hutchinson’s stopped working there.

Hence, regardless of the veracity or not of those complaining, or the truth or falsity of the above that I have written, which can only be properly established by sworn testimony or by Experts, or both, (so is not the kind of thing to be decided at the Supreme Court, lower Courts are the place for this), the notation of “Satisfactory” should at least have been “qualified” in the AER Official reports, as:

“Uncertain as to safety” , “Possibly unsafe” , “Probably unsafe” or “ Likely to be unsafe”.

The “Precautionary Principle” holds that consideration be given to tentative or not fully proven evidence, or even repeated unproven hearsay, where the consequences are potentially:

“. . . long lasting, irreversible or severe”.

- Report “**Recurring Human Health Complaints Technical Synthesis, Lochend Area, July 2015**”

In July 2015, a Report on the Lochend area was prepared by Dr Monique Dubé (chief Environmental scientist), Cory Schieman (regional coordinator Midnapore Centre), **Julia Fulford, Regional Manager, South, Alberta Stakeholder Engagement** & Michael Brown technical advisor, Industry Operations).

The first paragraph of the “*Terms & Conditions of the Mediation Process*” reads in part:

*“... Providing impartial mediators / facilitators & staff (collectively ERCB Staff) independent from any application and / or hearing process...”*

So we had Julia Fulford working as an “*Impartial mediator*” & *Independent from any application or hearing process*” in 2012 for the ERCB . But in 2015 she is deciding policy not to do air testing in the Lochend Area. This was despite repeated requests for testing from Alberta Health and the Lochend Area Residents Health Committee, of which I am a member.

This is a clear conflict of interest and “*acting in bad faith*”. Did Julia Fulford make fully known to Dr Dubé that Chloracne had occurred and hence Dioxins were liberated in the Lochend area? Also did Dr Dubé know that that several people had died, others had suffered other illnesses that are brought on by exposure to toxins liberated from Petroleum wells?

Julia Fulford also sat in on some of the Lochend Health Committee and the Lochend Area Residents Committee meetings, where people discussed confidential Health Information. Julia Fulford appears to be working “both sides of the fence,” as it were. If Julia Fulford did not let Dr Dubé know, then she was working in “Bad Faith”.

Her proper course of action, is either to ask the Residents and myself if she could provide to Dr Dubé such information, or to state she has a conflict and resign from the study. In any case, Julia Fulford is totally lacking in the required scientific understanding of the nature and effects of the toxins produced. What she says often can SOUND plausible until one asks some pointed intelligent questions, then it becomes apparent she knows less than nothing.

The statement that there are not enough “receptors” in the Lochend area, is very easy to modify. Wind carries pollution down wind into Cochrane and NW Calgary, so plenty more “Receptors” would come from just adjusting the boundaries by even a few hundred metres. The boundaries of any study area are somewhat arbitrary anyway.

Only having 3 wells drilled in 2015 was in fact ideal, as the stack gases of each emitter could have been measured using the official “Alberta Stack Code” and then “plume dispersion modeling” is used to find out the toxic dose for particular people /residences downwind. Then more emitters could be added, one by one in the modeling process and see what if the results are still acceptable.

The ONLY measure that the ERCB has used in the past was by “Complaints”.

Since the toxins from Fracking have little or no smell, then “Complaints” are a very poor measure of long term health effects. It is NOT required that people be made ill (probably nearly irreversible illness or death, incidentally) to determine if the risk is acceptable. The use of risk analysis by the ERCB of the past has not been done. Now the AER, which has all encompassing legislative powers, has no excuse not to do proper testing.

In the case of the generation of Dioxins & Furans, then we have “de Novo” formation of new compounds a distance away from the stack, as the stack gases cool into the “de-novo” formation cooling window. This was mentioned in both my first and second reports. Dr Dubé should have closely studied both of my reports. Neither of my Reports is confidential.

There are now new techniques using modified “Cal-Puff Modeling”, which give answers to what occurs as plumes cool, so there is no need to expose the General Public to potential harm to prove the point. There are other ways to measure potential harm, than by actually exposing people to harm and then wait for the complaints!. Dioxins give very long term effects, indeed going into future children and grandchildren, not yet conceived or born.

Julia Fulford and the other authors of this report risk the fate of unborn future generations of residents in Lochend. This action of Julia Fulford is criminal in nature. But, of course, the ERCB and Julia Fulford are protected from any consequences by the ERCB “Absolute Immunity”. The residents, unfortunately are no protected by being made “Immune”.

Also Brad Olive (ERCB Inspector) who wrote the “*Satisfactory*” report of the Hutchinson well, was apparently fired in 2013 by Mr Hill (when he was acting Pro-tem Director of the ERCB in its transition to the AER) after Mr Hill read my first Report.

Hence, none of the data rated as “Satisfactory” should have been used to decide future action, without mentioning that the person who established the “Satisfactory” judgment was no longer in the employ of the AER, for cause.

The AER report mentions the well where the high level exposure occurred on 18<sup>th</sup> Dec 2011 (16-10-027-03 W5) is labeled as “**Satisfactory**” on p. 36, (AER report, published by Stakeholder and Government Relations). From this report page 36, bottom line:

FIS Number	Incident Date	Company	Location	Concern Reported	Results of Inspection Investigation
20112531	18 Dec 11	Lightstream	16-10-027-03	Health Human	Satisfactory

**“Recurring Human Health Complaints Technical Synthesis, Lochend Area July 2015”**

I and many others complained continuously from Dec 2011 (others even earlier) until summer or Autumn 2013, when the PetroBakken well N of Hutchinson Fertilizer was shut in and no longer pumped. So the “Satisfactory” comment should have been qualified with the notation that “Chloracne” had been caused by release of toxic gases on 18 Dec 2011, so it is NOT satisfactory.



Chloracne is ONLY caused by Halogenated Dioxins, according to the literature.

*In the book “Dying from Dioxin” by L M Gibbs and Citizens Clearing house for Hazardous Waste, South End Press Boston 1995, p. 132*

*“Chloracne is considered the hallmark effect of exposure to dioxin showing up more often than any other symptom following exposure. It is a serious skin disorder that begins with acne-like skin eruptions within 1 to 2 months of exposure. The disease progresses to more severe symptoms, characterized by pus filled boils pimples that may be colored more darkly than the rest of the face,, blackhead and cysts that sometimes persist for years...”*

I gave my first report to the Officer for Public Safety ( Marilyn Craig) and the Inspector for the Lochend area, Mr. Brad Olive in the Midnapore Office. I showed to each one, the Chloracne on my legs and told both this was due to Dioxin exposure. Both either they chose not to understand, did not know just how serious Dioxins are, or chose not to inform their superiors.. Clearly no-one in charge bothered to look at the photos, or did not know what Chloracne is caused by. Despite my giving detailed descriptions of Dioxin & Furan production in Incinerators in my report, nothing occurred.

Both Dr D. Davies and Court Sandau (both Toxicologists) in early 2012 told me that if Dioxins were proved to be emitted from Shielded Ground Flares using the Lochend Frack Chemicals , then operations would be shut down within 24 hrs. Yet the ERCB did not act.

My first report given to the ERCB in spring 2012, was intended for the Board of the ERCB/AER. It shows photos of the presence of ‘Chloracne’ on my legs. ‘Chloracne’ is only caused by Dioxin exposure. The chemistry of the formation of Dioxins is well known.

The report by the European Environmental Agency, Copenhagen 2001,

**Late Lessons from Early Warnings: the precautionary principle 1896 -2000**, says:

Chapter 6. PCB’s and the precautionary principle.

6.1 Introduction “Polychlorinated biphenyls (PCB’s) are chlorinated organic compounds that were first synthesized in the laboratory in 1881. By 1899 a pathological condition named Chloracne had been identified, a painful disfiguring disease that affected people employed in the chlorinated organic industry.”

Later in the 1930’s and fully confirmed later, it was found Dioxins are the contaminant in PCB’s that cause Chloracne.

I included references to the WHO (World Health organization, Geneva). Dioxins were discussed at length. My 1<sup>st</sup> Report was the subject of the ‘Confidential Mediation’ (which I did not sign) on 19<sup>th</sup> Sept 2012. The AER cannot pretend they never received my 1<sup>st</sup> report 6 months before.

- **The “semi-secret” “Confidentiality Agreement” mechanism operated by the AER / ERCB**

As I recovered from my first chemical poisoning, my wife, Lise began developing MyoPostural Therapy for the reversal of chronic pain from high force accidents, including Motor Vehicle Accidents (MVA's) and other high force events leading to distortions of bodily structure.

To assist in the preparation of 'Medical Legal Reports' needed by Insurance adjusters, lawyers & Courts, I started to write these in English, as my French-speaking wife wrote little English.

I started to correlate bodily structural distortions to the particular circumstances of an MVA, using methods I had previously used in the design of High Explosives & the shock waves generated thereby

I was “coached” in writing Medical Legal Reports by many Personal Injury Lawyers in Calgary & elsewhere. I got to learn details of Lawyers, IME's & the Insurance business, both private & provincial.

I attempted to get toxic gas test results made by the ERCB + the MSDS's. Then just before the meeting of 18<sup>th</sup> Sept 2012, I began to learn sparse details from a few lawyers, of a 'system' operated by the ERCB of confidential negotiation. This protects the interests of those the ERCB regulates, Oil & Gas Cos, to shield disputes of people harmed from the public eye. After 18<sup>th</sup> Sept '12, I began to find out more. Nearly all lawyers didn't want to have anything to do with the ERCB/AER. Most conversations, even with lawyers that I had referred our MVA patients to, ended rapidly. But why was unclear. They were reluctant to talk. They wanted nothing to do with the ERCB / AER , it seemed for ethical reasons.

The ERCB /AER keeps an official register of law firms it likes, who comply to its laid down protocols & procedures. The system operates as below, is from information I believe to be true, from some law firms:

- a) There is usually an upfront fee to the Legal firm, sometimes on contingency, or paid by unclear sources. A legal firm in Calgary told me that they charged a firm minimum up-front fee of \$ 15,000.00. This fee was typically paid back later, by the Oil Co or Cos, but only on completion of an Agreement.
- b) A confidentiality agreement has to be signed at the start, if not the ERCB /AER will not “help”. This agreement is prepared & witnessed by the ERCB /AER by the Regulator's official Mediators, then the AER finds out which Oil Cos are at fault & arranges the meetings, usually in AER offices.
- c) The AER/ERCB provides the “free” official Mediators / staffers who are paid by the AER/ ERCB.
- d) These AER staff do not disclose any details of their mediations to the AER Board, nor to any other AER staffers, nor to their own bosses, including and especially those who issue permits for drilling etc., nor those who are public spokes-people for the ERCB / AER, nor those responsible for “Public Safety.
- e) If AER/ERCB Staffers active in planning, Public safety or permits etc, are present at mediations, they aren't permitted to tell their own bosses or fellow staffers, at the ERCB/AER of what they are doing, nor what was said. Only at the completion of an agreement, are ERCB /AER staff allowed to disclose anything, but just to the Board of the ERCB /AER, not to their own bosses or co-workers, so I was told.

**The only details allowed ever disclosed to the Board are the names of the parties involved and sometimes locations.** The subject of disputes, losses, injuries, deaths & all details are secret: never disclosed.

- f) Hence, old regulations are not updated or revised because of illness, fatalities or other losses. No investigation is ever made, everything is swept under the carpet. No Enquiries, like is routinely done by the Transportation Safety Board, by Coroners, Fatality Enquiries, Police enquiries.... are ever performed on the subjects covered by confidentiality. Secrecy is the “Law” at the AER. Whatever ‘fixes’ are made, are done as late as possible or not at all & are rarely made public. The investigations that have been made are pitiful, that is unless overwhelming bad publicity over years by thousands of complaints cause some action. Everything effected, is done to frustrate lawsuits, not to minimize real ongoing injuries / fatalities, which are emphatically denied. The ‘Official’ position is that all is “safe”.
- g) In similar cases, people’s homes would be bought by one or more of the Oil Cos, often at distressed prices. People likely have got zero for ‘Goodwill’ of any Business, ranch etc, nor costs of trying to re-establish the Business, etc. elsewhere. In several cases, landowners aren’t allowed to live in or visit Alberta ever again. I was told that people might likely never be allowed to step foot in Alberta again. No-one would be allowed to talk about this to anyone, including other people living in the area, nor to help them in any way, even if they got ill, nor for any other reason. Some said family members wouldn’t even be allowed to talk to their children about anything, unless specifically mentioned in the Mediation Confidentiality Agreement. The whole family in a given case might have to leave Alberta.
- h) If a house was found to be contaminated the Oil Co would demolish it, together with all possessions in houses/buildings, which would be forfeit & be sent to chemical land-fill or incineration in Swan Hills, Alb.
- i) If people did talk about this to others in any way, the monies paid could be seized, and all holdings in Alberta could be forfeit. Some lawyers told me the ERCB /AER would do this, others said the Oil Cos would instigate actions, some said both.
- j) It was very unlikely that any changes in ERCB /AER regulations, nor additional safety practices, would ever be employed. They would carry on, much or exactly the same, as before. They might shut in flares. They would do the absolute minimum unless there was overwhelming public pressure sustained over years, otherwise they would do nothing. No one would ever apologize or help at all.
- k) I got the impression, the AER could not care less how many people are injured, made ill or die, nor of any harm done to anyone’s business, ranch or farm. For quite a number of firms in the Oil Business, killing & maiming people is simply a tax deductible cost of doing business, so I was told, sad to say.
- l) **Several people have told me ...”THE ONLY THING the AER FEARS IS BAD PUBLICITY”.**
- m) Bear in mind, over the years, Oil & Gas is one of the most profitable industries in the world, employing some of the smartest people going. Immunity of the AER simply encourages laziness. By no stretch of the imagination is *absolute immunity* in the Public Interest. It is easy & cheap to do so very much better.

- n) This system is not 100% 'secret'. The AER ran job Ads in the Calgary Herald, stating they needed more mediators, due to increased demand: so logically more complaints. In past years the ERCB also ran job ads.

I also learned, FROM PERSONS THAT I BELIEVE WERE TELLING THE TRUTH, that Ralph Klein had been involved in a Mediation of this kind with the EUB when he was Premier, for people in NE Central Alberta. I did once know the name of the village, but I do not now remember it. About 2 or 3 people died or were made very ill & were expected to die. There were several flares surrounding the village. Many people had complained for a long time, to the EUB, to no effect. After Klein got involved the flares were shut down. About 3 to 5 others had died in the village, also. I heard \$15 million was shared between the Families.

***“Shoot it, shovel it & shut up”*** Klein was widely reported in the press as saying, about the necessity of reporting mad cow disease. Were his thoughts of people dying from the oil industry pollution similar ?

## Part II – Question at Issue

- 1) The Sole Question in issue on this motion is whether Rupert R. F. G. H. Goodhart should be granted leave to intervene in the within appeal.

## Part III –Argument

### A. Rupert Goodhart’s Interest in this Appeal

It is submitted that Rupert Goodhart meets the test for leave to intervene. Rupert Goodhart has a strong interest in the matter of this appeal and can provide useful

- 1) submissions to this Honourable Court <sup>1</sup>
- 2) Rupert Goodhart’s has a long history of expertise in pro-active good practices related to the Oil Industry, meeting stakeholders of Oil Industry Operations, landowners and other neighbor and avoiding difficulties and disputes. Appreciation of good neighborliness and civil rights are at the forefront of my philosophy in Client Representatives for Oil Field Operations.
- 3) Frequently, when working in Canada and other nations where there could be impacts with surrounding populations, I was usually the one who was chosen to solve ‘Insoluble difficulties’. I always succeeded in avoiding lawsuits, and getting satisfactory resolution (without anyone signing “Confidentiality Agreements” ) yet the cost per Km of seismic line, or for oil well access or damage done to crops & fields etc, by heavy equipment etc, was lower than their usual historic costs.

### B. Outline of Proposed Submission:

- a) If granted leave to intervene, Rupert Goodhart will focus initially on the adverse consequences which “Absolute Immunity” has caused, to the practical functioning of the AER, from the perspective of the AER itself, as seen from the outside and in conversation with AER

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<sup>1</sup> Reference *Re Workers’ Compensation Act, 1983 (Nfld) (Application to Intervene)*, [189] 2 SCR 355 at 339

Staffers, on the Oil Industry itself, on landowners and adjacent residences, on the general waste brought about by poor engineering practices and in particular the deleterious effects on aquifers and on the health of the population. These have already been discussed in my dissertation in earlier parts of this document.

- b) Also I will examine if in fact, the concept of “Absolute Immunity” has any practical advantages to any of the above people or organizations.
- c) If in fact the Court should decide that some kind of balanced immunity, or more immunity for certain aspects of the AER’s activities and less or none for others, b) above, may assist the Court in deciding where or how to make that kind of decision.
- d) It appears that instead of problems being brought to notice, being examined and then solved as they go along, instead with “Absolute Immunity” the problems have multiplied, so that we now have a large backlog of next to insoluble problems. The time to consider this is now. The recent fall of oil prices has lead to a near cessation of the previous frenetic drilling activity. This gives an ideal “pause” to allow time for mature consideration of the new legal interpretations to address the challenges that the new oil technologies which, if they continue unchecked, will bring a raft of highly damaging and expensive to solve costs and problems.
- e) The enforced “silencing” of those harmed, has lead to a tension and ennui in the Society of Alberta. There is also, a huge imbalance in the practical scheme of things, of Oil Companies with immense balance sheets who can ride roughshod over individual landowners. This applies especially when severe ill health occurs to landowners and their families and/or collapse of their Ranch or Enterprise, brought about by uncaring oil companies who live elsewhere, hence the Oil Companies suffer no adverse consequences.

- f) The concept of “the Precautionary Principle” has not historically been applied to harm brought about by damage to aquifers or toxic pollution, caused by the activities of Oil Companies. Would now be a good time to examine such concepts?
- g) Further, when several Oil Companies are active in a region and all fail to measure any of their emissions, how does one prove in any practical sense, who is at fault and if so, how is the responsibility for the damage divided?
- h) Several landowners in the Lochend Area, have brought forward the concept that when Oil Companies cause harm by known toxic emissions or activities damaging to the aquifer, then the burden of proof should lie on those harming or polluting to show that they did NOT cause the damage. This goes against the old English Law concept of the burden of proof lies with the victim. This would have the practical advantage to, in a sense; force the polluter to take more care. This will reduce irreversible harm to aquifer and health. Also, when someone’s Ranch is in ruins due to no water, or the victim is grievously ill and can barely function, how does the victim in reality find the energy to try to obtain compensation?
- i) Hence, I will bring forward the concept that outside legal experts, such as Jurists from Québec (Code Civil), Europe (far better control of Polluters) and possibly South Africa (The Truth & Reconciliation Commission) may be of assistance.
- j) Some of the Legal concepts of Old French law were used when the English “Alkali Act 1863” was considered and passed. English law of the time was that of the Law of Contracts and there was no contract between those harmed and the Alkali Industry Polluters. So all law suits of the time failed on this count. In fact, there may be applicability of Old French Law East of the height of the land of the Rockies.

*Quelques années avant le conquête du Canada, le Gouverneur de Nouvelle France, La Jonquière, a envoyé dix hommes et deux canoës au Pied des Montagnes de Roche. Ces dix homes ont partis 1,200 lieux à l'Ouest du Fort Pas'quoi"ac. (Le Pas, Manitoba). Donc, tout le terrain à l'Est de l'hauteur des Rocheuses était réclamé au nom du Roi de La France. Puis le Loi en vigueur pour tous les Prairies était celui de la Loi de la France, celui en vigueur avant la Révolution Française.*

Several years before the English Conquest of Canada, the Governor of New France, La Jonquière, sent ten men and two canoes to the Foot of the "Mountains of Rock". They paddled 1,200 Old French Leagues to the West from Fort Pas'quoi"ac. (The Pas, Manitoba). So all the lands to the East of the Continental Divide was claimed in the name of the King of France. So the law in effect for all the Prairies was that of the Law of France, the Law in force of before the French Revolution (Old French Law, which is the basis for Quebec's "Civil Code")

So certain rights under Old French Law may still apply in all of Alberta, Sask & Manitoba and the part of BC where most of BC's Oil & Gas lies. Old French law had wider guarantees to people being harmed by pollution despite there being no contract. The guarantees of Quebec law which is based on Old French Law, for example that of "Vices Cachés" in the Quebec Civil Code, is wider than corresponding English law. Hence this may be a useful base for new legal principles in Alberta, or more correctly, reviving Old French legal principles, for those suffering harm from Oil well Drilling & Production in Alberta. As the Regulations in the other Oil producing regions of Canada largely use the Alberta AER Regulations as their base, there may be wider applicability than just Alberta and the AER.

Sadly I have been just too ill up until now to do the needed legal research to flesh out this idea. I am hopeful the three Québec Judges



may be well informed on such concepts from Le Code Civil du Québec and could add very useful knowledge advice thereto.

### **The problems faced by Regulators and the Law in relation to the new technologies in the Oil Business.**

- 1) In the past, oil wells were spaced apart, typically kilometres. The Oil and Gas Reservoirs were drilled into porous AND permeable rocks. The oil and Gas flowed mostly easily.
- 2) Now however, these easy permeable reservoirs are no longer plentiful. What is now being increasingly explored are “tight” rocks. The oil & gas in the formation does not flow out easily. So we have a situation where wells may be spaced as close as every few hundred metres, there are long horizontal laterals. They are now often in more populated areas, frequently. The rock, which is “tight” in industry parlance has to be “fractured or “fracked”. Each oil well site is now a major polluting Industrial site. They are worse in every way as far as impacts to neighbours are concerned than old fashioned oil wells.
- 3) These long laterals can communicate with each other, communication has been seen a mile or more away. This has been seen by Petroleum Geologists I have spoken to, when examining the presence of Proppant sand grains in an old vertical well a long way away from a newer fracked well, which uses sand “Proppant”.
- 4) The fluids pumped down under enormous pressures need typically 50,000 horsepower of “frack” pumps, pumping at about 5,000 lbs per square inch. To prevent MIC (microbially induced corrosion) of the metal drilling parts and steel tubing, the use of water sterilants called “Biocides” is required. The “biocides” are registered as “Pesticides” under most regulations. The “biocide” or sterilising agents are very toxic. The Oil Industry has mostly made little attempt to find less toxic Biocides up to now.

Each well uses large quantities of Biocide . One Biocide used: DBNPA/DBAN, was used at 90,000 grams per well in the Lochend Area. If burned the 2 compounds liberate Cyanide. Biocides are even worse than antibiotics, in that they destroy all the gut bacteria too. Many Biocides are Bromine based chemicals. Bromines attack Sulphur containing amino acids & proteins in the body (e.g. hair, skin & many membranes) and neutralize Iodine in the body.

DBNPA (Di-Bromo-Nitrilo-Propion-Amide) & DBAN (Di-Bromo-Aceto-Nitrile) liberate Cyanide in the body, as well as when burned. DBNPA breaks down to DBAN. The old fashioned name of DBAN 50 years ago was “Di-Bromo-Methyl-Cyanide”. It dissolves in

the body and is non-toxic when breathed in or ingested. There is no smell or any warning by the way of symptoms. It is stored in the body. Later, possibly years later, the body metabolises DBAN, freeing the Cyanide. Only then do people get ill or die. Since there is little or no Cyanide in the blood, only in the tissues, blood tests may be negative.

Other Biocides are equally troubling. Thus the fracked oil wells now and in the future pose toxicity and other problems never before seen in the oil & gas business. Up to now, the Regulator has denied any problems exist, saying often that the Frack fluid is “just water”. Statements about the safety of the Frack Fluids & other procedures is simply untrue. With better choices and more attention to procedures & and equipment, safety could be improved

- 4 ) The well jobsite is mobile. Workers are often seasonal. The rigs move around frequently. Safety at temporary mobile work sites poses safety problems not seen in permanent factories.

Up to now, the Regulator (AER) has denied there are problems, and when they occur, they are “fixed” by Confidentiality Agreements”, with the injured parties. The drillers just goes onto the next well site. No-one talks: so the “problem is “solved”

- 5 ) The drillers and rig workers may never know what is happening in the areas they are no longer working in. They earn really good money. The work is seasonal. They are fit and young and probably are never told of the toxicity of the Frack Fluid additives. If they get ill later, they may disappear into the “woodwork”, back home in the Maritimes or wherever home is for them, where the medical people do not know what to do anyway. Medical people have no idea how to diagnose the illness and the workers do not even know the name of the chemical, most likely.

Contamination of the aquifer is simply denied, saying no such cases have ever been proven, even when there are certainly proven cases. The AER continues to lie about this.

- 6 ) Often, those in the Oil Industry or the Regulators, worldwide will say that Fracking has been practiced for 50 years with no problems. Early fracking started roughly 50 years ago, but the oil wells were vertical wells, with only say 5 or 10 metres of pay zone. Wells were usually deep. Now some fracked wells are in shallow coal measures, or shallow oil layers. Now most fracked wells have long horizontal laterals of up to a mile or more. The quantity of frack fluid 50 years ago was a few or tens of barrels. Now there are millions of Litres of Frack fluid used in these long laterals for Oil & gas and in coal measures to liberate the gas trapped in the coal.

So it is like saying the hot air balloons of les Frères Mongolifier are the same as a modern Jumbo Jet in their impact. No-one remembers now the two fatalities a couple of years after the first hot air flights. There were problems 50 years ago with fracking. They have

been “forgotten”, no doubt aided by the poor memory of the Oil Business and peoples’ memories are certainly not improved by these “Confidentiality” agreements also !

- 7 ) In a nutshell this is the nature of the problem. Companies say they meet AER standards, even if they don’t at all. The AER does not enforce even the poor standards that exist. The standards do not even account for vastly more dangerous current practices. The AER looks the other way; does nothing. The whole mess is often covered up by AER organized “Confidentiality Agreements”. The Regulator is “Absolutely Immune”, so couldn’t care less.
- 8) But damaged aquifers aren’t “Immune”. People aren’t “Immune” to toxic persistent pollutants.
- 9) I would be glad to be of any assistance desired to the Honorable Court.

