

Environmental Rights:

Prince Edward Island, New Brunswick and Nova Scotia

Summary of Strategy Sessions and Legislative Road Maps
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I. Background

Environmental rights encompass our human right to clean water, air, land and food. Environmental rights can help conserve and restore healthy environments, which in turn support healthy people and communities. While many Canadians assume we have environmental rights, Canada is one of very few countries that does not recognize a legal right to a healthy environment.

Environmental rights consist of two main branches of rights. First is a substantive right that gives citizens the right to live in a healthy environment. This is akin to our existing right to life, liberty and security of the person (section 7 of the *Canadian Charter of Rights and Freedoms*), or our freedom of religion (section 2a of the Charter). The second branch consists of procedural rights. These include the right to access information about environmental cases, the right to participate in decision-making processes affecting the environment, and an ability to oppose decisions that allow for an unhealthy environment.

The purpose of the environmental rights strategy sessions was, in part, to raise awareness among key organizations and people in each of the Maritime Provinces. The sessions also offered a chance for organizations to learn what other groups are doing to promote environmental rights, and to network with each other. Importantly, the sessions laid a foundation upon which to create strategies and plans of action to push forward environmental rights in each of the Maritime Provinces.

The campaign to raise awareness and understanding of legally based environmental rights in Canada has been led by Ecojustice, the David Suzuki Foundation (DSF) and the East Coast Environmental Law Association (ECELAW). All three organizations believe that a substantive right to a healthy environment should be enshrined in the Canadian Constitution, while at the same time are fully

aware of the challenges associated with obtaining such a right. Given that context, the organizations have moved forward collaboratively. Ecojustice is active in environmental-rights based litigation, arguing that section 7 of the Charter (our right to life, liberty and security of the person) inherently recognizes a right to a healthy environment.

The DSF has focused its efforts on a cross-Canada campaign to engage Canadians to seek municipal declarations on the right of communities to a healthy environment (the Blue Dot Tour). ECELAW has focused on the path towards establishing substantive and procedural rights to a healthy environment in provincial legislation. We have collaborated with the DSF and Ecojustice throughout this project to ensure that our approaches are complimentary and supportive of one another's objectives.

In early 2014, ECELAW published *An Introduction to Environmental Rights for Prince Edward Island, New Brunswick and Nova Scotia*. The document represents research and analysis completed by ECELAW on the environmental legislation in each of the three provinces. We identified any environmental rights (substantive or procedural) already recognized in provincial law, and assessed the steps needed to amend current laws or introduce new laws to provide more broadly for environmental rights in provincial legislation.

In order to identify the best approach to achieve legally based environmental rights in the Maritimes, we followed up our research with a series of strategy sessions in each of the three provinces. These sessions significantly enhanced our research through information sharing with community members, lawyers and environmental organizations. A summary of the strategy sessions in Nova Scotia, New Brunswick and Prince Edward Island and the outcomes of these sessions follows.



II. Strategy Session Summaries

A. Nova Scotia

(1) Preparation for the Strategy Session

The strategy session on environmental rights in Nova Scotia was held on September 26, 2014. The date was selected to coincide with the DSF's Blue Dot tour. The Blue Dot Tour event took place in Halifax on the evening of September 27, 2014.

Several months prior to the launching the strategy session, ECELAW established partnerships through an environmental rights working group to assist in the design and implementation of the session. The working group included representation from the following groups and individuals engaged in environmental projects:

- Gretchen Fitzgerald, Director, Sierra Club Atlantic (atlantic.sierraclub.ca)
- Mark Butler, Policy Director, Ecology Action Center (www.ecologyaction.ca)
- Lil McPherson, Co-owner and Food Activist, Wooden Monkey (www.thewoodenmonkey.ca)
- Silver Donald Cameron, Executive Producer, The Green Interview (www.thegreeninterview.com)
- Billy Lewis, Mi'kmaq Elder

The group met on multiple occasions to discuss the approach to the Nova Scotia strategy session, the outline for the session and to share contact information for participants. The working group also met with representatives of the DSF (including David Suzuki himself) to assist with the Blue Dot Tour and to facilitate the selection of Halifax as one of the communities to be part of the DSF community engagement plan.

The Nova Scotia strategy session was titled: 'Legal Rights to a Healthy Environment: It's Time' and participation was by invitation. ECELAW's goal in the design of the invitation list was to bring together a mix of individuals with a variety of experiences and interests that connected to the broader concept of environmental rights. There were 29 invitations sent and 23 people attended the session. The mix included environmental lawyers, representatives from environmental organizations, business owners and citizens dealing with environmental concerns. See Appendix A for a list of invitees and attendees. The session ran from 11:30 am to 3:30 pm and was held at a local restaurant (owned by working group member Lil MacPherson) where the meeting space was provided free of charge. A working lunch was provided. See Appendix B for a copy of the agenda.

The session was opened by the facilitator and followed by a round table of introductions. Jamie Simpson and Lisa Mitchell gave opening remarks on behalf

of ECELAW and set the stage for the environmental rights dialogue. The large group was divided into pre-arranged small groups for a one-hour discussion focusing on:

- Specific environmental issues in the province;
- How things may have been different if there was a legally protected right to a healthy environment (R2HE);
- How specific procedural environmental rights could make a difference in NS; and
- How to move forward to implement R2HE in NS.

The group reconvened in a full round table with a focus on how to move forward. Some of the questions posed during the large group discussion included:

- What challenges exist in NS to implement R2HE?
- What specific actions can the environmental community, community groups, and individual citizens take?
- How do we engage a broader spectrum of groups and individuals?
- How do we engage with government?
- Where is the common ground?
- What would be the most successful approach in NS?

The final 30 minutes of the large group discussion focused on actions that could be taken to establish environmental rights in provincial law in Nova Scotia.

(2) Discussion of Substantive and Procedural Environmental Rights

The strategy session participants provided excellent insight into the elements of substantive and procedural environmental rights they considered being key in Nova Scotia.

a. Substantive Rights

- A substantive right to a healthy environment needs to be established in law in Nova Scotia.
- The legal language around this right should include reference to 'long-term' health.
- Government should be required to place greater weight on the right to a healthy environment when contrasted with short-term public benefit.
- The precautionary approach to assessing health risk should be applied to decision-making.

To that end, government and industry should be required to prove that there is no 'serious risk to health' as opposed to the current state of focusing on 'no imminent health risk.'

b. Procedural Rights

Procedural rights provide citizens with tools to ensure transparency, accountability, engagement, enforcement and oversight.



i. Transparency

- Mandatory reports submitted by industry to government should be available to the public.
- Non-compliance with an environmental law, approval, permit, or other related legal requirement should be made public.
- There should be a legal obligation on government to share information with the public. Restrictions on access to information should be minimal and the onus should be on the proponent to establish why information provided to a public body cannot be shared. Activate the environmental registry established by the *Environment Act*.
- Information should be shared in an easily accessible manner. i.e. on-line.
- Communities have experts and information should not be withheld or dumbed-down before being disclosed.
- Provincial government should be required by law to report annually to the public on the state of the environment.

ii. Accountability

- Resource based and environmentally damaging industries often receive significant financial support from government on the premise that the industry will provide jobs. A more detailed assessment of the costs associated with these industries should be legally required. The costs that are externalized to the environment need to be evaluated. The benefits provided by healthy and productive ecosystems also need to be valued.
- The purpose section of the *Environment Act* requires the government to use the precautionary principle in decision-making so that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation. Government needs to be held accountable for this and other principles identified in the Act.

iii. Engagement

- Project proponents and government should be required by law to discuss plans for new or expanding projects with the host community in a way that is honest and for which they are held accountable.
- Projects that impact natural resources, the environment or communities should be presented to the public for consideration. In some circumstances there should be a community-right to say no to certain projects under certain circumstances.

iv. Enforcement

- Government should be held accountable for failing to enforce environmental laws.
- There should be guarantees that the number of enforcement officers needed to effectively carry out the enforcement program will be maintained.
- Community members should have a recognized role in enforcement, i.e. providing information, etc.
- The purpose section of the *Environment Act* requires the government to use the precautionary principle in decision-making so that where there are threats of serious or irreversible damage, the lack of full scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation. Government needs to be held accountable for this and other principles identified in the Act.

v. Oversight

- The province should have an independent third party such as an Ombudsperson to hear environmental complaints and to hold the government accountable. This would ease the burden on the citizen to go to court and would reduce costs.
- There should be an environmental tribunal or counsel to hear concerns and adjudicate where necessary. This would reduce the administrative burden.
- The judiciary should be educated on the role of environmental law and the right to a healthy environment. Fines need to reflect the true damage caused.
- Environmental laws should include opportunities for citizen lawsuits.

(3) Discussion of Political Context for Establishing Environmental Rights in Nova Scotia

Participants engaged in a reflective discussion on the challenges faced by the provincial government with an aging population and exorbitant health-care costs. The general comment was that healthcare costs continue to increase but there is no leadership on establishing a healthy population through safer and healthier food supply, safe water and clean air. Participants highlighted the need to establish a right to a healthy environment as a means of facilitating healthy living and reduce healthcare costs.

Participants engaged in a lively discussion on the importance of building healthy and diverse communities as a key element in creating a healthy environment. As stated by one of the participants:

“Try to establish a common understanding that we value each other and our community instead of just short-term creation of jobs at the expense of the environment.”

Participants identified several factors that they believed contributed to a healthy community:

- Create opportunities for real grassroots discussion with a diversity of viewpoints that represent the community.
- Debate and identify shared values instead of particular issues.
- Talk to people in a way that says, “I’m worried about your



future, not that you are doing this and this wrong.”

- Protecting the earth is in everyone’s interest – not whether it is attainable right now but our job is to raise that understanding.
- Establish relationships and connections.
- Affirm rights even when they do not exist – if we just focused on whether we can win a specific battle then we wouldn’t have abolished slavery or gotten more rights as women.
- Law reform and community action go hand in hand.

(4) Input from the Strategy Session on Moving ER Forward in Nova Scotia

Several of the participants in the strategy session have personal experience with an environmental issue in their community. The strategy session provided a unique opportunity to bring together legal expertise and on the ground experiences.

Some important pieces of advice were shared:

- Get the facts.
- Do the research.
- Seek out experts.
- Use the resources that are available, EAC, ECELAW, Sierra Club Atlantic.
- Look at the role of all levels of government – federal, provincial, municipal.
- Engage others including politicians and lawyers that are keen to be there.
- Make a clear presentation that would withstand criticism.
- Be prepared, be polite and don’t be intimidated.
- Learn to work well with the media and social media.
- Present success stories.
- Campaign and run for office.

During the first phase of the Environmental Rights project, ECELAW completed a legislative gap analysis of provincial statutes in Nova Scotia that influence and guide environmental decisionmaking, as follows:

- *Emergency Management Act*
- *Environment Act*
- *Environmental Goals and Sustainable Prosperity Act*
- *Freedom of Information Act*
- *Municipal Government Act*
- *Ombudsman Act*

The goal of the review was to identify any existing legislative provisions that may be used or modified to support legally based environmental rights in the province. We identified several provisions in the

Environment Act that could be modified or improved to provide procedural environmental rights; however, the Act does not include a substantive right to a healthy environment.

Participants in the Nova Scotia strategy session had an opportunity to review the legislative gap analysis and provided ECELAW with some specific direction on moving forward with a legislative road map:

- Create a substantive right to a healthy environment in an environmental bill of rights for Nova Scotia.
- Provide the government with recommended amendments to incorporate procedural environmental rights in the *Environment Act* and the *Environmental Goals and Sustainable Prosperity Act*.
- Provide the government with recommendations and the rationale to amend the *Municipal Government Act* to provide municipalities with more authority to address environmental concerns.
- Address conflict of interest issues in legislation to ensure that the Minister responsible for regulation and enforcement is not also responsible for promotion of the regulated industry.
- Develop an ER working group for Nova Scotia
- Develop opportunities to engage with communities and the general public to share information on environmental rights and ultimately achieve a better understanding. Undertake a ‘small-dot’ tour across the province.
- Design a template or checklist for community groups to assist them in gathering information and understanding their rights when a resource development or extraction project is proposed.



B. New Brunswick

(1) Interviews with Key Participants in New Brunswick

The first step towards the New Brunswick strategy session was to hold discussions with several key individuals and organizations involved with environmental rights in New Brunswick. ECELAW identified four key environmental organizations in New Brunswick with which to open discussion: Children's Environmental Health Collaborative, Conservation Council of New Brunswick, New Brunswick Environmental Law Society, and New Brunswick Environmental Network. The interviews provided ECELAW with a sense of the environmental rights work already underway in the province and led to important partnerships.

Interview 1: Bonnie Hamilton-Bogart is the coordinator of the Children's Environmental Health (CEH) Bill project. She noted that a network of collaborators is undertaking the CEH work (the "CEH Collaborative"), including non-profit environmental and other groups, and lawyers from environmental law organizations (e.g. ECELAW and Ecojustice), and government representatives. The group sends updates to some 300 supporters through its email listserv. At present, the group cannot undertake advocacy work given the government representation in its membership. Its work has therefore focussed on developing the Bill. A new or reinvented group (without government representation) will have to take over advocating for the Bill once the drafting phase is complete.

Interview 2: Lois Corbett is the Executive Director of the Conservation Council of New Brunswick (CCNB). CCNB is presently heavily focused on short-term issues and goals such as the September election; the forestry crown lands contract with JD Irving, a large forestry company; fracking; and a Sunshine Bill (transparency legislation). CCNB is interested in participating in ER work as a steering committee member and in strategy sessions, provided these include a focus on practical, shorter-term goals. Ms. Corbett indicated that at this time CCNB is not able to take a leadership role with longer-term "Charter-level" issues.

Interview 3: Michel Des Neiges is the founder and spokesperson of the New Brunswick Environmental Law Society (NBELS) and has written a draft Environmental Bill of Rights for New Brunswick. Mr. Des Neiges indicated that as an organization, NBELS is not currently active. As a result, Mr. Des Neiges was happy to have ECELAW involved in developing and promoting ER in New Brunswick. Mr. Des Neiges is willing to help out on the steering committee and participate in meetings if he has time.

Interview 4: Mary Ann Coleman is executive director of the New Brunswick Environmental Network (NBEN). Ms. Coleman is willing to coordinate and facilitate the New

Brunswick ER strategy session. She wishes to make sure that current and past initiatives in New Brunswick are not lost or put to the side, and wants to make sure we embark on a collaborative effort, supportive of other ER activities. The NBEN is a member of the CEH Collaborative.

(2) Pre-strategy Session Conference Call

In lead-up to the strategy session, Mary Ann Coleman organized a conference call with some of the key participants. The conference call included Mary Ann Coleman (NBEN), Lois Corbett (CCNB), Sabine Dietz (Nature New Brunswick, or "Nature NB"), Bonnie Hamilton Bogart (CEH Collaborative) and Sharon Murphy (Green Party of New Brunswick). The call began with a review by each participant of related projects and activities. Jamie provided an overview of ER generally, ECELAW's work on ER, including the strategy sessions, and ECELAW's ER research and primer document. Jamie described the purpose and rationale of the ER strategy sessions and responded to questions about ECELAW's funding, the nature of ER that we are promoting, and the purposes of the strategy sessions.

Lois Corbett described her work to promote a Sunshine Law (transparency legislation), which would provide greater rights to individuals to know about what is going on within government regarding the environment. All on the call agreed that it fits well with the procedural side of ER.

Sabine Dietz offered that her organization (Nature NB) would benefit greatly from increased government transparency on environmental issues.

Bonnie Hamilton-Bogart described her group's work to create a Children's Environmental Health Bill, and that the draft will be launched publically on June 17th [note that the proposed Bill was released at this time]. Bonnie also noted the assistance that ECELAW, Ecojustice and the Office of the Child and Youth Advocate have provided to help develop the Bill.

Sharon Murphy brought attention to the New Brunswick *Charter for Environmental Justice* which was developed at CCNB some years ago. The Charter consists of six principles, which would be good material to work with in moving ER forward in New Brunswick.

The group discussed the outcomes that it wanted from the strategy session. These included (1) bring all participants up to speed on ER (i.e. the concept and what has been done in Canada and other jurisdictions); (2) identify the best approaches to promote ER in New Brunswick; (3) share current initiatives in New Brunswick (and discuss how we can move them forward); and (4) identify common ground for joint strategy and actions. Finally, the group discussed possible invitees, dates and venues.



(3) New Brunswick Environmental Rights Strategy Session

Step 1: Bringing everyone up to speed

The New Brunswick Environmental Rights strategy session took place on June 19th, 2014, at the offices of the Conservation Council of New Brunswick. Mary Ann Coleman of the NBEN advertised, coordinated and facilitated the strategy session.

The objectives of the strategy session were set out at the beginning of the strategy session, as follows:

- Bring everyone up to speed on the subject of environmental rights and what has been done in other jurisdictions around the world and in Canada.
- Identify the best approaches to promote environmental rights in NB.
- Share the current initiatives in NB: what they are doing? What is the intended outcome? How can people get engaged with the current initiatives? And what are the legal implications of each initiative?
- Identify common ground that everyone can think about together: strategy, needs, and actions.
- Develop a common strategy.

Following a welcome and introductions, Jamie gave a presentation entitled *What are Environmental Rights? Canada and around the World*.

This was followed by presentations on current and past ER initiatives in NB. Bonnie Hamilton- Bogart described the CEH group's efforts to create a Bill of Rights to Support Children's Environmental Health, which includes both procedural and substantive rights. Bonnie noted that it is a collaborative effort, including a lot of interaction with various government departments. She noted that Raffi, the children's entertainer, is a key promoter and champion and brings added publicity to the project. They have succeeded in getting buy-in from various sectors, and the NB Department of Health has indicated support in principle for the Bill. They have also created a "statement of need" for politicians to sign (which they can do without actually endorsing the bill, as an interim step). [Note that the bill was released publically in June 2014.]

Lois Corbett spoke about CCNB's efforts to bring about a Sunshine Law, which is government transparency legislation. Lois described the law as a stepping-stone along the way to an environmental bill of rights. Lois also described the process undertaken to get the Ontario Environmental Bill of Rights implemented. She noted it took about ten years, with many groups coming together to get the NDP to commit to the Bill in their platform, before they were elected with a majority, and then ensured that they followed through with the commitment.

Mike McKinley of a group called "Our Environment,

Our Choice" described his group's work to get municipalities in eastern NB to enact by-laws against fracking. He noted a tremendous amount of public support for this effort.

Mary Ann Coleman noted that the NB Environmental Law Society is not currently active, but that all participants can build upon the Environmental Bill of Rights that it created in association with CCNB. Mary Ann also noted the abundance of work done on ER in NB. Sharon Murphy drew participant's attention to the NB Charter for Environmental Justice, as another body of work that can be built upon.

Step 2: Identifying Needs and Actions

Raising awareness: The participants agreed with the need to increase awareness of ER in NB, the Maritimes, and Canada. The CEH group has already taken action by organizing a petition regarding the need for their Children's Environmental Health Bill and the NB Lung Association and CCNB are assisting with this effort. Another action will be to increase the presence of ER on the web to provide people with background and motivational materials, as well as supplementary information for the media to utilize. We recognized that the participants in the workshop need to draw more media attention to ER, and noted that the Blue Dot tour will help in this regard. Finally, we recognized the need to reach out to other non-profit organizations in NB to get them up to speed and on board with the ER message. We recognized that ECELAW could serve as a central clearinghouse for information on ER, and also serve to connect the various groups interested in ER in the Maritimes with each other. ECELAW can also work to put together and communicate whatever successes are realized in other jurisdictions, to learn from and be inspired by.

Resources: We recognized that we are limited by funding to carry out additional ER campaign work both in NB and in the Maritimes. We agreed to make efforts to secure more funding for ER work in NB and the Maritimes generally. This can be assisted by recognizing the good work done to date in NB, and through ECELAW's research and strategy sessions. Political Champions: We need political champions. There is an acute lack of endorsement by politicians at this stage. We noted that if David Coon is elected, he is an obvious place to state. [Note that David was elected in the September election as the first Green Party MLA in NB.] We also noted that municipal politicians might be a good starting point. It was noted that there is currently a lot of environmental interest in eastern NB because of the fracking and Crown lands forestry issues, and this could be used as an opportunity to promote the ER message.

Strategy: We identified a need for a coordinated strategy among several of the key organizations. CCNB, ECELAW and Falls Brook Centre agreed to take a lead on this. The results of this strategy session would form the basis of this strategy, with input from the other Maritime strategy sessions. The group stressed the need to be strategic given our limited resources, and the difficulty of the task. We also recognized the benefit of collaborating with other groups in the Maritimes and with national groups such as DSF and Ecojustice to help build momentum.

Children's Environmental Rights Bill: Everyone agreed to support the implementation of this Bill. It was also agreed that collaboration was important and it makes sense to create a single, Maritimewide draft environmental rights bill, including both procedural and substantive rights, as well as purpose statements that describe the need for and benefit of such a bill. ECELAW can take the lead, and with seek input and feedback from provincial groups.

Step 3: Identifying Strengths and Weaknesses with respect to promoting Environmental Rights in New Brunswick

Strengths include (1) high level of buy-in from significant number of allies already, (2) consistency in language, message and purpose, (3) professional quality of work done to date, (4) science-based nature of work done to-date, (5) precedent of ER being accomplished and effective in other jurisdictions, (6) excellent representation at this strategy session, indicating high level of interest, (7) excellent work done to date on the Children's Environmental Health Bill.

Weaknesses include (1) conceptual challenge of presenting right for humans and not the natural world – is this a problem, or does the concept just need to be better explained? (2) little or no political leadership or buy-in at present, (3) little public buy-in or knowledge of ER yet, and perhaps low on the priority list for New Brunswickers, (4) lack of connection among communities in NB, plus language and culture divides, (5) potential for confusion if there are multiple attempts and approaches to ER going forward, (6) changing laws or introducing new laws takes a lot of time and effort.

Opportunities include (1) the fact that current environmental threats have created a significant backlash in NB, (2) September election could see a green party member elected and ousting of Conservatives [as noted, this in fact occurred], (3) we have a great group of people eager to work on this issue, (4) potential to move ER forward with the current Ecojustice case in Sarnia, (5) potential for First Nations allies in NB for ER, (6) media may be receptive to the ER message, (7) many others are also working to promote ER – DSF and David Boyd for example, (8) the municipal approach to promoting ER could have a domino effect – if we can get just one community to make an ER declaration, others may well follow suit.

Threats included (1) heavy influence of corporate economic interests in NB, particularly around forestry and fossil fuel industry, (2) private ownership/monopoly on media in New Brunswick (owned by Irving), (3) lack of political will – potentially hostile, (4) public apathy, (5) science not currently being valued in decision making processes, (6) lack of sustainability and environmental education in schools, (7) lack of funding for ENGOS.

(4) New Brunswick Action Plan: The Road Ahead

The group identified seven key actions to move help move ER forward in New Brunswick. These are

- a. Public outreach: The groups will create special editions, or features, for their member newsletters or email lists about the lack of and need for environmental rights, and actions that individual people can take. We also agreed to create dedicated sections on our websites, with background information plus links to the work of other groups, particularly DSF's Blue Dot campaign. We agreed that it will be important to share achievements with members to keep them motivated and inspired. We will try to get op-eds into the media, and create events that will attract media attention. We will identify and reach out to other groups to increase the reach of our message.
- b. Information transfer and legal assistance: ECELAW agreed to serve as a central source for background information on ER, and to provide legal assistance to groups engaged in ER work in NB, if possible. ECELAW will also provide a continued link among groups in the Maritimes, as well as national groups such as Ecojustice and DSF.
- c. ER Bill of Rights: ECELAW will work to create draft environmental rights legislation, through collaboration with key groups in NB and other Maritimes provinces, building upon the ER work done to date in NB.
- d. Municipal Engagement: We will work collaboratively to identify municipalities that might be willing to pass ER declarations.
- e. Political Champions: We will work to identify political champions at all levels of government, and to cultivate relationships with these folks to increase their awareness of and the need for ER.
- f. Support National Work: We will support and promote as we are able the work of national groups promoting ER, such as DSF and Ecojustice.
- g. Iterative Process: We recognized the need for periodic check-in with each other, and consultation with key groups about our strategy, actions and achievements.

C. Prince Edward Island

(1) Establishing Contact

We began our ER work in PEI by contacting several key people in the province's environmental community. These were Gary Schneider of MacPhail Woods Ecological Forestry Project, Chris Ortenburger and Cindy Richards of the PEI Citizens' Alliance, Rob Sharkie of the PEI Watershed Alliance, and Jackie Waddell of the Island Nature Trust. Through these discussions we decided to ask Cindy Richards to help coordinate the strategy session, on behalf of the PEI Citizens' Alliance.

We then held a preliminary meeting, with additional interested people, at the home of local environmental advocate Darcie Lanthier. Jamie gave a quick presentation on the purpose of ECELAW work with ER and members of the meeting asked questions about ER and ECELAW. We discussed the current political climate on PEI, to assess whether there might be any political avenues to explore. We also discussed the purpose and logistics of the strategy session, deciding to keep the strategy session relatively small with a focused group of representatives of environmental and citizens' organizations. We also discussed appropriate dates, times and venues.

(2) PEI Strategy Session

The strategy session was held the morning of September 6, 2014 at the PEI Farm Centre in Charlottetown and was facilitated by Cindy Richards. The purpose of the strategy session was outlined by Cindy as to (1) bring everyone up to speed on ER in the Maritimes and Canada, (2) analyze the current status of ER in PEI, and (3) explore options to promoting ER in PEI. Jamie provided an overview of ER in the Maritimes, Canada and internationally. Richard Baker and Chris Ortenburger provided an analysis of whether PEI's environmental legislation contains any provisions that provide procedural environmental rights and concluded that it does not. We then held a question and answer period with Jamie on environmental rights generally.

Cindy then facilitated a discussion of what barriers we face in promoting environmental rights legislation in PEI, and what solutions can we contemplate to overcome these challenges. Barriers noted by the group included the following:

- The dominance of Irving businesses in the province, and the influence they have over how
- A tradition of government prioritizing benefits for businesses and a lack of interest in environmental issues;
- A lack of effective government opposition, as PEI essentially has had and continues to have a two-party political system;
- Sense that politicians do not represent or address citizens' concerns, and a diminishment of parliamentary democracy;
- Non-cabinet MLAs no longer have any voice or influence;
- Government appears to be a heavily top-down approach;
- Lack of public will and complacency with the status quo (and fear of change); lack of trust and sense of disempowerment;
- Fear of retaliation for speaking out;
- Concern that there may be promises of patronage in exchange for supporting certain policies;
- Fear mongering to influence public's view on policies;

- Lack of public awareness about ER;
- Misconception that environmental policy is inherently anti-economy;
- Lack of funding for public policy research, and lack of public participation in public policy development;
- Lack of evidence-based decision making;
- Lack of positive vision of an environmentally sustainable future;
- Lack of government transparency and accountability;
- No cap on political donations;
- Divisions in the community (farmer versus consumer).

As illustrated by the list above, there was a general tenor of frustration among the strategy session participants, especially with the nature and operation of the provincial government, and a sense of "patronage-based" politics. According to those in the room, change will be very challenging.

The group entered into a discussion about strategies to move environmental rights forward in PEI. A central theme was the need to provide people with a positive vision of how environmental rights could improve their quality of life. This vision may well need to include a thoughtful challenge of the current economic model, and people's basic notions of how the economy and the environment are related.

An important aspect of moving forward will be to provide positive examples of how different ways of interacting with the environment can work and are working in other places. Connecting with youth and seniors may be an effective way to effect change.

The group also noted the importance of finding people who can speak out against current political situations without repercussions to their employment or relations with their community.

The group noted some specific policy changes that need to be addressed, including establishing a cap on political donations and fair representation electoral reform. The group also recommended establishing an environmental report card that would evaluate government's track record on the environment. The group saw a potential to make environmental rights an issue in upcoming municipal and provincial elections.

Finally, the group recognized the benefit of connecting with other groups in the Maritimes that are working to promote environmental rights, and with national groups such as DSF and Ecojustice.

For next steps, Jamie agreed that ECELAW would like to assist with creating draft ER legislation for PEI. All of the organizations represented agreed that they could help to spread the ER message by promoting it to their memberships.

Based on our research, legislative gap analysis and the feedback



III. Action Plan: Our Legislative Road Map for the Maritimes

received from the strategy sessions, ECE LAW proposes the following next steps to develop and implement legally based environmental rights in the Maritimes:

Step 1 Establish Environmental Rights Working Groups

As described above, ECE LAW has been working with partners in the three Maritime Provinces over the past 12 months to identify the best ways forward on environmental rights and to prepare for the strategy session. We propose that these partners continue to work together as Environmental Rights working groups in each province.

Providing it has funding to do so, ECE LAW would like to provide support to each of the three working groups and serve as a hub of information and communications on environmental rights. ECE LAW was able to secure funding from the Newfoundland and Labrador Law Foundation to carry out environmental rights work in Newfoundland and Labrador. During 2015, ECE LAW plans to engage partners in NL and facilitate the establishment of an Environmental Rights working group in that province.

Step 2 Design a Legislative Work Plan

We propose ECE LAW prepare a basic draft legislative work plan to present to the Environmental Rights working groups in each province. The plan will be based on the legislative gap analysis; model environmental rights provisions and input from the strategy sessions. The work plan will include the option of amending current legislation and development of a stand-alone environmental bill of rights, and will be unique to the needs and interests of the province.

In Nova Scotia the work plan will recognize the existing procedural environmental rights in the Environment Act and the Environmental Goals and Sustainable Prosperity Act and will propose options to build on those rights.

In New Brunswick, the work plan will recognize the groundwork already in place by the Children's Environmental Health Bill, the Sunshine Bill and the NB Environmental Bill of Rights, and will propose options to build on these initiatives.

In Prince Edward Island, the work plan will recognize the challenges expressed in the strategy session with the political context in the province, and will propose incremental policy changes, such as an environmental report card, to establish a stronger foundation for environmental rights in the province.

Step 3 Build Relationships Nationally and Across the Provinces

The current project has enabled ECE LAW to build relationships on environmental rights in three provinces and with two national organizations. It became clear during the strategy sessions in each of the three provinces that groups across the provinces are engaged in environmental rights work and that there is much to be learned from one another. The energy needed to move forward with legally based environmental rights in Canada will come from groups and individuals sharing their knowledge and ideas on how to grow this movement.

As a starting point, we propose an environmental rights forum to be held in Atlantic Canada. The Environmental Rights working groups in each of the three provinces, with the addition of the future group in Newfoundland and Labrador, could undertake the planning for this forum. ECE LAW could assist with design and coordination of a forum that would bring together interested parties across provinces to share ideas and strategies to establish provincial environmental rights. To extend these communications nationally, we propose the DSF, Ecojustice and other interested national organizations be invited to participate in the forum.

Step 4 Build Momentum Within the Provinces

One of the action items identified during each of the strategy session was to develop ways to engage with the general public on environmental rights and to facilitate a better understanding of the value of environmental rights for all Canadians. In a play on the DSF Blue Dot tour, one participant in the Nova Scotia session suggested that we could host the 'small dot tour'. There was a great deal of enthusiasm among the participants in the strategy session to do work 'on the ground' by hosting events, going to schools and generally sharing the environmental rights message.

We propose that the Environmental Rights working groups in each of the provinces develop a plan to 'spread the word' on environmental rights in their province. Each province has different practical and political challenges to address. Each province has different strengths to draw upon. A common theme in all was that ECE LAW could assist by providing support and information with the groups or individuals leading these efforts.

The DSF Blue Dot tour has recently visited all of the Atlantic Provinces and the timing to work with and seek support from the DSF on local initiatives is now. ECE LAW will endeavor to work with the provincial ER working groups to establish links with the community engagement projects being implemented by the DSF.



Step 5 Propose Environmental Rights in NS, NB and PEI

Steps 1 to 4 will provide a supportive platform for a proposal to the governments of Nova Scotia, New Brunswick and Prince Edward Island to introduce substantive and procedural environmental rights into law.

We propose that ER working groups in each of the three provinces, with support from ECELAW, the David Suzuki Foundation and Ecojustice, present legislative amendments or new bills of environmental rights to each of the Maritimes provincial governments to be tabled in the legislature in the Fall of 2015.

IV. Summary

There is a strong current supporting the recognition of the right to a healthy environment for every Canadian. With the support of engaged funders, the foundation of knowledge provided by David Boyd's detailed research and considered analysis, the leadership taken up by the David Suzuki Foundation, Ecojustice and the East Coast Environmental Law Association many more Canadians now realize the value of legally based environmental rights.

Across the three Maritime Provinces, community groups, public interest organizations, concerned citizens, politicians, and business people demonstrated through the ECELAW-led strategy sessions that there are many means by which to move forward on environmental rights. The Action Plan and Legislative Road Map described in this Report provide an opportunity to continue the environmental rights conversation and take concrete actions to that will lead to legally based environmental rights.

ECELAW has facilitated the efforts to date and is committed to continuing the partnerships we have developed, serving as an environmental rights information and resource hub for the Atlantic region, and seeking out the resources necessary to enable the action items proposed in this report.

Nova Scotia Participants

Session facilitated by Laurie Suitor, NSEN

1. Mark Butler, Policy, Ecology Action Centre
2. Gretchen Fitzgerald, Executive Director, Sierra Club Atlantic
3. Lil McPherson, Food Activist and Owner of the Wooden Monkey
4. Silver Donald Cameron, Journalist, Green Interview
5. Marlene Brown, Concerned Citizen and Intervenor in legal case impacting the communities groundwater (Harrietsfield)
6. Derek Simon, lawyer, Burchells LLP
7. Kathaleen Milan, Concerned Citizen, Annapolis Basin (aquaculture)
8. Ron Neufeld, Concerned Citizen, Annapolis Basin (aquaculture)
9. Fred Blois, Concerned Citizen (crime report/biolsolids)
10. Tricia Barry, Lawyer, former Executive Director of ECELAW
11. Bryson McDonald, Lawyer, Boyne Clarke
12. Colleen McGill, Concerned Citizens of Brooklyn Road (quarry issue)
13. Nicole Power, Law Student, Environmental Law Students Society, Dalhousie
14. Kacie Oliver, Law Student, Environmental Law Students Society, Dalhousie
15. Jamie Simpson, Executive Director, ECELAW
16. Michael Karanicolas, Legal Officer, Center for Law and Democracy
17. Stewart Lamont, Managing Director, Tangier Lobster Company
18. Sheila Cole, Senior Advisor, Nova Scotia Environment Network
19. Karen Traversy, Aquaculture
20. Billy Lewis, Mi'kmaq Elder
21. Tovah Paglaro, Tour Project Lead, Blue Dot Tour, David Suzuki Foundation
22. Michiah Prull, Director of Communications and Public Engagement, David Suzuki Foundation
23. Av Singh, Organics and Rural Infrastructure Specialist, Perennia
24. Lisa Mitchell, Lawyer, ECELAW

New Brunswick Participants

Session facilitated by Mary Ann Coleman, New Brunswick Environmental Network

1. Bill Ayer, NB Nature Trust
2. Anita Cannon, Conservation Council of NB, Moncton Chapter
3. Lois Corbett, Conservation Council of NB
4. Sabine Dietz, Nature NB
5. Marc Gionet, Falls Brook Centre
6. Bonnie Hamilton-Bogart, Results Planning Ltd.
7. Mike Mckinley, Our Environment, Our Choice
8. Sharon Murphy, PEACE-NB
9. Jamie Simpson, East Coast Environmental Law Association
10. Larry Tannahill, NB Lung Association

PEI Participants

Session facilitated by Cindy Richards

1. Donna Sears, Citizens' Alliance of PEI
2. Boyd Allen, Citizens' Alliance of PEI
3. Richard Baker, Citizens' Alliance of PEI
4. Chris Ortenburger, Citizens' Alliance of PEI
5. Darcie Lanthier, Pesticide Free PEI, Green Party
6. Keith Kennedy, PFPEI, Food Exchange
7. DON Mazer, Winter River -- Tracadie Bay Watershed
8. Leo Cheverie
9. Beth Hoar
10. Alesia Napier
11. Muriel Siemens



APPENDIX B: Strategy Session Agendas

Nova Scotia Agenda

- 11:30 – 11:45 Arrive, order food, mix and mingle
- 11:45 – 12:00 Round table of introductions and a brief share of current interests/ initiatives
- 12:00 – 12:15 General overview of what a right to a healthy environment is and how ECELAW has been engaged with other organizations across the country to pursue this right. (Jamie Simpson)
- 12:15 – 12:30 Brief description of the research and analysis completed by ECELAW on procedural environmental rights in the Maritimes (Lisa Mitchell)
- 12:30 – 1:00 Lunch
- 1:00 – 2:00 Small group discussion (facilitators: Jamie, Tricia, Don, Laurie)
- We will break into 4 groups of 5 (see attached list), with a facilitator for each. Discuss environmental issues in the province. Discuss how things may have been different if there was a R2HE. Discuss how specific procedural environmental rights could make a difference in NS. Begin discussing how to move forward to implement R2HE in NS.
- 2:00 – 3:00 Large group discussion
- Focus on how to move forward: What challenges exist in NS to implement R2HE? What specific actions the environmental community, community groups, and individual citizens can take? How do we engage a broader spectrum of groups and individuals? How do we engage with government? Where is the common ground? What would be the most successful approach in NS?
- 3:00 – 3:30 Identify Actions: “Today is the day we decide”
- Walk away with 10 action items to move forward with establishing environmental rights in law in Nova Scotia. Identify who will undertake these actions and how we will proceed.

New Brunswick Agenda

- Welcome & Introductions
- Presentation: What are Environmental Rights? In Canada and Around the World: Jamie Simpson
- Current ER Initiatives in New Brunswick
 - o Bonnie Hamilton-Bogart: Bill of Rights to Support Children’s Environmental Health
 - o Lois Corbett, CCNB: Sunshine Law (transparency)
 - o Mike McKinley, Our Environment, Our Choice: Municipal By-laws against fracking
 - o Mary Ann Coleman, NBEN: NBELS Environmental Bill of Rights
- Break
- Identifying Common Ground:
 - o Strengths and weakness of each of the initiatives identified
 - o Common needs among initiatives?
 - o Common actions or strategies to address those needs?
- Developing a Common Strategy:
 - o How to address the common needs identified?
 - o Are there additional actions than can be taken to move environmental rights forward together?
- Working inter-provincially:
 - o Can we work together to collaborate on a harmonized Bill of Rights?
 - o How can we advance this work with other provinces?
 - o How can ECELAW help NB groups to advance environmental rights in NB?
- Wrap-up

Prince Edward Island Agenda

- Welcome and Introductions
- Background Information
 - o Presentations by PEI Citizens Coalition and Jamie Simpson to introduce concept of environmental rights
 - o Presentation on environmental rights gaps in PEI by Richard Baker and Chris Ortenburger
 - o Q&A with Jamie Simpson
- Break
- Questions for the Group
 - o What are the barriers to creating environmental rights legislation in PEI?
 - o Are any of these barriers unique to PEI?
 - o What is needed to overcome these barriers?
 - o What strategies can we develop to promote environmental rights in PEI?
- Wrap up: Where do we go from here?
 - o Role for PEI Steering Committee
 - o Role for ECELAW
 - o Immediate Actions



