

## **Department of Communities, Land and Environment**

**April 10, 2017**

### **Water Act Consultation**

This is the submission of Vision PEI to the public consultation process initiated by the provincial government respecting the implementation of a new Water Act for the Island. Vision PEI is a network of Island citizens interested in a long-term sustainable culture in Prince Edward Island. Vision PEI seeks to engage in discussion of any issue of concern or interest to the Island public.

There will be many submissions in this process outlining the significance of PEI's water resources to the economic, social and environmental health of our province. This cannot be overstated. As an island, the limits to our resources, including water, are obvious. Unlike continental jurisdictions such as Ontario or Alberta, our only source of water is the ground. We have no access to large continental river systems or mountain glacier basins. This means we must be more careful than other places about use of and access to water. However, because of our isolation, we also have the ability for exclusive control of our groundwater. This is an advantage. Thus, in the creation of legislation respecting our water resource, we have the ability to maximize the potential for public good for Island residents that other provinces or jurisdictions do not. In reviewing the draft legislation proposed, Vision PEI does not believe that the government has gone far enough in attempting to maximize the public good in relation to PEI's water resources.

What is lacking in the draft act is a real commitment to stewardship. Bearing in mind that most legislation utilizes neutral and legalistic vernacular, we must also, however, consider the dire environmental circumstances that exist in this province in relation to water pollution and water extraction. Some of us are fortunate enough to have explored and observed the Island's multitude of small streams, estuaries and watersheds in the recent past of the 20th Century prior to the advent of industrial farming practices. Some of us, even more fortunate, have been tutored by the "old people," our fathers, mothers, grandparents and, if we were especially lucky, the elders of our First Nations peoples. Their descriptions of our natural surroundings are unforgettable. Every tiny brook and stream ran clear, even after heavy rain. In spring they all were bursting with schools of smelts, squirming and roiling in their frenzy to spawn. Large brook trout slashing the surface while feeding on insects and smelt. Our estuaries were hard-bottomed sand and rock, home to seemingly unending beds of clams and oysters. Today, there is frequent reporting of fish kills in our streams, anoxic waterways, and negative effects on human health due to pesticides infiltrating our underground water table. Vision PEI believes that this legislation is an opportunity for something that communicated a tone of urgency and determination to, if not return to the environmental health of our remembrances then at least forge a strong commitment to sustainable use and sustainable access based primarily on ecological principles.

Thus, our submission targets certain provisions of the draft act where not enough, or even nothing, is said; where too much discretion is available to politicians or, even worse, unelected entities; where questions about enforcement of provisions are left to as yet unseen regulations. Utter vigilance from government is required to protect the quality of water in the province. As well, principles about the duty of government to protect the public good is needed to ensure availability of water to citizens of the province. The provisions of the draft act are too silent on these issues and provide too much flexibility. Specific concerns are the following:

- Sections 7 and 28 are examples of the concern around Ministerial discretion. Where the draft act refers not just to the Minister but the Minister and the Lieutenant Governor in Council, that is when the decision-making becomes less "administrative" (which it is when the "Minister" and/or his delegates are making decisions) and risks becoming "political" and/or hidden. Transparency in legislation and governance is paramount but especially so in relation to water resources. Moreover, politicization of any issue is a risk at the cabinet level, however, again, in relation to water resources it is a potential nightmare. Water is a life and death issue for humans, farm animals, wildlife and indeed our entire Island eco-system. It is too important to become a "political football".
- Similarly, public engagement mechanisms such as advisory councils are also discretionary possibilities. If the government is serious about public engagement on this issue on an on-going basis in the future, stronger and more detailed mechanisms beyond advisory councils would be useful.
- Section 14 is a potential Ministerial "carte blanche". It allows the Minister to "amend, suspend, revoke or impose terms and conditions" on any orders made under the auspices of the Act by he or an Environmental Officer. There is nothing within that states that the Minister has to provide reasons for so doing. Some kind of due process for this level of authority should be required but is lacking here and generally throughout the draft act.
- Another concern is section 46 which allows the Lieutenant Governor in Council to create a water "corporation" at arms length from government, similar to Island Waste Management Corporation. Creating a Crown corporation to run water extraction, distribution and sewage systems lessens accountability and takes administration of access and regulation it out of public view and out of public control. As mentioned, access to clean water is too important to the public to allow any reduction in

accountability or transparency.

- The Transitional Provisions provide ample opportunities for political influence as well. For example, section 74(5) provides a 5 year grandfather clause which invites an onslaught of extraction applications to be adjudicated by the Minister. Protection of our water systems must begin now and persons or entities who, in the present or past, have had unlimited access to our limited resource must be encouraged to find alternatives than to horde our common resource for individual gain.
- Agricultural practices (crop rotation, pesticides) and the effects of pollutants and sedimentation on waterways, despite broad hints from the current government that they would be addressed, are not mentioned in the draft act. This is a glaring absence and is indicative of a lack of ecological perspective (that all aspects of Island activity are connected to the health of our water systems) necessary for effective resource protection.
- A clear statement about high capacity wells is also absent from the draft act. Given the level of public engagement about high capacity wells and the moratorium on them, it would be appropriate for the new legislation to provide direction that this technology is not appropriate for our Island water resource.
- Prior to this process, there was an expectation that the issue of "fracking" for natural gas deposits would be dealt with in a new Water Act. This is also a glaring omission. Enough is already known about the risks of fracking to warrant a complete prohibition. If the issue of fracking is left to the regulations, it can easily be changed in an undemocratic way, by Cabinet, with no public consultations or even advance warning, at any point down the road, and that's unacceptable.
- Finally, the process for the drafting of Regulations adjacent to any Act remains unclear and given what is missing from the draft act itself, one can assume that the writing of Regulations is underway in a hidden corner of

the Executive Council. This is unacceptable. The only opportunity to discuss them will be after their tabling in the Legislature which will be time driven and thus limited. Even if a thorough robust set of regulations are put forward, they are of little value if insufficient resources are guaranteed to enforce them. Clearer benchmarks, to assist in implementation and enforcement, are needed both in act itself and the ensuing regulations.

It is internationally recognized that access to clean drinking water and water systems is essential to the realization of any human rights or indeed any economic or cultural pursuit in Prince Edward Island. Strong commitment, intelligent progressive laws and regulations, community involvement and yes, vision, are required to ensure this. Successive Island governments have paid little more than lip service to environmental issues all the while pouring dollars into failing and unprofitable business ventures. Our politicians have been fond of the type of exploitative economic development that is plundering and poisoning habitat here, and around the world.

However, the majority of the citizens those politicians serve want more. We require strong measures to stop the recklessness. Mother Nature is resilient, and forgiving. In addition to the intangible and aesthetic benefits of effective and sustainable natural resource protection, we believe there are also tangible dividends. We ask those, including some Island politicians, who narrowly focus on short-term profits to broaden their points of view by considering the health benefits, the tourism benefits, and the real potential for higher value exports from a pristine island with the cleanest of waterways and groundwater resources. The current Water Act debates can be a "watershed" moment in our history. Let's seize it. Let's insist on vision.

VISION PEI