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MARINE &
ENVIRONMENTAL
LAW INSTITUTE

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Hon. Ross Landry
Chair, Law Amendments Committee
c/o Legislative Committees Office
3rd Floor, Dennis Building
1740 Granville Street
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Halifax, NS B3J 3P7
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Dear Minister Landry:

Re: Bill 136, The Green Economy Act

I very much appreciate the opportunity to share with you my thoughts on Bill 136, an Act to amend the Environmental Goals and Sustainable Prosperity Act (EGSPA). I feel that at the outset I should briefly tell you something about myself so that you will have a sense why I may have something to offer on this Bill.

I have devoted my professional career to environmental law. I have tried to understand environmental issues and environmental law from a range of perspectives. I have worked for government (including drafting the Nova Scotia Environment Act, and advising the federal government on the Canadian Environmental Assessment Act). I have worked with and for industry in the practice of law, and I have worked for and with environmental and community groups. Since 2003, I have taught and studied environmental law and policy as an academic at Dalhousie University, both at the law school and the college of sustainability.

In my capacity as an academic, I have, over the past year and a half, been part of a research team of academics from law, management and social sciences at Dalhousie to study EGSPA. What I would like to do in this submission is to suggest further improvements to Bill 136 based on my own research and the work of my colleagues on EGSPA as part of this effort. I stress however that I am writing on my own behalf.

I am sorry I am not able to present to you in person, but I understand that the only time slot to appear before your committee is November 22 at 2:00pm, a time that

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unfortunately conflicts with my teaching commitments here at Dalhousie. Should you be interested in discussing any of the issues I am raising in this submission, I will do everything I can to make myself available at another time.

I just became aware of Bill 136 on Tuesday evening and understand that the submission has to be submitted this morning to reach the committee in time. As a result, I am not able to offer precise proposals for amendments in this brief. I very much hope that the effort to put this brief together will nevertheless aid the committee in its deliberations.

By further introduction, I would like to recall the non-partisan manner in which the original EGSPA was passed. It received the support of all three political parties in the legislature. It is my hope that the important issues of environmental protection and sustainable prosperity will continue to be supported by all parties, and that the parties will work together through the law amendments process to further strengthen the Act and ensure that it will continue to have the support of all political parties and serve to make Nova Scotia an example of sustainable prosperity.

I was encouraged to see that many of the recommendations of the NS Round Table are reflected in Bill 136, including the shift in focus from the initial environmental goals to the more challenging and more rewarding pursuit of the true integration of environmental and economic sustainability. I was pleased to see the focus on promoting a green economy in Nova Scotia, and in particular the specific goal of developing a green economy strategy for Nova Scotia by 2014. I should also point out that these changes are consistent with the results of my research into EGSPA and how it could be strengthened.

In the remainder of this submission, I would like to make you aware of the most important additional areas of improvement I have identified in my research that have, not surprisingly, not yet found themselves into Bill 136. These areas of further improvements fall into the following broad categories:

1. Ensuring good process, particularly for the implementation of goals related to policies and strategies.
2. Public engagement in the concept of sustainable prosperity and its implementation through this Act.
3. The role of an independent commissioner for sustainable prosperity in Nova Scotia.
4. A commitment to update goals and develop new goals toward the ultimate objective in the Act on an ongoing basis rather than just during the legislative five year review

1. Ensuring Good Process

The basic point is that good process is important to the successful implementation of the Act for at least two reasons. First, good process results in a better end product, be that a new wetland policy, a water strategy, or a green economy

strategy. Secondly, good process builds support for the substance of what is being developed, ensuring more effective implementation. One of the lessons learned from the first 5 years of EGSPA is that a goal to develop a policy or strategy with a firm timeline can lead to bad process even when the intentions are good. For these reasons, it is my submission that it is critical that Bill 136 establish clear criteria for good process, criteria against which processes utilized to meet the goals in this Act can be measured. In the limited time available, I do not feel comfortable developing a list of criteria to be applied in the short time available to me, but they would include principles of transparency, access to information and decision-makers, inclusiveness and an effort to build consensus where possible. The criteria could be established in the Act, or the Act could set the stage for their development in regulations as long as their role in the Act was clearly set out.

The importance of good process going forward is perhaps best illustrated when considering the challenge of developing the green economy strategy by 2014. I am sure there are many aspects to this strategy that are well beyond my expertise, however, I have given some thought to one important part of such a strategy, the role of solar energy in a green economy. In order to maximize the opportunity that the solar industry could contribute to a green economy in Nova Scotia, a wide range of stakeholders would have to work together to identify the various elements that would have to be in place. Stakeholders would include all three levels of government, those currently active in the solar industry in Nova Scotia, those involved in educating those involved in the industry, various stakeholders involved in the construction industry, Nova Scotia Power, and homeowners. I am sure there are others I have missed. Among the issues one would need to consider in determining how this industry can best contribute to a green economy in Nova Scotia are the following:

- What role can solar energy play in meeting existing and possible future renewable energy targets and GHG emission reduction targets in Nova Scotia?
- What contribution can solar energy make to energy security and how?
- What contribution can solar energy make to managing the evolving fuel mix for electricity generation in Nova Scotia and related challenges and opportunities for peak demand, stability of the grid, smart grid, and demand management?
- What contribution can solar energy make to economic development in Nova Scotia, particularly development outside urban centers and how can this opportunity be maximized?
- Is the opportunity limited to installation and servicing of solar equipment, or can it extend to manufacturing beyond our existing manufacturing capacity?
- How should construction and development change in Nova Scotia to embrace the opportunities associated with solar energy, such as changes to subdivision design and building codes to take full advantage of passive, thermal and photovoltaic solar energy in the built environment?
- What other measures should be taken to take full advantage of passive solar, thermal solar, and photovoltaic solar from an energy perspective, from an

environmental perspective, from a social perspective and from an economic perspective?

- How do we ensure a properly educated workforce in all affected trades and professions?
- How do we ensure maximum local benefits from the manufacturing, installation and maintenance of solar energy products?
- How can we best integrate solar energy with other forms of renewable energy as well as energy conservation, efficiency and smart grid technologies to create energy security, sustainable and affordable energy to meet energy needs in Nova Scotia over the long term?

Again, in my haste, I am sure I have omitted some important issues. My ultimate point is that the solar industry is only one of many aspects of a green economy, and even on this one issue, there are many issues to be explored and many interests to be engaged. In short, these are complex issues that will greatly benefit from good process, both in terms of the quality of the strategy, and its implementation. With the pressure of time imposed in the Act, it is particularly important to be clear about the importance of good process.

2. Public Engagement

An important part of public engagement is already addressed under the previous point. Good process encourages constructive public engagement, and will enhance the public's awareness and support for the goals of the Act. There is, however, at least one other important opportunity to engage members of the public to improve the effectiveness of the Act and to enhance the public's support for its implementation.

If public support for the Act is important for its effective implementation, then the annual review offers an invaluable opportunity to further improve the implementation of the Act. Governments can only lead so far. If the broad public is not aware of and supportive of the effort, it is unlikely to be sustained.

It is therefore my respectful submission that offering an opportunity for the general public to comment on the range of issues addressed in the annual progress report on the implementation of the Act is critical to the long-term success of the Act. I would therefore recommend that the Round Table be mandated to seek feedback from the general public on the range of issues to be addressed in the annual report to the legislature. This can be done in parallel with the development of the report, so that it does not delay the completion of the report to the legislature or the completion of the Round Table's review of the report.

3. Commissioner For Sustainable Prosperity

Sustainable Prosperity is a complex issue, and likely to be among the defining issues of our and future generations. The creation of a commissioner for sustainable prosperity would ensure an independent voice and a source of expertise on this

critical and complex issue. My recommendation is that the commissioner not be given any decision making power under the Act, but that it be given full access to the range of government efforts undertaken to implement the Act, and be given the opportunity to file an annual report at an appropriate time to inform the public debate on the effectiveness of the Act, the implementation of existing goals, the adequacy of existing goals, and to make recommendations on how to improve efforts in Nova Scotia toward the ultimate goals as set out in the Act.

The Commissioner will serve as an important complement to the Round Table. Given the composition of the Round Table, it is well positioned to offer advice to the Minister on a range of issues and to encourage diverse interests to seek common ground. Given the range of interests represented, however, the Round Table has its limits. It is generally not well positioned to serve as an independent voice to assess and where appropriate lend credibility to the sometimes difficult choices that will have to be made. For Nova Scotians to be able to trust that these choices are made in the best interest of the long-term goals, the independent voice of a commissioner for sustainable prosperity will be invaluable.

Let me briefly try to illustrate my point. The individual goals have multiple elements by which their success will be measured. One of them is the date by which they are to be accomplished. Some will have numerical targets that are to be met, but say little about the opportunity to integrate environmental protection and economic prosperity associated with that numerical target. Some will require the preparation of a document, but say little about the substance the documents and how we ensure that the substance ensures that we continue to move in the direction of sustainable prosperity. At times, there will be conflicts among the elements, requiring choices to be made.

It would be very unfortunate if the provincial government were stuck in a position where opportunities for better integration of the environment and the economy, or good process to bring Nova Scotians along in the implementation, were compromised in the name of meeting a timeline associated with a goal. On the other hand, it would be similarly unfortunate if timelines were to be ignored unnecessarily in the name of process and integration.

Only an independent voice, such as a commissioner for sustainable prosperity has the potential to support good choices on these issues. The Round Table plays a very different, though just as important function, it cannot be expected to achieve consensus on such issues, where immediate short-term interests of individual members of the Round Table will make it impossible for the Round Table to speak with one, impartial voice.

4. Annual Reflection on Goals

My final point is closely connected to some of the previous recommendations, in that public engagement in the annual review of the performance under the Act and

the creation of a commissioner for sustainable prosperity could both serve to address the issue I would like to highlight here.

My basic point is that while there has been an ongoing effort to meet existing goals under EGSPA through the first 6 years of its existence, there has been limited reflection on the adequacy of the goals and the value of adding goals to those listed. The current Act already provides an opportunity to consider these issues in the annual report to the legislature; however, this has not resulted in these issues being raised in the annual reports, even when new goals are identified outside the Act, as was the case with the 40% renewable energy target. My proposal is that through a combination of public engagement, the Commissioner for Sustainable Prosperity, perhaps a clarification of the role of the Round Table and a refinement in the requirements for the annual report to the legislature, we ensure that the adequacy of goals set out in the Act are considered annually, not just their implementation.

I am sorry that in the limited time available I was not able to offer more concrete proposals for amendments to strengthen Bill 136, but I hope these comments are helpful in your deliberations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Meinhard Doelle', written in a cursive style.

Dr. Meinhard Doelle
Associate Dean, Research
Professor of Law