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# Provincial Coastal Management in Nova Scotia – A Legislative Review

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### **Note**

This paper was authored by Jamie-Lynn Kraft, while a third year law student at the Schulich School of Law. Opinions expressed in the Paper are those of the author and do not necessarily reflect the views of the East Coast Environmental Law Association (ECELAW). The Paper has been posted on the ECELAW website to provide general information to the public. The Paper is not legal advice and ECELAW is not responsible for the currency, accuracy or reliability of the information contained in the Paper. Any use which a party makes of the Paper, or any reliance on or decisions made based on it, are the responsibility of such parties.

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## Abstract

The “coast” is ubiquitous in Nova Scotia; but who has the power to manage it? The federal government, provincial government and municipalities all have various claims over aspects of coastal management. This jurisdictional confusion has motivated a widespread call for a holistic approach to the coast, including the demand for a provincial “Coastal Act”. Is a new coastal legislation necessary, or does the province already have the tools to manage coastal resources? This paper is the result of a survey of several Nova Scotia statutes, chosen because they contained provisions relevant to the management of coastal resources. The analysis provided in this paper shows that the Province does indeed already have the means available to it to manage the coast. Should the Province prefer to delegate the management of coastal resources, the paper also identifies models for the delegation of authority with which the Province is already familiar.

## Part 1: Motivation and Methodology

This research was carried out as part of an initiative by East Coast Environmental Law, with support from the Marine and Environmental Law Institute at the Schulich School of Law, Dalhousie University, to explore the tools available to the Province of Nova Scotia to implement the Coastal Strategy. The research findings are relevant to the provincial effort to determine how the government of Nova Scotia can manage coastal areas and, more particularly, if new legislation is needed to do so or if the government can work within the existing statutory framework.

This paper asks two questions:

1. What legislative tools are available to the provincial government to manage activity in coastal areas, particularly development?
2. What statutory models are currently in place for provincial delegation of land- and resource-management?

The researcher selected the provincial statutes used in this study from the list provided in Appendix 3 of *The 2009 State of Nova Scotia's Coast Technical Report*. Fifteen of the most relevant statutes were chosen from the list. The researcher read each statute with the view of finding provisions relevant to coastal area management. These provisions were sorted into four categories of “tools”:

1. Area designation and zoning;
2. Approvals, permission, licencing, and permits;
3. Real property transactions; and
4. Prohibitions.

The researcher then performed a cross-sectional review according to tool. Part 2 of this paper provides a review and an analysis of the tools. Part 3 of the paper looks specifically at the tools available for management of development in coastal areas. Part 4 tackles the second question posed by this paper and describes statutory models for provincial delegation of land and resource management.

## Part 2: Review and Analysis of Legislative Tools for Coastal Area Management

The tools listed here provide a snapshot of the legislative landscape for land- and resource-management and are not exhaustive.

### 2.1 AREA DESIGNATION & ZONING

An effective way for the Province to manage land and resources is to designate areas where certain activities or types of development are lawful or prohibited. This study revealed that the ability to create “development zones” is a recurring theme across statutes. Conversely, the Province has the power to set aside areas for protection from development, whether it be for public health and safety or an environmental purpose.

| Act  | Tools   |
|--|---|
| <i>Agricultural Marshland Conservation Act</i> | <ul style="list-style-type: none"> <li>the Province can designate a “marsh body” and authorize agricultural development thereon[s. 5(1), 51(1)(ia)].</li> </ul>   |
| <i>Beaches Act</i>                             | <ul style="list-style-type: none"> <li>defines what constitutes a beach under the Act - that is, the area of land on the coastline lying to the seaward of the mean high watermark and the area of land to the landward immediately adjacent thereto to the distance determined by the Province [ss. 3(a), 5(1)].</li> </ul>  |
| <i>Crown Lands Act</i>                         | <ul style="list-style-type: none"> <li>the Province has the power to set aside special areas on Crown lands for [s. 24]: <ul style="list-style-type: none"> <li>the development of water power.</li> <li>forest research and wildlife conservation.</li> <li>water flow protection.</li> </ul> </li> </ul>  |
| <i>Environment Act</i>                         | <ul style="list-style-type: none"> <li>the Province has the power to designate an area surrounding a source of water supply for a water works as a protected water area and to regulate the activities within that area in order to maintain water quality [ss. 106(1), 106(6)].</li> <li>the Province may [ss. 3(be)(i), (ii), 110(1)(a), 3(bf), 105(3)(k)]: <ul style="list-style-type: none"> <li>make regulations as to how watercourses – that is, the bed or shore of every natural body of water within Nova Scotia – may be used.</li> <li>adopt strategies to protect watersheds – the area drained by, or contributing to a body of water – for specific uses.</li> </ul> </li> </ul> |
| <i>Fisheries and Coastal Resources Act</i>     | <ul style="list-style-type: none"> <li>the Province has the power to designate sub-aquatic land as an aquaculture development area or as a closed area where aquaculture development is not suitable [ss. 56(1)(a), 56(1)(e)].</li> </ul>   |
| <i>Forests Act</i>                             | <ul style="list-style-type: none"> <li>the Province can make regulations prescribing methods and standards for sustainable forest management practices to protect wildlife habitats, watercourses, wetlands and other significant resources [s. 40(j)]: <ul style="list-style-type: none"> <li>A forestry operator shall establish or ensure the establishment of a special management zone of at least 20 m in width along all boundaries of prescribed watercourses [<i>Wildlife Habitat and Watercourses Protection Regulations</i>, s. 6(1)].<sup>1</sup></li> </ul> </li> </ul>  |
| <i>Municipal Government Act</i>                | <ul style="list-style-type: none"> <li>enables municipalities to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province [s. 190(b)].</li> </ul>  |

<sup>1</sup> Where “watercourses” means the bed and shore of a river, stream, lake, creek, pond, marsh, estuary or salt-water body that contains water for at least part of each year (s. 2(i)).

| Act                                    | Tools  |
|--|--|
| <i>Peggy's Cove Commission Act</i>     | <ul style="list-style-type: none"> <li>• creates the "Peggy's Cove Preservation Area" and makes all development within that area subject to the Act [s. 3(1)].</li> <li>• creates a Commission which has the right to make by-laws designating districts within the Peggy's Cove Preservation Area where development is lawful or unlawful [s. 7(2)(a), (b)].</li> </ul> |
| <i>Provincial Parks Act</i>            | <ul style="list-style-type: none"> <li>• the Province has the power to reserve Crown land as a provincial park [ss. 6(1), 8(a)].</li> </ul>  |
| <i>Public Highways Act</i>             | <ul style="list-style-type: none"> <li>• the Province has the power to reserve land for the use of a highway [s. 12].</li> <li>• the Province may designate a part of a highway as a no-sign zone for the protection of a scenic view [s. 50(1)].</li> </ul>   |
| <i>Special Places Protection Act</i>   | <ul style="list-style-type: none"> <li>• the Province has the right to designate any land within the province, subject to certain conditions, as a protected or an ecological site [ss. 17(1), 14(1)].</li> </ul>  |
| <i>Wilderness Areas Protection Act</i> | <ul style="list-style-type: none"> <li>• provides a schedule of areas of land that, if not privately owned, are considered wilderness areas [s. 11(1)].</li> <li>• the Province has the power to designate any additional Crown land as a wilderness area [s. 11(3)(b)].</li> </ul>  |
| <i>Wildlife Act</i>                    | <ul style="list-style-type: none"> <li>• the Province has the power to designate land, whether Crown or privately owned, as a wildlife sanctuary, a wildlife management area, or a wildlife park [ss. 14(a), 15(a), 16(1)].</li> </ul>   |
| <i>Municipal Government Act</i>        | <ul style="list-style-type: none"> <li>• enables municipalities to assume the primary authority for planning within their respective jurisdictions, consistent with their urban or rural character, through the adoption of municipal planning strategies and land-use by-laws consistent with interests and regulations of the Province [s. 190(b)].</li> </ul>         |
| <i>Wildlife Act</i>                    | <ul style="list-style-type: none"> <li>• the Province has the power to designate land, whether Crown or privately owned, as a wildlife sanctuary, a wildlife management area, or a wildlife park [ss. 14(a), 15(a), 16(1)].</li> </ul>   |

## 2.2. APPROVALS, PERMISSION, LICENCING & PERMITS

A licencing or permit requirement is a tool to manage land and resources by restricting the access of persons or corporations to the resource. Approvals, permission, licencing and permits are widely used in the legislation and therefore there is a large amount of data for this tool. For the sake of brevity, the researcher provides only the most relevant examples in this part.

| Act  | Tools  |
|--|--|
| <i>Agricultural Marshland Conservation Act</i> | <ul style="list-style-type: none"> <li>no development shall be carried out in a marshland section without a permit [s. 41(1)(a)].</li> </ul>   |
| <i>Beaches Act</i>                             | <ul style="list-style-type: none"> <li>gives the Province the right to grant permits, licences or leases authorizing the removal of sand, gravel, stone or other material from a beach [ss. 11, 13(b)].</li> </ul>   |
| <i>Crown Lands Act</i>                         | <ul style="list-style-type: none"> <li>Timber and other resources on Crown land may be disposed by means of licence or permit [s. 28(a)].</li> <li>the Province may grant a permit to construct a forest access road on Crown lands [s. 26(2)].</li> </ul>   |
| <i>Environment Act</i>                         | <ul style="list-style-type: none"> <li>the Province may establish tradeable effluent permits [s. 15].</li> <li>undertakings must go through the Environmental Assessment Process [ss. 33-39].</li> <li>regulated activities must go through the approvals process [ss. 53-64].</li> </ul>  |
| <i>Fisheries and Coastal Resources Act</i>     | <ul style="list-style-type: none"> <li>a person may apply to the Province for an aquaculture licence [s. 45(1)].</li> <li>the Province may grant a permit for the harvesting of sea plants in a leased area [s. 70(1)].</li> <li>a person may apply to the Province for a licence to process, sell, package, possess or market fish or fish products [s. 74(1)].</li> </ul>  |
| <i>Municipal Government Act</i>                | <ul style="list-style-type: none"> <li>enables a municipal council to provide for a system of licences, permits or approvals prohibiting any development, activity, industry, business or thing until a licence, permit or approval is granted [s. 172(2)(e)(ii)].</li> </ul>  |
| <i>Peggy's Cove Commission Act</i>             | <ul style="list-style-type: none"> <li>gives the Commission the right to make by-laws licencing camps, parks, tracts or areas of land, and facilities maintained for camping or trailers [s. 7(2)(f)].</li> </ul>  |
| <i>Public Highways Act</i>                     | <ul style="list-style-type: none"> <li>gives the Province the right to make regulations regarding the licencing of signage and advertising on public highways [s. 49(1)(c)].</li> </ul>  |
| <i>Special Places Protection Act</i>           | <ul style="list-style-type: none"> <li>the Province may issue ecological and historical research permits authorizing ecological research or other ecological activities within the designated sites [s. 16(1)].</li> </ul>   |
| <i>Water Resources Protection Act</i>          | <ul style="list-style-type: none"> <li>water may be removed from the portion of the Atlantic Drainage Basin that is located within Nova Scotia with the approval of the Province for a non-commercial purpose, including meeting short-term safety, security, fire-fighting or humanitarian needs [s. 5(1)(d)].</li> </ul>   |
| <i>Wilderness Areas Protection Act</i>         | <ul style="list-style-type: none"> <li>gives the Province the right to issue a licence for scientific research within a wilderness area [s. 21].</li> <li>the Province may issue a licence permitting the use of a motor vessel or aircraft within a wilderness area to enable access hunting and trapping s. 23(4A)].</li> <li>the Province may issue a licence permitting moose hunting in a wilderness area [s. 23(4B)].</li> </ul> |
| <i>Wildlife Act</i>                            | <ul style="list-style-type: none"> <li>the Province may: <ul style="list-style-type: none"> <li>grant a permit to export a species of wildlife for propagation or scientific interests [s. 20(1)(a)].</li> <li>issue a game-farming licence [s. 49(1)].</li> </ul> </li> </ul>   |

## 2.3. REAL PROPERTY TRANSACTIONS

Perhaps the most direct way that the Province can manage coastal land is by acquiring it. Many of the statutes in this study give the Province the power to buy and sell real property to carry out the purposes of the legislation.

| Act  | Tools  |
|--|--|
| <i>Agricultural Marshland Conservation Act</i> | <ul style="list-style-type: none"> <li>allows a marsh body to expropriate an easement in land for any purpose relating to the construction, maintenance or repair of works [s. 40].<sup>2</sup></li> </ul>   |
| <i>Beaches Act</i>                             | <ul style="list-style-type: none"> <li>gives the Province the power to acquire land to provide public access to and from a beach and to provide facilities there [s.4(6)].</li> </ul>  |
| <i>Crown Lands Act</i>                         | <ul style="list-style-type: none"> <li>allows the Province to acquire an interest in land by lease or licence [s. 7(b)].</li> <li>allows the Province to exchange Crown lands for privately owned land [s. 7(c)].</li> </ul>   |
| <i>Fisheries and Coastal Resources Act</i>     | <ul style="list-style-type: none"> <li>an applicant must apply for an aquaculture lease before carrying out aquaculture activities on Crown land [s.45(2)].</li> <li>the Province may issue a lease to harvest sea plants from an area of the solum [s.66(1)].</li> </ul>  |
| <i>Municipal Government Act</i>                | <ul style="list-style-type: none"> <li>A municipality may acquire and own property granted or conveyed to the municipality either absolutely or in trust for a public or charitable purpose [s. 50(1)].</li> <li>A municipality may lease property owned by the municipality at market value [s. 50(5)(c)].</li> </ul> |
| <i>Provincial Parks Act</i>                    | <ul style="list-style-type: none"> <li>allows the Province to acquire land for the purpose of a provincial park [s. 5].</li> </ul>   |
| <i>Special Places Protection Act</i>           | <ul style="list-style-type: none"> <li>the Province may not grant, lease, or otherwise dispose of land that has been designated as an ecological site [s. 18(1)].</li> </ul>   |
| <i>Wildlife Act</i>                            | <ul style="list-style-type: none"> <li>Province may, for the purpose of the protection, management or conservation of wildlife, purchase, lease, or otherwise acquire title to land [s. 13].</li> </ul>  |

<sup>2</sup> Where “works” includes dykes, aboiteaux, breakwaters, canals, ditches, drains, roads and other structures, excavations and facilities for the conservation, development, improvement or protection of marshland to a standard appropriate for agricultural purposes (s. 2(i)).

## 2.4. PROHIBITIONS

A prohibition is a particularly potent tool because the Province – i.e. the legislature – has the power to create offences. The commission of an offence results in a penalty which can range from fines to imprisonment and this serves as a deterrent against wrongful behaviour. Many of the prohibitions from these statutes are directly related to the licencing tool. In most cases, an activity is prohibited unless permission has been obtained from the Province; when a person or corporation undertakes the activity in absence of permission, they commit an offence. To avoid repetition, most licence-related prohibitions have been omitted from this part.

| Act                               | Tools   |
|-----------------------------------|---|
| <i>Beaches Act</i>                | <ul style="list-style-type: none"> <li>• No person shall [ss. 6(1), 8(1)(e), (f)]:               <ul style="list-style-type: none"> <li>o remove sand, stone or other material from a beach without authorization.</li> <li>o wilfully destroy natural resources on or adjacent to a beach.</li> <li>o dump or deposit garbage on a beach except in the receptacle provided.</li> <li>o be impaired by drugs or alcohol while on a beach.</li> <li>o pursue a course of conduct that is detrimental to the safety of other beach users.</li> </ul> </li> </ul>  |
| <i>Beaches and Foreshores Act</i> | <ul style="list-style-type: none"> <li>• prohibits the cultivation of oysters upon a beach without having obtained a lease on the land from the Crown [s. 5(1)].</li> </ul>   |
| <i>Crown Lands Act</i>            | <ul style="list-style-type: none"> <li>• prohibits the dumping or depositing of materials over Crown land [s. 38(1)(c)].</li> </ul>   |
| <i>Environment Act</i>            | <ul style="list-style-type: none"> <li>• the unauthorized release of an adverse effect substance into the environment [s. 67(2)].</li> <li>• prohibits the unauthorized release of litter [s. 99].</li> </ul>   |
| <i>Forests Act</i>                | <ul style="list-style-type: none"> <li>• The Province can make regulations prescribing methods and standards for sustainable forest management practices to protect wildlife habitats, watercourses, wetlands and other significant resources [s. 40(j)]:               <ul style="list-style-type: none"> <li>o No forestry operator shall permit the use of, use or operate a vehicle for forestry operations within 7 m of the watercourse within a special management zone [<i>Wildlife Habitat and Watercourses Protection Regulations</i>, s. 6(3)(a)].</li> </ul> </li> </ul>  |
| <i>Municipal Government Act</i>   | <ul style="list-style-type: none"> <li>• No person shall [s. 180(2)]:               <ul style="list-style-type: none"> <li>o place, or permit to escape, any matter or thing of an offensive nature, deleterious nature or likely to impair the quality of water for use for domestic purposes, upon land in a protected water supply area;</li> <li>o fish or bathe in a lake, or other body of water, in a protected water supply area;</li> <li>o camp on land in a protected water supply area;</li> <li>o cut wood or erect, construct or place a building or structure in a protected water supply area without the permission of the council.</li> </ul> </li> </ul> |
| <i>Provincial Parks Act</i>       | <ul style="list-style-type: none"> <li>• no person shall be impaired by drugs or alcohol while in a provincial park reserve [s. 33(a)].</li> <li>• prohibits [ss. 33(e), (f)]:               <ul style="list-style-type: none"> <li>o the wilful destruction of trees or natural resources on park property.</li> <li>o the dumping or depositing of garbage in a provincial park except in the receptacle provided.</li> </ul> </li> </ul>   |
| <i>Public Highways Act</i>        | <ul style="list-style-type: none"> <li>• no person shall [ss. 40(1)(a)-(d)]:               <ul style="list-style-type: none"> <li>o place an obstruction on a highway.</li> <li>o place an obstruction in a drain, gutter, sluice or watercourse on a highway.</li> <li>o prevent, by dam or obstruction, water flowing from the highway on to the adjoining land</li> <li>o cause water to flow over the highway.</li> </ul> </li> <li>• no person shall deposit or cause to flow sewage, refuse, garbage, rubbish on any highway [s. 43(1)(a)].</li> </ul>  |

|                                       |   |
|---------------------------------------|---|
| <i>Water Resources Protection Act</i> | <ul style="list-style-type: none"> <li>prohibits the removal of water from the portion of the Atlantic Drainage Basis that is located within Nova Scotia [s. 4].</li> </ul>                                       |
| <i>Wildlife Act</i>                   | <ul style="list-style-type: none"> <li>no person shall be in possession of a firearm that is not properly secured with ammunition in a wildlife habitat while impaired by alcohol or drugs [s. 87(1)].</li> </ul> |

## 2.5 CONCLUSION AND OUTLOOK

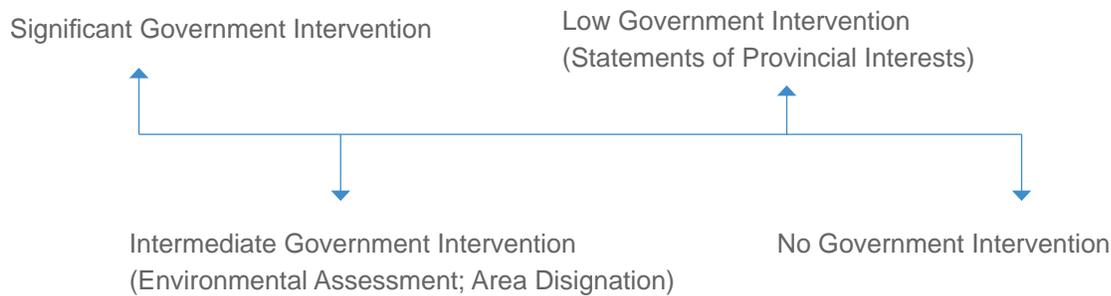
Nova Scotia does not have an integrated coastal management statute; nor does it define what is understood by the term “coastal zone.” Indeed, one could argue the entire province is a coastal zone. This legislative review and analysis has revealed that the provincial government already has some tools available for “coastal” management even in the absence of definition. The Province has the power to reserve certain tracts of land as protected areas and others as areas where activities are controlled through the use of licencing and approvals. Individuals and corporations are compelled, ideally, to abide by these rules because failure to do so would result in a penalty. In theory, however, individuals and corporations make decisions based on a risk assessment analysis and if there is an ineffective enforcement mechanism, the prohibition may be rendered meaningless.

To draw concrete conclusions from this study, then, further research needs to be conducted into which of the tools presented here are actually being used and how or if they are being enforced. Furthermore, there needs to be a province-wide discussion on what tools are currently necessary but missing for coastal management.

## Part 3: Provincial Tools for the Management of Development in Coastal Areas

A review of the relevant provincial legislation confirmed that the Province of Nova Scotia has tools available to it to control or influence development along the coast. These tools fall along a range of government intervention from significant to non-existent. The following diagram illustrates that spectrum:

Figure 1: Spectrum of Government Intervention through the use of Legislative Tools



### 3.1 SIGNIFICANT GOVERNMENT INTERVENTION

The most significant way to ensure that the Province has a reasonable level of control over development in an area along the coast would be for the government to appropriate or buy the land such that it becomes Crown land [ss. 7, 9]. Any development within that area would be subject to provincial approval. Given the cost – both financial and political – of such mass acquisition, it would be unrealistic to assume that the Province could use that form of intervention any more than sparingly.

### 3.2 INTERMEDIATE GOVERNMENT INTERVENTION

A more realistic tool available to the Province – which still involves a substantial level of intervention – is area designation. Many of the acts reviewed in this study relate to areas of land which, though private, are subject to certain development restrictions. The following are tools which, although not created and administered for this purpose, could be used by the Province to manage coastal development:

1. In the *Agricultural Marshland Conservation Act*, the Province may designate an area of land as “marshland” one of the results of which is that no development may take place in that area without a permit from the Province [ss. 5(1), 41(1)(a)].
2. In the *Beaches Act*, the Province may designate an area as a “beach”. The regulations pursuant to the Act prohibit development of a beach without approval from the Province [ss. 3(a), 5(1), 8(1)(g), 13; Beaches Regulations, s. 6].
3. In the *Special Places Act*, the Province may designate any land as a protected site or an ecological site. If any development activities threaten the destruction of a protected or ecological site, the Province may issue a stop order and request a site survey [ss. 7(1), 13(1), 14(1)].
4. In the *Wilderness Areas Protection Act*, with the consent of the owner, the Province may designate privately owned land as a “wilderness area” and all land designated as such is under the administration and control of the Province [ss. 6(2), 11(3)(c)].

Another intermediate-intervention tool to manage coastal development is the Environmental Assessment Process in the *Environment Act*. Under the Act, the Province can designate certain development activities as “undertakings”. The undertakings are divided into two classes and are listed in the *Environmental Assessment Regulations*. All undertakings are subject to the EA process. During the environmental assessment, the Province has the power to approve or reject an undertaking [ss. 3(az), 49, 31(1)].

Similarly, the approvals process in the Environment Act gives the Province the power to grant or reject an approval for an activity which has been designated as requiring an approval. These activities are listed in the *Activities Designation Regulations* [s. 3(aa), 66].

The Province could create a “designated coastal area” and require in the regulations that certain types of development within that area be deemed as “undertakings” or “activities” under the Environment Act. In so doing, the Province would make coastal development subject to governmental approval. There is an argument, though, that such designation of privately-owned land would amount to effective expropriation by the Crown. The likelihood, extent, and desirability of that expropriation is unknown and requires further research.

A third type of intermediate-intervention tool is taxation – that is, influencing actors through an incentive system. An example of this is the *Conservation Property Tax Exemption Act* which allows conservation property owned by not-for-profit organizations to be exempt from taxation. If the scope of the Act were expanded, all property owners could designate their land as conservation property and receive a corresponding tax benefit.

### **3.3 LOW GOVERNMENT INTERVENTION**

A form of low government intervention in coastal development would be the ability to influence other decision-making bodies. For example, most development in the province, including development along the coast, is subject to the approval of municipalities or restricted by municipal land-use by-laws. According to the *Municipal Government Act*, the Province can draft “*Statements of Provincial Interest*” which influence municipal planning strategies. The municipal planning strategies, in turn, influence land-use by-laws [ss. 213(c), 217(1), 220]. The Province, therefore, can direct how land is used along the coast by drafting a “coastal” statement of interest. This idea of influencing other decision-making bodies is the focus of Part 4 of this paper. This might, however, be seen as the Province “dictating” to the municipalities what they need to do and could therefore be seen as a high-level government intervention. The degree of intervention would depend to the extent to which the municipalities are compelled to comply with the Statement.

### **3.4 CONCLUSION AND OUTLOOK**

Because land acquisition is an unlikely route, both the intermediate- or low- intervention tools are more appropriate for coastal development. The adoption of coastal management legislation could be an intermediate-intervention tool for coastal development. The legislation could designate any land – whether Crown or privately owned – within a certain distance from the mean high watermark as “coastal area” and create a series of prohibitions, licencing requirements, and/or approvals processes that would prevail within that area. Any development therein would be subject to provincial approval.

A low-intervention tool that the Province could create to influence development along the coast would be coastal development boards. Whenever development would be proposed within an area that is defined as “coastal” it would trigger a review by one of the coastal development boards. The boards could either advise the Province or the Municipality, or make development decisions for the area to which they are assigned. The Boards would adhere to a coastal mandate created by the Province. Similar boards exist in other spheres of influence, for example marshland bodies and planning commissions. This concept will be explored more fully in Part 4.

## Part 4: Models for the Provincial Delegation of Land- and Resource-Management

The previous Parts of this paper contemplated that the provincial government's responsibility could encompass all aspects of coastal management – including development, environment protection, and public health and safety. It might be more effective, however, for the Province to opt to delegate authority to smaller decision-making bodies rather than pursue an exclusively centralized approach. There is good precedent for this: The delegation model is already being used in other areas of land and resource management in Nova Scotia. This Part is a review of some of those models and could serve as a guide in considering options for a coastal management platform for Nova Scotia.

### 4.1 MARSH BODIES

The *Agricultural Marshland Conservation Act* is a mechanism through which the Province can delegate authority to smaller decision-making bodies known as “marsh bodies”. Owners of marshland may petition the provincial Agricultural Marshland Conservation Commission to be incorporated as a marsh body [s. 11(1)]. Once a marsh body is incorporated, each person who is a landowner of that particular marshland section becomes a voting member [s. 12(1)].

The Act sets out the administrative rules for the marsh bodies, including the composition of the executive committee, the role of members like the Chair and Secretary, the frequency of meetings and funding [ss. 15-28].

A marsh body has the power to [s.14]:

- (a) acquire, use, sell and lease real and personal property;
- (b) construct, reconstruct, recondition, repair, maintain, conduct and operate works;
- (c) enter into agreements with the Minister or other persons for the construction, reconstruction, reconditioning, repairing, maintenance, conduct or operation of works;
- (d) make by-laws not inconsistent with this Act for the regulation of its business and affairs;
- (e) subject to the approval of the Commission, make rules respecting works and land within or affecting the marshland section;
- (f) raise money for its purposes by borrowing or by the levying of rates pursuant to this Act;
- (g) prepare a mission or an objectives statement;
- (h) do and perform all other acts and things incidental or conducive to the attainment of its objects.

As evident in section 14(e), a marsh body's power is constrained by the Agricultural Marshland Conservation Commission, and, ultimately, the Province.

Although the *Agricultural Marshland Conservation Act* is not intended for environmental conservation – that is, a marsh body designation would allow rather than prohibit agricultural development – it is a good example of the type of delegation that the government of Nova Scotia is already familiar with.

### 4.2 PROTECTED WATER AREAS

According to section 106(1) of the *Environment Act*, the Province, acting on the request of an operator of a water works, may designate an area around a source of water supply for a water works as a protected water area. The current protected water areas are listed in the regulations to the Act. The regulations set out the boundaries of the designated area and the activities that are permitted or prohibited in those areas. The following is an example of a section within such a regulation [*Bennery Lake Watershed Protected Water Area Regulations*, s. 19(1)]:

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3. Where “works” includes dykes, aboiteaux, breakwaters, canals, ditches, drains, roads and other structures, excavations and facilities for the conservation, development, improvement or protection of marshland to a

No person is permitted to erect a structure, excavate, fill or alter the grade of land within 100 m of Bennery Lake or within 30 m of any watercourse or wetland located on lands zoned P-4 under the Halifax Regional Municipality Land Use By-law for Shubenacadie Lakes (Planning Districts 14 and 17), within the Protected Water Area, unless such activity is

- (a) related to the operation of the Bennery Lake Water Treatment Plant; and
- (b) approved in advance by the Water Works Operator.

Section 106(3) of the *Act* grants the Water Works Operator the power to take all measures to protect the area designated, and the right to enforce any of the regulations made pursuant to that section.

### 4.3 PEGGY'S COVE COMMISSION

When the Province designates land as part of the Peggy's Cove Preservation Area, development on that land is under the authority of the Peggy's Cove Commission [s. 3(1)]. The Commission consists of [s. 4(1)]:

- (a) the municipal councillor for the polling district that includes Peggy's Cove;
- (b) one representative of the Nova Scotia Economic Renewal Agency;
- (c) the Provincial Director of Planning for the Province; and
- (d) not more than four additional members appointed by the Governor in Council, three of whom shall be residents of the Area.

The Commission's purpose is to preserve the unique scenic beauty, character and atmosphere of the Peggy's Cove Preservation Area for the enjoyment of both residents and visitors. It fulfills this purpose through the enactment of by-laws which control development within the Area [ss. 7(1), (2)].

The Commission is not an independent body, but rather it is deemed to be part of the Nova Scotia Economic Renewal Agency and its members are remunerated according to the *Civil Service Act*, R.S.N.S. 1989, c. 339, s. 5 [*Peggy's Cove Commission Act*, ss. 4(6), 5].

### 4.4 MUNICIPAL DEVELOPMENT

A significant way through which the Province often delegates its authority is the Municipal Government Act. Municipalities are granted a wide power to manage land through zoning and land-use by-laws – for example, designating an area as residential, commercial, industrial, agricultural, or environmentally protected [s. 220]. Land-use by-laws must be in accordance with a broader "Municipal Planning Strategy" agreed upon by the council and cannot derogate from that strategy [s. 217(1)]. The Municipal Planning Strategy, in turn, must be reasonably consistent with the Statements of Provincial Interest contained in Schedule B to the Act [s. 213(c)]. In this way, the Province is able to direct and influence municipal land management.

The five existing Statements of Provincial Interest regard drinking water, flood risk areas, agricultural land, infrastructure and housing [Schedule B]. Although there is currently no statement regarding the coast, under the Municipal Government Act, the Province retains the right to draft new Statements of Provincial Interest [s. 193]. If it had the political will to use that power, the Province could look to other jurisdictions as models for the coastal statement. Howard Epstein points to the *California Coastal Act*, which he believes "reads rather like a Municipal Planning Strategy."<sup>4</sup> The following are excerpts that he has identified as relevant from the *California Coastal Act*:<sup>5</sup>

- 'development shall not interfere with the public's right of access to the sea;'
- 'uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters;'

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<sup>4</sup> Howard Epstein, "Coasts: Provincial and Municipal Land Use Controls" (Paper delivered at the ECELAW – Who Owns the Coast? Conference, July 2010) at 8 [Epstein].

<sup>5</sup> *California Coastal Act* of 1976 cited in Epstein at 8.

- ‘development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas;’
- ‘New...development...shall be located...where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.’

Alternatively, the municipality could take a more active role in protecting the coast where it feels that more stringent development rules than those provided by the Province are required. In most municipal acts across Canada there is an “omnibus powers clause” – a clause which gives the municipality the power to make general by-laws for the well-being of its citizens.<sup>6</sup> In Nova Scotia, for example, the municipality has the power to make by-laws “respecting the health, well being [sic], safety and protection of persons” [s. 172(1)(a)].

The Supreme Court of Canada decision, *Spraytech*<sup>7</sup>, strengthened the municipalities’ ability to use the “omnibus powers clause” and was “widely seen as opening the door for municipal regulation of many things not specifically listed in their governing statutes, especially for environmental purposes.”<sup>8</sup> According to *Spraytech*, although any municipal by-law must give way to a provincial statute where they are in conflict, if they are not in conflict, the municipality has the right to make more stringent standards where the province has set a minimum.<sup>2</sup> In the Nova Scotia, the *Municipal Government Act* goes one step further:

Where this Act confers a specific power on a municipality in relation to a matter that can be read as coming within a general power also conferred by this Act, the general power is not to be interpreted as being limited by the specific power [s. 171A].

Nova Scotia municipalities, then, could be the leaders in coastal stewardship by zoning land as environmentally sensitive, at risk of erosion or prone to flooding, and enacting by-laws against certain types of development, and creating setbacks along the coastline – so long as none of these are directly in contradiction with a provincial statute.

## 4.5 ALTERNATIVE MODELS FOR LAND-MANAGEMENT

It is beneficial to round out this discussion by giving a a mention to alternative forms of land-management that do not necessarily involve provincial delegation of authority.

### 4.5.1 ADVISORY COMMITTEES

Under the Nova Scotia *MGA*, a municipality may establish “planning advisory committees” and “area advisory committees” [ss. 200(1), 201(1)]. The purpose of these committees is “to advise respecting the preparation or amendment of planning documents and respecting planning matters generally” [s. 200(4)]. The committees are made up of members of the public. While it is the municipal council that holds the ultimate authority for planning, the committees can influence the decision-making through consultation, depending on whether they are bound by a Municipal Planning Strategy or have been given the direction by the municipal council to develop a secondary strategy.

The municipality could create area advisory committee(s) sensitive to coastal concerns.

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<sup>6</sup> Supra Epstein at 17.

<sup>7</sup> 114957 Canada (*Spraytech*) v Town of Hudson (2001), 19 MPLR (3d) 1 (SCC).

<sup>8</sup> Supra Epstein at 17.

<sup>9</sup> Ibid at 19.

## 4.5.2 COLLABORATIVE ENVIRONMENTAL PLANNING INITIATIVE

In Nova Scotia, the Bras d'Or Lakes Collaborative Environmental Planning Initiative (CEPI) is an example of government collaboration with a community group. CEPI's purpose is to:

develop an overall management plan for the ecosystem of the Bras d'Or lakes and watershed lands and to facilitate its implementation by governments and other relevant stakeholders. The management plan seeks to address the existing environmental issues, and to anticipate and plan for the prevention of other issues that may effect this unique and valued environment. The term 'Management plan' is used here to include all planning stages including development, implementation, monitoring and evaluation. Part of this work is to ensure that the diversity of efforts underway in this area are better coordinated and supported.<sup>10</sup>

Although the Bras d'Or Lakes CEPI has no formal authority, it is made up of representatives from "federal, provincial, municipal and Mi'kmaq governments, industry, academia and NGO representation"<sup>11</sup> and it attempts to influence government decision-making through periodic meetings with those members.

## 4.6 CONCLUSION AND OUTLOOK

The Province of Nova Scotia has numerous tools available to it to delegate authority of land- and resource-management. The Province could use one of the existing delegation models described in 4.1-4.3 – models with which it is already familiar. Alternatively, the Province could draft a new Statement of Provincial Interest regarding the coast, thereby influencing municipal and provincial planning. Finally, the thrust for coastal management could come not from the Province, but from a municipality in the creation of an area advisory committee, or from a grass-roots organization that seeks to collaborate with all levels of government. This paper is not prescriptive; any one of the above options has the potential to be effective. What is relevant is that the Province does have the tools available to take the next step.

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10 Bras d'Or Lakes CEPI, "Vision & Goals," online: Bras d'Or Lakes CEPI <<http://brasdorcepi.ca/about/vision-goals/>>.

11 Bras d'Or Lakes CEPI, "About CEPI," online: <<http://brasdorcepi.ca/about/welcome/>>.

## Part 5: Bibliography

### LEGISLATION

| Legislation  | Section(s) cited   |
|--|--|
| <i>Agricultural Marshland Conservation Act</i> , S.N.S. 2000, c. 22. | <ul style="list-style-type: none"> <li>• s. 5(1)</li> <li>• s. 11(1)</li> <li>• s. 12(1)</li> <li>• s. 14</li> <li>• ss. 15-28</li> <li>• s. 40</li> <li>• s. 41(1)(a)</li> <li>• s. 51(1)(ia)</li> </ul>  |
| <i>Beaches Act</i> , R.S.N.S. 1989, c. 32                            | <ul style="list-style-type: none"> <li>• s. 3(a)</li> <li>• s. 4(6)</li> <li>• s. 5(1)</li> <li>• s. 6(1)</li> <li>• ss. 8(1)(e), (f), (g)</li> <li>• s. 11</li> <li>• s. 13(b)</li> </ul>   |
| <i>Beaches Regulations</i> .   | <ul style="list-style-type: none"> <li>• s. 6</li> </ul>   |
| <i>Beaches and Foreshores Act</i> , R.S.N.S. 1989, c. 33.            | <ul style="list-style-type: none"> <li>• s. 5(1)</li> </ul>  |
| <i>Bennery Lake Watershed Protected Water Area Regulations</i> .     | <ul style="list-style-type: none"> <li>• s. 19(1)</li> </ul>   |
| <i>California Coastal Act of 1976</i> .                              |  |
| <i>Conservation Property Tax Exemption Act</i> , S.N.S. 2008, c. 36. |  |
| <i>Crown Lands Act</i> . R.S.N.S. 1989, c. 114.                      | <ul style="list-style-type: none"> <li>• ss. 7(b), (c)</li> <li>• s. 9</li> <li>• s. 24</li> <li>• s. 26(2)</li> <li>• s. 28(a)</li> <li>• s. 38(1)(c)</li> </ul>  |
| <i>Environment Act</i> , S.N.S. 1994-95, c. 1.                       | <ul style="list-style-type: none"> <li>• ss. 3(aa), (az), (be)(i), (ii), (bf)</li> <li>• s. 31</li> <li>• ss. 33-39</li> <li>• s. 49</li> <li>• ss. 53-64</li> <li>• s. 66</li> <li>• s. 67(2)</li> <li>• s. 99</li> <li>• s. 105(3)(k)</li> <li>• ss. 106(1), (3), (6)</li> <li>• s. 110(1)(a)</li> </ul> |

|  |   |
|--|---|
| <i>Fisheries and Coastal Resources Act</i> , S.N.S. 1996, c. 25. | <ul style="list-style-type: none"> <li>• ss. 45(1), (2)</li> <li>• ss. 56(1)(a), (e)</li> <li>• s. 66(1)</li> <li>• s. 70(1)</li> <li>• s. 74(1)</li> </ul>   |
| <i>Forests Act</i> , R.S.N.S. 1989, c. 179.                      | <ul style="list-style-type: none"> <li>• s. 40(j)</li> </ul>  |
| <i>Municipal Government Act</i> , S.N.S. 1998, c. 18.            | <ul style="list-style-type: none"> <li>• ss. 50(1), (5)(c)</li> <li>• s. 171A</li> <li>• ss. 172(1)(a), (2)(e)(ii)</li> <li>• s. 180(2)</li> <li>• s. 190(b)</li> <li>• s. 193</li> <li>• s. 200(1)</li> <li>• s. 201(1)</li> <li>• s. 213(c)</li> <li>• s. 217(1)</li> <li>• s. 220</li> </ul> |
| <i>Peggy's Cove Commission Act</i> , R.S.N.S. 1989, c. 339.      | <ul style="list-style-type: none"> <li>• s. 3(1)</li> <li>• ss. 4(1), (6)</li> <li>• s. 5</li> <li>• ss. 7(1), (2)(a), (b), (f)</li> </ul>  |
| <i>Provincial Parks Act</i> , R.S.N.S. 1989, c. 367.             | <ul style="list-style-type: none"> <li>• s. 5</li> <li>• s. 6(1)</li> <li>• s. 8(a)</li> <li>• ss. 33(a), (e), (f)</li> </ul>   |
| <i>Public Highways Act</i> , R.S.N.S. 1989, c. 371.              | <ul style="list-style-type: none"> <li>• s. 12</li> <li>• ss. 40(1)(a)-(d)</li> <li>• s. 43(1)(a)</li> <li>• s. 49(1)(c)</li> <li>• s. 50(1)</li> </ul>   |
| <i>Special Places Protection Act</i> , R.S.N.S. 1989, c. 438.    | <ul style="list-style-type: none"> <li>• s. 7(1)</li> <li>• s. 14(1)</li> <li>• s. 16(1)</li> <li>• s. 17(1)</li> <li>• s. 18(1)</li> </ul>   |
| <i>Water Resources Protection Act</i> , S.N.S. 2000, c. 10.      | <ul style="list-style-type: none"> <li>• s. 4</li> <li>• s. 5(1)(d)</li> </ul>  |
| <i>Wilderness Area Protection Act</i> , S.N.S. 1998, c. 27.      | <ul style="list-style-type: none"> <li>• s. 6(2)</li> <li>• ss. 11(1), (3)(b), (c)</li> <li>• s. 21</li> <li>• ss. 23(4A), (4B)</li> </ul>  |
| <i>Wildlife Act</i> , R.S.N.S. 1989, c. 504.                     | <ul style="list-style-type: none"> <li>• s. 14(a)</li> <li>• s. 13</li> <li>• s. 15(a)</li> <li>• s. 16(1)</li> <li>• s. 20(1)(a)</li> <li>• s. 49(1)</li> <li>• s. 87(1)</li> </ul>  |
| <i>Wildlife Habitat and Watercourses Protection Regulations</i>  | <ul style="list-style-type: none"> <li>• s. 2(i)</li> <li>• ss. 6(1), (3)(a)</li> </ul>   |

## JURISPRUDENCE

*114957 Canada (Spraytech) v Town of Hudson* (2001), 19 MPLR (3d) 1 (SCC).

## SECONDARY MATERIAL

Bras d'Or Lakes CEPI, "About CEPI," online: <<http://brasdorcepi.ca/about/welcome/>>.

---, "Vision & Goals," online: Bras d'Or Lakes CEPI <<http://brasdorcepi.ca/about/vision-goals/>>.

Epstein, Howard. "Coasts: Provincial and Municipal Land Use Controls" (Paper delivered at the ECELAW – Who Owns the Coast? Conference, July 2010).

Nova Scotia, Government, *The 2009 State of Nova Scotia's Coast Technical Report*.

Nova Scotia Department of Justice, "List of Regulations by Act" *Registry of Regulations*, online: Nova Scotia Department of Justice <<http://www.gov.ns.ca/just/regulations/rxaa-l.htm#env>>.