

November 21, 2012

Hon. Ross Landry  
Chair, Law Amendments Committee  
c/o Legislative Committees Office  
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1740 Granville Street  
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Dear Minister Landry:

**Submission to the Law Amendments Committee**

We regret that, because of the short notice afforded us, we are unable to appear before the Law Amendments Committee, but we trust that the Committee will be able to give our comments due consideration.

East Coast Environmental Law (ECELAW) is a non-profit organization with charitable status dedicated to encouraging the development and fair application of innovative and effective environmental laws in Atlantic Canada. We aim to increase access to environmental laws through a legal inquiry service, develop public awareness through workshops and publications, provide the next generation of environmental lawyers with opportunities to get practical experience, and strengthen environmental laws in Atlantic Canada through research, publication and collaboration with public interest groups, lawyers and government.

ECELAW welcomes the emphasis placed in Bill 136 on the integration of environmental and economic aims using a whole systems approach, and the commitment to prepare a green economy strategy by 2014. Of course, exactly what any of this will mean in practice is still to be determined. "Sustainable prosperity" and "green economy" are meaningless concepts without rigorous definition and continuous evaluation (and indeed re-evaluation), and this process will need to draw on all available sources of expertise and inspiration. For this reason ECELAW recommends that the proposed new goal in 2(s) – the development of a provincial green economy strategy – be amended to include specific commitment to the use of an open and collaborative process, engaging all interested parties.

In our earlier submission to the ESPA review, ECE LAW made a number of recommendations. We were particularly disappointed that Bill 136, on the advice of the Round Table, does not address the related issues of environmental rights and of independent oversight through the appointment of a Green Economy (or Sustainable Prosperity) Commissioner.

Why are environmental rights critical to the attainment of sustainable prosperity? And why are environmental rights a fundamental requirement if Nova Scotia is going to “demonstrate international leadership” in a world where over 130 other countries (and three Canadian provinces) have already taken the vital step of protecting their citizens’ right to live in a healthy environment?

ECE LAW wishes to provide the following arguments:

The “green economy” and “sustainable prosperity” are relatively new concepts but do not replace the older but absolutely crucial concepts of environmental protection, conservation and restoration, because these imperatives are what will maintain and build our “natural capital” – the ecosystem that sustains and nurtures all life on earth, including human life. ECE LAW looks forward to the future development and use, through the creation of an effective green economy strategy, of tools that accurately value this natural capital and builds the concept of ecosystem services and environmental costs into our societal decision-making. But in the meantime what is the best way to improve our ability to ensure environmental protection? Strengthening government regulation and enforcement is one answer, but in addition the conclusion reached in many other jurisdictions is by empowering citizens through the legal protection of the right to a healthy environment.

In its report the Round Table indicated that

- it had heard from a number of participants about the need for environmental rights in Nova Scotia
- some members of the Round Table were supportive, others feared opening the door to frivolous litigation (a criticism that was not substantiated in any way and one which ECE LAW would be pleased to refute with evidence if required)
- the Round Table considered that environmental rights should be addressed through the Environment Act and not through EGSPA.

ECE LAW agrees that environmental rights should be legislated through the Environment Act or through a piece of stand-alone legislation such as an Environmental Bill of Rights (and please note that we recommended the inclusion of environmental rights during the most recent review of the Environment Act). ECE LAW would be pleased to assist the Government of Nova Scotia in exploring how best to proceed to ensure that the legislative approach most suited to Nova Scotia’s needs is developed. However the Green Economy Act, which lays out the overall

strategy to move the province forward, is the place where the Government should commit to this important step. We recommend inclusion of (a) a statement of principle that Nova Scotians have a right to live in a healthy environment, and (b) a target that the Government will introduce legislated protection of environmental rights by 2015.

If necessary, the Government could adopt a phased approach to the introduction of environmental rights. ECELA recommends that the first step should be to provide Nova Scotians with procedural rights – namely access to environmental information and to participate in decision-making, the right to request review of policies, regulations and laws, and the right to apply for an investigation when an environmental act or regulation has been contravened. Please note that section 10 of the Environment Act indicates that the Minister shall establish an environmental registry ensuring public access to information and documents. This is an important procedural right, one which is already in legislation but not implemented, which severely hampers the efforts of citizens (including ECELA on behalf of our clients) to participate effectively in the promotion of environmental protection. ECELA believes that this problem should be rectified as soon as possible.

The other recommendation from our previous submission that we wish to bring to your attention is the need for independent oversight through the appointment of an Environmental (or Sustainability) Commissioner. We applaud the intent in Bill 136 to emphasize that the work of greening our economy must integrate the efforts of many departments. However, this task is so vital to Nova Scotia's future, and the challenge of ensuring that all departments truly buy into the process is so enormous, that provision should be made for independent auditing. The Sustainability Commissioner should be tasked with studying best practice in other jurisdictions, establishing the environmental and economic indicators of sustainable prosperity, evaluating and reporting on Nova Scotia's progress, and making annual recommendations for improvement.

We would be pleased to make a more detailed submission if required or to meet with members of the Committee at a later time. We wish you well in your deliberations. Bill 136 as it stands is a good start, but we believe that it still lacks some of the tools necessary to make the green economy a reality in Nova Scotia.

Sincerely

Lesley Griffiths  
Executive Director

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The other recommendation from our previous submission that we wish to bring to your attention is the need for independent oversight through the appointment of an Environmental (or Sustainability) Commissioner. We support the intent in Bill 138 to emphasize that the work of greening our economy must integrate the efforts of many departments. However, this task is vital to Nova Scotia's future, and the challenge of ensuring that all departments truly buy into the process is so enormous, that provision should be made for independent auditing. The Sustainability Commissioner should be tasked with studying best practice in other jurisdictions, establishing the environmental and economic indicators of sustainable prosperity, evaluating and reporting on Nova Scotia's progress, and making annual recommendations for improvement.

We would be pleased to make a more detailed submission if required or to meet with members of the Committee at a later time. We wish you well in your deliberations. Bill 138 as it stands is a good start, but we believe that it still lacks some of the tools necessary to make the green economy a reality in Nova Scotia.

Sincerely,

Larry Griffiths  
Executive Director