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To: Office of the Legislative Counsel
Cc: Lisa Mitchell
Subject: Comments on Bill No. 1, An Act Respecting Government Organization and Administration
Attachments: East Coast Environmental Law_Written Submission on Bill No. 1, An Act Respecting Government Organization and Administration_March 12, 2025.pdf

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Good afternoon,

Please find attached written comments from East Coast Environmental Law to the Nova Scotia Public Bills Committee regarding *Bill No. 1, An Act Respecting Government Organization and Administration*.

Sincerely,

Mike Kofahl

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March 12, 2025

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Dear Members of the Public Bills Committee,

Re: Comments on Bill No. 1, *An Act Respecting Government Organization and Administration*

East Coast Environmental Law is a regional charity that provides public-interest environmental law services throughout Atlantic Canada. We have three staff lawyers who live and work in Nova Scotia: one lives in the Annapolis Valley, one lives on Cape Breton Island, and one lives in Halifax. Our organization envisions a future where laws and legal systems protect ecological health and promote environmental and climate justice throughout Atlantic Canada. We work to enhance public education about environmental laws, conduct innovative legal research, and advocate for environmental law reform that aims to safeguard the critical resources that all Nova Scotians depend on for our health and wellbeing – including clean air, clean water, fertile soil, and a rich, biodiverse environment that supports all life.

As a community centered organization, our vision for the future is shaped by what we hear from Nova Scotians every day. That is important because listening to and hearing perspectives, voices, and input from the diverse communities around Nova Scotia helps us to constantly refine and re-evaluate our work so that our public-interest services reflect the public's diverse interests and needs.

One of the most consistent things we hear from Nova Scotians is that they want to know why and how decisions about the environment are made and to shape and inform those decisions. As a public-interest organization, we have steadfastly advocated for environmental decision-making that enables members of the public and community groups to engage and to shape decisions that affect their lives and the prosperity of this province. Therefore, we are deeply concerned about proposed changes in *Bill No. 1, An Act Respecting Government Organization and Administration* ("*Bill No. 1*") because they threaten the transparency and accountability of environmental decision-making in Nova Scotia.

We need to meet the moment

Nova Scotians and Canadians are facing enormous uncertainty as the second Trump Administration in the United States threatens to undo generations of peacebuilding, economic development, and global environmental stewardship. There is a real fear that democracy and democratic values are under threat as disinformation runs rampant, the news media is attacked, and vulnerable communities are silenced with the threat of economic reprisals and disenfranchisement.

In this global political backdrop, Nova Scotians continue to face economic pressures as the province maneuvers out of a global pandemic. Amid high interest rates, stagnant wages, and swollen costs of living, we now face the real threat of tariffs from the Trump Administration and a dramatic escalation in global protectionism that will further raise costs and threaten our local economies. It is reasonable to meet this moment by looking inward, evaluating our place in the world, and imaging what a future looks like in all that uncertainty and fear.

East Coast Environmental Law's vision for Nova Scotia's future, based on what we hear from Nova Scotians, is one where the province continues to recognize the importance of a healthy and sustainable environment because our local natural resource economies, cultural heritage, and community health are so dependent on thriving forests, clean soil, water and air, and an abundance of biodiversity. That vision of a healthy environment – one which supports our businesses, cultures, traditions, and livelihoods – requires law and law-making that values and respects the most fundamental principles of a healthy democracy, including transparency and accountability, and the exercise of power in accordance with the rule of law.

Bill No. 1 does not support this vision of a future for Nova Scotia. *Bill No. 1* significantly reduces transparency and accountability by removing fundamental checks and balances that are in place to ensure that members of the public can see how and why decisions are made and laws administered. *Bill No. 1* feels like an attack on independent bodies and important laws that are designed to ensure the government is accountable to the public and to enable the public to make informed decisions when the time comes, once again, to elect a government – another hallmark of a healthy democracy.

The Auditor General needs independence to ensure environmental decisions are sustainable

We are pleased to see that Premier Houston has signalled that he will abandon the amendments to the *Auditor General Act* that he proposed in *Bill No. 1*, which otherwise will significantly change the function and independence of the Office of the Auditor General of Nova Scotia. Nonetheless, given the track record of Premier Houston's government (for example, a legislated promise to adhere to fixed election dates which *Bill No.1* removes, or the promise to implement the *Coastal Protection Act*), we feel it is important to add our voice to the chorus of Nova Scotians who do not support changes that threaten democratic institutions, and to underscore the importance of the Auditor General's work to good environmental decision-making.

In 2016, the Auditor General audited the province's management of species at risk under the *Endangered Species Act*. The Auditor General recognized that with human activity causing impacts around the world, more species are likely to become at risk; that the connection between life and supporting ecosystems was key; and, that preservation of habitat for species at risk is important to their survival.¹ The Auditor General's audit revealed that species at risk needed to be a greater priority for the Department of Natural Resources (as it was called then), which was not fully managing conservation and recovery of species at risk.² In 2019, the Auditor General followed up on its audit and found that the Department had not followed through on many of the Auditor General's recommendations.³ A further update by the Auditor General in 2021 found that the Department still had not followed through on its recommendations, which included: establishing recovery teams; developing and reviewing recovery and management plans for species at risk as required under the *Endangered Species Act*; and, reviewing all species listed in the regulations and amending or developing appropriate practices, as guided by recovery plans, to protect their habitat.⁴ The Auditor General concluded that there was a risk that by not following its recommendations, the Department was not properly monitoring and conserving endangered species.

The Auditor General's 2016 audit report was cited as evidence by the Supreme Court of Nova Scotia in its 2020 decision, *Bancroft v Nova Scotia (Lands and Forests)*, where the court found that the province had failed to adequately protect species at risk, and specifically, that it had failed to carry out legal obligations under the *Endangered Species Act*.⁵ Ultimately, the Auditor General's audit of the province's management of species at risk was an important part of holding the province to account, not only by flagging issues of provincial management of species at risk, but by ensuring that a strong, public record existed that could be used to hold decision-makers to account.

The Office of the Auditor General relies on its independence from government to ensure that it will not face politically motivated reprisals for criticizing the government of the day. *Bill No. 1* would make changes to the *Auditor General Act* that threaten the independence of the Office of the Auditor General and its ability to openly flag inadequacies of government management and inconsistencies with the law on important matters including environmental stewardship. For example, if the amendments to the *Auditor General Act* are not removed, *Bill No. 1* will give the Legislative Assembly the extraordinary power to dismiss the Auditor General without cause or reason; would give the Attorney General the power to order government records or information to be confidential because of privilege; would allow members of the Executive Council to require reports of the Auditor General to remain confidential for vague reasons of "public safety" or "public interest"; and, would require the Auditor General to submit draft reports to the Legislative Assembly and give the Governor in Council power to stop tabling of such reports indefinitely through its regulation-making authority.

¹ Auditor General of Nova Scotia, "[Report to the House of Assembly](#)" (May, 2016) at page 47.

² *Ibid.*

³ Auditor General of Nova Scotia, "[Follow-up of 2015 and 2016 Performance Audit Recommendations](#)" (March, 2019) at page 12.

⁴ Auditor General of Nova Scotia, "[2021 Report of the Auditor General to the Nova Scotia House of Assembly: Follow-up of 2016, 2017, and 2018 Performance Audit Recommendations](#)" (July, 2021) at page 14.

⁵ *Bancroft v Nova Scotia (Lands and Forests)*, 2020 NSSC 175 at paragraphs 130 and 135.

None of the changes to the *Auditor General Act* proposed by Premier Houston in *Bill No. 1* would have furthered the public interest in transparency and accountability. Rather, the changes would amount to a consolidation of power in the Executive Council and would remove important oversight and accountability powers of the Legislative Assembly, skewing the important balance of power and eroding the delicate separation of powers that serve as another hallmark of democracy.

We urge Premier Houston to follow through on his recent public promise to withdrawing all his proposed amendments to the *Auditor General Act*. We also encourage the Premier and the members of his Executive Council to reflect on the extraordinary position of power they find themselves in, and to strengthen, rather than weaken, the ability of independent bodies to scrutinize government decision-making.

Access to information is fundamental to a functioning democracy

Nova Scotians have seen first-hand what happens when the Executive Council makes decisions about the environment without transparency or accountability. On December 18, 2019, the CBC reported that the Treasury and Policy Board – a committee of the Executive Council – had removed Owls Head Provincial Park from the province’s list of sites awaiting legal protection from the province’s *Our Parks and Protected Areas* plan, with the intention to sell the Owls Head Crown lands to a private developer.⁶ The CBC’s article, which relied on information gained through an access to information request, sparked a province-wide conversation about what kinds of special interests were driving decisions about public assets.

In a subsequent access to information request, Robert Bancroft, a retired biologist, and the Eastern Shore Forest Watch Association, further discovered that the Minister of Lands and Forestry of the day had executed a Letter of Offer to sell the Owls Head Crown lands. Mr. Bancroft and the Eastern Shore Forest Watch Association asked the Supreme Court of Nova Scotia to review the decisions of the Treasury and Policy Board and the Minister. The Supreme Court of Nova Scotia released its decision, *Bancroft v Nova Scotia (Lands and Forestry)*, in 2021. Although it found that the decisions of the Treasury and Policy Board and the Minister were reasonable, that decision was based on the fact that the province had represented the Owls Head Crown lands as a provincial park for more than four decades despite never legally protecting it. The Supreme Court noted the following (emphasis added):

The reasonableness of the Treasury and Policy Board’s decision must be assessed in its proper context. Despite the Province’s representations to the contrary for more than four decades, the Owls Head Crown lands were never designated for protection as a provincial park or a park reserve. They did not become a provincial park or a park reserve through their inclusion in the PAPA, nor did such inclusion guarantee that they would be protected in the future. The government’s misrepresentations that Owls Head was a provincial park, while troubling, are legally irrelevant to this court’s substantive

⁶ CBC Nova Scotia, “NS won’t protect land with ‘globally rare’ ecosystem that company eyes for golf report” (December 18, 2019).

review of the Treasury and Policy Board's decision. **The same is true of the choice by the Ministers of Land and Forestry and Environment to seek removal of Owls Head from the PAPA without first informing the public.** The wisdom of the government's conduct in this regard is not a matter for judicial review. **In our constitutional democracy, the merits of such exercises of discretion by elected representatives are reviewable only by the public who elected them.**⁷

The Court highlighted that the merit of many decisions made by elected representatives will ultimately take place at the ballot box. The government of the day fell shortly afterward. In June 2022, Premier Houston's government formally and legally designated Owls Head as a provincial park. It is difficult to imagine a scenario where such an outcome would have occurred if the public were unaware of the secret dealings of the Treasury and Policy Board and the Minister, or if the Owl Heads Crown lands had been sold to a private developer.

In *Bill No. 1*, Premier Houston has proposed changes to parts of the *Freedom of Information and Protection of Privacy Act* and the *Municipal Government Act* that deal with public access to government records. These changes will jeopardize the same crucial public information gathering tools that the CBC and members of the public used to gather information about the Owls Head Crown lands and to prevent a deeply unpopular and inappropriate transfer of public assets into private hands. In perception and in effect, the proposed changes will endanger important tools that allow the public and the media to understand government decisions about the environment and to hold elected officials accountable.

If the proposed amendments to the *Freedom of Information and Protect of Privacy Act* and the *Municipal Government Act* are passed, the head of a public body – usually, the minister of a government department, i.e., a member of the Executive Council) – can disregard requests for access to records that are “frivolous” or “vexatious”, “unduly repetitive or systematic”, or “otherwise not made in good faith”. There will be no test or criteria for how such a broad, sweeping power will be applied to individual requests. Instead, the amendments will provide the heads of public bodies with substantial discretion to disregard requests for information.

Furthermore, if the amendments are passed, Review Officers – who are appointed by the Governor in Council, i.e., the Lieutenant Governor acting on the advice of the Executive Council – will be empowered to refuse to conduct or refuse to continue reviews for information for “whatever reason the Review Officer considers proper or necessary”. For example, a Review Officer could find that a matter “has been or could be more appropriately dealt with, initially or completely, by means of a procedure other than a complaint or review”; that there is “insufficient evidence to warrant a review”; or that the review is “trivial, frivolous or vexatious or is made in bad faith”. Such decisions would only be reviewable through a judicial review in the Supreme Court of Nova Scotia. Equivalent changes will be made to the *Municipal Government Act* and will allow requests for municipal records to be disregarded.

⁷ *Bancroft v Nova Scotia (Lands and Forestry)* 2021 NSSC 234 at paragraph 175.

The changes to the *Freedom of Information and Protection of Privacy Act*, and related sections of the *Municipal Government Act*, amount to a consolidation of power and control in the Executive Council, which will have broad discretion to decide whether information should be released to the public.

In times of uncertainty, when government is unresponsive to the public's desire for information about government decision-making, members of the public use access to information requests to get the information they need to make informed decisions, to understand government policy, and to spark conversations about the direction –and future of Nova Scotia. In our opinion, the proposed amendments to the *Freedom of Information and Protection of Privacy Act* and the *Municipal Government Act* calls into question the government's commitment to transparency.

Consider the ongoing controversy around the *Coastal Protection Act*. Nova Scotians continue to be interested in the Government of Nova Scotia's commitment to, and responsibilities over, coastal protection, and that interest has not waned in the face of a dramatic shift in policy direction on coastal protection.

In September 2022, in the devastating aftermath of Hurricane Fiona, Environment Minister Tim Halman told the Legislative Assembly that regulations for the *Coastal Protection Act* were nearly complete and would be introduced in the spring of 2023. However, the spring came and the government delayed implementation of the Act. Under the *Freedom of Information and Protection of Privacy Act*, the CBC requested all feedback the Department of Environment and Climate Change had received on the issue from August 2021 to June 2023.⁸ Documents obtained through the request showed that the majority of people, mostly private citizens, wanted the province to take action. CBC received a second package of documents in January 2024 that totalled 900 pages – documents that were found in the Department of Environment's junk folder. The documents amounted to 863 submissions, with all but two calling on Minister Halman to proclaim the *Coastal Protection Act*.⁹

In the autumn of 2023, the Department hired a consultant – Group ATN – to conduct a survey of coastal property owners for further feedback on the issue of coastal protection. Ultimately, the government refused to release the results of the survey¹⁰, and instead, only shared a summary of the coastal survey.¹¹ In the face of the Government of Nova Scotia's unwillingness to share information, members of the public and the media made multiple requests for information about the survey and the government's decisions related to coastal protection. In fact, since 2019, a total of 11 freedom of information requests have been made seeking more information about the *Coastal Protection Act*.¹²

⁸ CBC Nova Scotia, "Documents show Nova Scotians urging minister to proclaim *Coastal Protection Act*" (September 7, 2023).

⁹ CBC Nova Scotia, "Environment Department finds hundreds of *Coastal Protection Act* submissions in junk mail" (February 2, 2024).

¹⁰ CBC Nova Scotia, "NS government refuses to release latest *Coastal Protection Act* survey results" (January 11, 2024).

¹¹ Group ATN Consulting Inc, "Nova Scotia Coastal Property Owners Consultation Results" (April, 2024).

¹² Government of Nova Scotia, "Catalog – Coastal protection – FOI Requests" (current to February 25, 2025).

The Government of Nova Scotia may disagree with many citizens about the direction of coastal protection policy, but members of the public deserve to understand the rationale behind its decisions. In many instances, the only way to obtain access relevant information is through the FOIPOP process. Would the 11 freedom of information requests about the *Coastal Protection Act* have been treated differently if the proposed amendments were in place? The lack of criteria to dismiss a request as frivolous, vexatious, unduly systemic, or not in good faith makes it impossible for Nova Scotians to know how these terms will be interpreted. Would a Review Officer have dismissed a search for records based on there being insufficient evidence to warrant a review, because government policy was already set? We may not know, but we may find out.

It is also worth noting that Premier Houston has not provided evidence to support the need for his proposed changes to the *Freedom of Information and Protection of Privacy Act*, and related sections of the *Municipal Government Act*. The information that is available through these important provisions belongs to the public. Take the Group ATN coastal protection survey as an example. The Government of Nova Scotia used public money to pay for the consultant, but then refused to share the results with the public. It seems inappropriate to us that a freedom of information request was even necessary to access information paid for with public money, and even more inappropriate that *Bill No. 1* would further limit the ability of the public to access public information. We would welcome the opportunity to stop using freedom of information requests to access public information about decisions affecting the environment, but until the Government of Nova Scotia makes a good faith effort to use more appropriate and efficient procedures to release public information, we strongly condemn the changes proposed by Premier Houston in *Bill No. 1* that would weaken the public's access to public information.

***Bill No. 1* puts the “no” in Nova Scotia: no information, no oversight, no accountability**

Ultimately, the changes that Premier Houston has proposed in *Bill No. 1* will reduce the ability of members of the public to feel confident about the decisions that the Government of Nova Scotia – and particularly, the Executive Council – make about our future. Premier Houston has signalled that he will withdraw his proposed changes to the *Auditor General Act* that would reduce government transparency and accountability, and we urge him to listen to Nova Scotians, who have been clear that endangering the ability of the public to get information about government decision-making will reduce oversight, transparency, and accountability, and will threaten the open exchange of information and discussion that fosters a strong democracy.

Sincerely,



Mike Kofahl
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