

4-1-2012

## Negotiating the Interface of Environmental and Economic Governance: Nova Scotia's Environmental Goals and Sustainable Prosperity Act

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### Recommended Citation

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Meinhard Doelle\*\*

Negotiating the Interface of Environmental  
and Economic Governance: Nova Scotia's  
*Environmental Goals and Sustainable  
Prosperity Act*

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*The year 2012 marks the fifth anniversary of the Environmental Goals and Sustainable Prosperity Act (EGSPA). The Act is an experiment in improving government performance in promoting sustainable prosperity through the process of setting legislative goals and enhancing accountability. This article provides an overview of the Act and an assessment of its performance over these first five years. As such, it supplies the context for the other contributions to the collection of essays on EGSPA in this issue of the Journal. The authors conclude that the Act has had a positive impact on government action on sustainable prosperity and that there is room for improvement, particularly with respect to the overall goal of integrating environmental protection with economic prosperity. The article concludes by offering some recommendations to strengthen the Act.*

*L'année 2012 marque le cinquième anniversaire de l'adoption de la Environmental Goals and Sustainable Prosperity Act (loi sur les objectifs environnementaux et la prospérité durable). La loi est une expérience visant à améliorer les résultats du secteur public pour ce qui est de promouvoir la prospérité durable par le processus qui consiste à établir des objectifs pour la loi et à accroître les responsabilités. L'article donne une vue d'ensemble de la loi et présente une évaluation de ses résultats après ces cinq premières années. À ce titre, il sert de contexte aux autres contributions à la série d'essais sur la loi dans ce numéro du Dalhousie Law Journal. Les auteurs arrivent à la conclusion que la loi a eu des incidences positives sur les interventions du gouvernement en matière de prospérité durable et que des améliorations restent possibles, particulièrement pour ce qui est de l'objectif global qui est d'intégrer protection de l'environnement et prospérité économique. En conclusion, l'article formule des recommandations pour renforcer la loi.*

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*Introduction*

Nova Scotia's *Environmental Goals and Sustainable Prosperity Act* (EGSPA) came into force on 7 June 2007.<sup>1</sup> In addition to setting a performance schedule and a process of accountability for the achievement of twenty-one discrete environmental goals, the *Act* proclaimed Nova Scotia's ambition to achieve two overarching goals by 2020: to "demonstrate international leadership by having one of the cleanest and most sustainable environments in the world" and to improve "the Province's economic performance to a level that is equal to or above the Canadian average."<sup>2</sup> This combination of ambitions reflected the influence of a previously adopted provincial economic development strategy that linked environmental sustainability and economic growth through the concept of "sustainable prosperity."<sup>3</sup> It was also influenced by a number of reports that argued Nova Scotia was well positioned to prosper by embracing the "environmental economy," evidenced by its earlier success in waste management, the growing importance to its business sector of

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1. *Environmental Goals and Sustainable Prosperity Act*, SNS 2007, c 7 [EGSPA].

2. *Ibid*, ss 4 (1)(a), (b).

3. Nova Scotia Department of Economic Development, *Opportunities for Sustainable Prosperity* (Nova Scotia: Nova Scotia, 2009).

environmental sustainability, and the perceived strengths of its higher education sector in fields of study related to the environmental economy.<sup>4</sup>

Although introduced and promoted in the House of Assembly by the short-lived minority Conservative government of Premier Rodney MacDonald, the *Act* was also supported by the official opposition New Democrats and by the Liberals who held the legislative balance of power in the House of Assembly. The New Democrats replaced the Conservatives as Nova Scotia's government in 2009 and assumed responsibility for implementation of *EGSPA*.

As in the other contributions in this issue, this paper provides a perspective on the significance of the *Act* roughly five years after proclamation. More specifically, this paper evaluates the impact of the *Act* as an instrument of environmental and economic governance. While the analysis concentrates on the impact of *EGSPA* in the specific context of Nova Scotia and the conclusions focus on how *EGSPA* might be strengthened and improved, the analysis examines the broader question of what Nova Scotia's experience under *EGSPA* tells us more generally about the potential role of this kind of legislation in environmental and economic governance.

There are two core conclusions. The first is that *EGSPA* seems, in large measure, to have succeeded in improving the performance of the Nova Scotia government in implementation of environmental policy commitments, including those which require action by departments of government that are primarily responsible for other domains of public policy, and those that require continuity of effort by successive governments. This suggests that the formal legislating of policy commitments can add normative weight to these commitments even where the legislation functions more as soft rather than hard law. It suggests that *EGSPA* has improved the capacity of government to implement an environmental policy framework that requires contributions from multiple government departments and continuity of effort over time and political cycles.

The second core conclusion is that *EGSPA* has not yet succeeded in transforming Nova Scotia into a jurisdiction that achieves high environmental performance and higher economic performance through the integrated pursuit of ambitious environmental and economic objectives. While this conclusion suggests an inherent limitation to legislation as

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4. Walker et al, *The Nova Scotia Solid Waste-Resource Accounts, Executive Summary In Genuine Progress Index: Measuring Sustainable Development* (Halifax: GPIAtlantic, 2005); K Ogilvie, *Interim Report of Council* (Nova Scotia: Premier's Advisory Council on Innovation, 2006); NovaKnowledge, *Defining and Developing Tomorrow's Workforce, Knowledge Economy Report 2006.2007* (Halifax: NovaKnowledge, 2007).

a policy instrument, it may also show that legislation which aspires to play a role in such a transformation must address its economic objectives more rigourously than has *EGSPA* during its first five years. Further, the implementation of legislation, including *EGSPA*, must pay more explicit attention to the distinct and overriding goal of integration and the mechanics to achieve this end. The paper concludes with suggestions for how *EGSPA*, and other “aspirational legislation,” might be designed and administered to enhance its effectiveness in improving governmental policy performance at the interface of environmental and economic governance.

I. *Situating EGSPA as an instrument of environmental and economic governance*

1. *Overview of EGSPA*

At the heart of the *Act* is the long-term objective of integrating environmental sustainability and economic prosperity, as articulated in section 4(1):

4 (1) The long-term environmental and economic objective of the Province is to fully integrate environmental sustainability and economic prosperity and to this end to

(a) demonstrate international leadership by having one of the cleanest and most sustainable environments in the world by the year 2020; and

(b) provide certainty to all sectors of the economy through the Government’s economic development strategy entitled Opportunities for Sustainable Prosperity and establish clear environmental goals while improving the Province’s economic performance to a level that is equal to or above the Canadian average by the year 2020.<sup>5</sup>

To achieve this long-term objective, the *Act* enumerates twenty-one short and medium term goals, establishes a process to ensure the effective implementation of these goals, and creates authority for the adoption and implementation of additional measures necessary to meet the long-term objective. The twenty-one goals are set out in subsection 4(2) of the *Act* and are reproduced in full in the appendix to this paper.<sup>6</sup> The goals cover a range of issues, from more substantive targets on greenhouse gas (GHG) emissions, air pollutants, energy, solid waste, protected areas, wastewater treatment, and drinking water, to process-related targets such as the requirement to develop strategies, policies, or regulations on resource management, wetlands, brownfield re-development, and government procurement.

5. *EGSPA*, *supra* note 1, s 4(1).

6. *Ibid*, s 4(2).

The goals can be roughly grouped into five categories. One category embraces a range of goals pertaining to air emissions, including those requiring emission reductions of NO<sub>x</sub> by 20% by 2009 as compared to 2000, mercury emissions by 70% by 2010 compared to 2001, SO<sub>2</sub> emissions by 50% by 2010 compared to 2001, and GHG emissions by at least 10% by 2020 compared to 1990. This category also includes goals requiring the adoption by Nova Scotia of Canada-wide standards on ground-level ozone and fine-particulate matter and the adoption of provincial standards for new vehicles on GHG and air pollution emissions, all by 2010.

A second, and obviously overlapping, category—particularly given the reliance of Nova Scotia's electricity system on fossil fuels—includes a number of goals tied to the energy sector. One of these goals requires all new residential dwellings built in or after 2008 to display an EnerGuide rating. A closely related goal in this category demands that all new dwellings built in or after 2011 achieve an EnerGuide rating of 80. A third goal in the energy category requires 18.5% of Nova Scotia's energy to come from renewable sources by 2013.

The third category of goals deals with water. The grouping includes the development of a comprehensive water resource management strategy by 2010, the application of at least primary treatment to all wastewater treatment discharge by 2017, the compliance of all municipal public drinking water supplies with provincial standards by 2008, and the establishment of a policy to prevent net loss of wetlands by 2009.

The fourth category of goals addresses resources conservation and management more broadly. Specific requirements include: the adoption, by 2010, of strategies to ensure sustainability of natural capital in forests, mining, parks, and biodiversity; the legal protection of 12% of Nova Scotia's land mass by 2015; and the development, by 2010, of regulatory tools to stimulate redevelopment of contaminated land. This category can also be said to include the goal of limiting waste disposal to 300 kg per person by 2015 (previously set out in the *Environment Act*).<sup>7</sup>

The fifth category includes two goals that relate to the responsibility of government to put its own house in order—i.e., to lead by example. The first of these goals required the Province to adopt a sustainable procurement policy by 2009. The second required the Province to construct a “government facility” to serve as a “demonstration facility in accordance with a leading standard for building efficiency and sustainability.”

Many of the goals were drawn from existing policy positions of the provincial government; other goals were developed specifically for

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7. *Environment Act*, SNS 1994-95, c 1.

*EGSPA*.<sup>8</sup> On first glance most of the goals are designed with environmental protection rather than economic prosperity in mind. This approach is consistent with the concept that long term economic prosperity depends on environmental stewardship, but it may also reflect other more practical considerations. One such consideration is the reality that *EGSPA* emerged from the Department of Environment with little indication of inter-departmental consultation during the development process. Another is the reality that specific environmental protection commitments are easier to articulate in legislation than are comparably specific economic policy commitments.<sup>9</sup> The emphasis in *EGSPA* on environmental goals may also have reflected that it was introduced by a government that had identified the environment as one of its major priorities at a time when many governments were pursuing relatively aggressive environmental policies.<sup>10</sup> Moreover, the *Act* was passed during a time of relative economic prosperity and of heightened concern in and outside of Nova Scotia about a number of environmental issues, most notably climate change, the safety of drinking water, and habitat protection.

The *Act* is, however, clearly concerned with both economic prosperity and environmental protection. The twenty-one environmental goals are explicitly linked to a single long-term objective: “to fully integrate environmental sustainability and economic prosperity.” Furthermore, there are clear economic opportunities associated with a number of the goals. For example, the province had already created employment through solid waste reduction efforts.<sup>11</sup> It is also generally recognized that there are economic opportunities associated with renewable energy production and with energy efficiency and conservation efforts. More generally, the *Act* is based on seven principles that are as much about the economy as the environment, including, the principle that “the management of goals

8. For example, the development of a comprehensive water management strategy was foreshadowed in the Department of Environment’s work on a drinking water strategy: see William Lahey (chair), *A Drinking Water Strategy for Nova Scotia: Final Report* (Halifax: Interdepartmental Drinking Water Management Committee, 2005). Similarly, a number of goals were previously included in the “green plan” that was adopted by the Province in 2003: see Nova Scotia Department of Environment and Labour, *Green Plan: Progress towards a sustainable environment* (Halifax: Nova Scotia, 2005), and Nova Scotia Department of Environment and Labour, *Towards a Sustainable Environment* (Halifax: Nova Scotia, 2003). In addition, a number of the goals relating to air emissions and energy policy were previously agreed to by Nova Scotia either through the Canadian Council of Ministers of the Environment or the Conferences of the New England Governors and Eastern Canadian Provinces.

9. John Brazner, “Legislating sustainability: Nova Scotia’s new law marries environmental sustainability and economic prosperity” (2008) 34:4 *Alternatives Journal* 16.

10. Jay Makarenko, *Progressive Conservative Party of Nova Scotia: Party history, election platform & leader* (1 May 2006), online: mapleleafweb <<http://www.mapleleafweb.com/features/1006-nova-scotia-general-election#progressive>>.

11. Walker et al, *supra* note 4.

for sustainable prosperity, such as emission reduction, energy efficiency programs and increasing the amount of legally protected land will preserve and improve the Province's environment and economy for future generations."<sup>12</sup>

When it comes to specifics, however, the *Act* is heavily weighted towards environmental protection and, more specifically, to the twenty-one goals. Not surprisingly, these have been the focus, not only in the implementation of the *Act*, but also in the accountability mechanisms provided for in the legislation. These mechanisms are quite basic. First, the *Act* obliges the Minister of Environment to carry out an annual review of progress under the *Act* and to table a report based on that review in the House of Assembly.<sup>13</sup> In doing so, the minister is required to seek the advice of the Nova Scotia Round Table on Environmental Sustainability—now called the Round Table on Environment and Sustainable Prosperity—which was re-established by amendment to the *Environment Act* in 2006.<sup>14</sup> These annual reviews are to consider the implementation of the existing targets, as well as their adequacy in meeting the long-term objective in section 4(1). Second, the minister is required to ask the Round Table to carry out a thorough review of the *Act* every five years and to submit to the minister "a report with recommendations for amendments and improvements in the implementation of this Act."<sup>15</sup>

The *Act* assigns responsibility for implementation of the goals to the government of Nova Scotia. It is, however, clear that some goals are more directly within the control of the government than others. The substantive goals, such as the reduction of GHG emissions, require action from other levels of government and other non-state actors, including Nova Scotia's privately owned power utility, major industries, and the general population. Other goals that focus on the development of policy rather than the meeting of a specific substantive target are more directly within the control of the provincial government, though many have involved extensive stakeholder consultations.

The powers granted in the *Act* are allocated to the Governor in Council, as opposed to any particular minister. These powers consist of broad authority to pass regulations, to develop programs, and to enter into agreements with other governments or non-state actors in order to achieve

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12. *EGSPA*, *supra* note 1, s 3(2)(g).

13. *Ibid*, s 6(1).

14. *Environment Act*, *supra* note 7, s 6(3); *An Act to amend Chapter 1 of the Acts of 1994-95, the Environment Act*, SNS 2006, c 30.

15. *EGSPA*, *supra* note 1, s 6(2).



the goals of the *Act*.<sup>16</sup> This approach makes sense, since integration of environmental and economic policy can only happen optimally if it happens on a government-wide, or at least multi-departmental, scale. But, on the other hand, as mentioned already, the *Act* gives the responsibility for reporting to the House of Assembly on implementation of the *Act* to the Minister of Environment, while most of the specific goals established by the *Act* fall within the mandate of the same minister under Nova Scotia's *Environment Act*.<sup>17</sup> Thus, it is perhaps not surprising that the legislation has, as will be discussed later, largely been implemented as environmental legislation that operates in the context of environmental policy.

## 2. EGSPA's uniqueness: applying law to the policy-making process

In many respects, *EGSPA* might be seen as the successor policy to Nova Scotia's "green plan," *Towards a Sustainable Environment*, which was adopted in 2003.<sup>18</sup> Like that policy, and like the similar non-legislative policies that have been typically used by governments across Canada to outline their environmental policy, *EGSPA* articulates a general policy philosophy and then lays out a series of discreet policy commitments that government will implement to achieve a broadly defined set of objectives.

*EGSPA*, however, is different from Nova Scotia's green plan and from its counterparts in other Canadian jurisdictions in one important respect: it explicitly mandates the government to follow through on its own environmental policy commitments. In other words, *EGSPA* is different from typical green plans because it is law. That said, *EGSPA* does not do what environmental law typically does: it does not regulate, or create authority to regulate, non-governmental actors. At most, it sets the stage for regulation necessary for the achievement of its goals, primarily, but not exclusively under Nova Scotia's *Environment Act*. Thus, while *EGSPA* is distinguished from typical environmental policy frameworks by its legislative character, it is also distinguished from traditional environmental law by its concern with the performance of government in the implementation of its own environmental policy.

Government environmental policies are, typically, just that until they are fashioned into law—which only happens once government has determined the appropriate role for non-state actors. This exposes them to the risk of not being implemented as a result of a change in government or other changes in circumstances that shift government priorities. In *EGSPA*, twenty-one environmental goals and the specific schedule for their

16. *Ibid*, ss 5 and 7-9.

17. *Supra* note 7.

18. *Supra* note 8.

achievement between 2007 and 2020 are given the force of law. All of the prescribed goals are either ones that only government can make happen or that can only be achieved with significant action from government. Many of the goals require adoption by government of regulatory instruments or the development by government of new policy frameworks. Although there are implications across the goals regarding the contributions expected of other sectors in society, the focus of the goals is the use by government of its legislative authority over the environment to ensure the enumerated goals are achieved.

There is nothing in the *Act* to dictate the particular approach to environmental governance that government is to follow in implementing the legislation. Some of the goals seem to clearly imply new or elevated regulatory standards of a traditional sort. Meanwhile, a number of indications might all be taken to invite “new governance”<sup>19</sup> approaches: the fact that a number of the goals relate to the adoption of non-legislative policy frameworks or strategies, the emphasis in the broader language of the *Act* on economic prosperity and partnerships, and the emphasis in the legislative process on the government’s intention to work on implementation of the *Act* with diverse stakeholders. Neither traditional nor “new governance” approaches, however, can be said to be required by the *Act*.

That said, *EGSPA*, as law, does regulate the performance of government in making and implementing environmental policy. There are three key aspects to how it regulates government policy-making and implementation that warrant mention to set the stage for the subsequent evaluation of *EGSPA*’s performance.

First, *EGSPA* applies what is properly characterized as “soft” regulation to the policy-making process of government.<sup>20</sup> As noted above, the main mechanism of accountability for implementation is an annual report from the Minister of Environment that is tabled in the House of Assembly after

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19. Subsection 3(2) says that the *Act* is based on several “principles,” including that “the environment and the economy of the Province are a shared responsibility of all levels of government, the private sector and all people of the Province”: *supra* note 7. See, for example Chris Tollefson, Anthony R Zito & Fred Gale, “Symposium Overview: New Governance Arrangements” (2012) 90:1 Public Administration 3, part of a special issue on new governance arrangements.

20. L Sossin & CW Smith, “Hard Choices and Soft Law: Ethical Codes, Policy Guidelines and the Role of the Courts in Regulating Government” (2003) 40:4 *Alta L Rev* 867; L Sossin, “The Politics of Soft Law: How Judicial Decisions Influence Bureaucratic Discretion in Canada” in Marc Hertogh & Simon Halliday, eds, *Judicial Review and Bureaucratic Impact* (Cambridge: Cambridge University Press, 2004); L Pottie & L Sossin, “Demystifying the Boundaries of Public Law: Policy, Discretion and Social Welfare” (2005) 38 *UBC L Rev* 147.

the minister has sought input from the Round Table.<sup>21</sup> Such “softness” is not surprising in legislation that seeks to direct government decision-making over a long period of time. But *EGSPA* opts for less onerous mechanisms than it might have. For example, although no other jurisdiction in Canada has spelled out the environmental policy agenda of government in legislation to the same extent that *EGSPA* has in Nova Scotia, several others have created an environmental commissioner with independent authority to report on the government’s environmental performance.<sup>22</sup> Other provinces, particularly Ontario, have also implemented an environmental bill of rights, which includes procedural rights that can be used by citizens to hold government accountable for their commitments.<sup>23</sup> An environmental bill of rights may also include substantive rights, which provide a substantive legal standard against which government action is measured.

Second, given the range of environmental policy goals within *EGSPA*, the *Act* applies a very wide-ranging regulatory framework to government’s environmental policy-making process. In light of its goal of integrating environmental sustainability with economic prosperity, *EGSPA* casts a wider net as compared to many non-legislative environmental policy frameworks. One of the consequences of *EGSPA*’s breadth is that even though most of the goals fall wholly or largely within the mandate of the Minister of the Environment, a significant number fall under or have significant implications for the mandate of a number of other departments of the Nova Scotia government. These departments include those responsible for energy, natural resources, economic development, transportation, public works, and government services.

Third, the regulatory framework that *EGSPA* applies to the policy-making process is primarily directed at environmental policy. Although the *Act* connects the implementation of the twenty-one environmental policy commitments to the broader integration of Nova Scotia’s stated policy objectives in environmental and economic governance, *EGSPA* contains little guidance or direction on the mechanics of this connection. *EGSPA* does say that Nova Scotia, a traditional “have not” province, will enjoy “economic performance” by 2020 at a “level that is equal to or above the Canadian average.”<sup>24</sup> This performance is to parallel (or

21. The written input received from the Round Table is included in the reports that have been to date tabled in the House of Assembly.

22. Federal Environment Commissioner, online: <[http://www.oag-bvg.gc.ca/internet/English/cesd\\_fs\\_e\\_921.html](http://www.oag-bvg.gc.ca/internet/English/cesd_fs_e_921.html)>; Ontario Environment Commissioner, online: <<http://www.eco.on.ca/>>.

23. *Environmental Bill of Rights*, SO 1993, c 28.

24. *EGSPA*, *supra* note 1, s 4(1).

perhaps be attributable to) the objective of “having one of the cleanest and most sustainable environments in the world by the year 2020.”<sup>25</sup> The *Act* declares that “environmentally sustainable economic development that recognizes the economic value of the Province’s environmental assets is essential to the long-term prosperity of the Province” and acknowledges that “a long-term approach to planning and decision-making is necessary to harmonize the Province’s goals of economic prosperity and environmental sustainability.”<sup>26</sup> It states that “the management of goals for sustainable prosperity, such as emission reduction, energy efficiency programs and increasing the amount of legally protected land will preserve and improve the Province’s environment and economy for future generations.”<sup>27</sup>

In all of these ways, *EGSPA* implicates broad fields of economic policy. This justifies the conclusion that *EGSPA* aspires, at least rhetorically, to influence government decision-making so as to integrate environmental and economic policy-making. But the patent limitation of *EGSPA* in this regard is its silence on both specific goals for economic policy to match those it enumerates for environmental policy and on the mechanisms to be used to ensure the integration of environmental and economic objectives in policy-making in both policy fields. The deeper limitation is its failure to address how environmental goals are best selected and implemented to ensure economic prosperity and vice versa. Instead, it asserts and assumes a mutually beneficial connection between an assortment of mostly pre-existing environmental policy objectives and a vaguely defined future economic prosperity.

## II. *Implementation of EGSPA*

### 1. *Introduction*

How has *EGSPA* performed in ensuring that government implements the policy commitments that *EGSPA* enumerates? This question will be answered from two perspectives. First, an evaluation of the performance of the Nova Scotia government in meeting the twenty-one specific goals in accordance with the schedule set out in *EGSPA* is provided. Second, a broader evaluation is offered of whether the implementation of *EGSPA*

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25. Unfortunately, by choosing the Canadian average as the baseline against which to measure economic performance, and by setting a medium term target of 2020, the *Act* opens itself up to influences on the achievement of the overall economic goal that may be completely outside the control of the *Act*. A medium term goal of achieving a net positive contribution to economic performance out of the implementation of the goals in the *Act* may have been a more appropriate economic goal. Over the long term, it should become easier to make the case that environmental protection and conservation of natural resources will lead to better economic performance.

26. *EGSPA*, *supra* note 1, s 4(1).

27. *Ibid.*

has moved Nova Scotia's policy-making process forward in achieving integration of environmental and economic policy-making.

2. *Performance in meeting EGSPA's specific environmental goals*

The following table, organized according to the categorization of the goals set out earlier in the paper, summarizes the status of the twenty-one goals specified in section 4(2) of the *Act*. This summary is based on the first four annual reports released by Nova Scotia's Ministers of Environment since the *Act* came into force in 2007 and the report of the Round Table on its five-year review of the *Act*, supplemented by information on the status of one goal provided by the Nova Scotia Department of Environment.

Goals - s 4(2)	Current Status
Air Emission Goals	
(b) Adopt provincial standards for GHG and air pollutants from new motor vehicles by 2010	Achieved
(c) Reduce NO <sub>x</sub> emissions 20% from 2000 levels by 2009	Exceeded
(d) Reduce SO <sub>2</sub> emissions 50% from 2001 levels by 2010	Achieved
(e) Reduce GHG emissions by at least 10% below 1990 levels by 2020	In progress
(f) Reduce mercury emissions by at least 70% from pre-2001 levels by 2010	Delayed until 2014, work in progress
(h) Meet Canada-wide standard established by the CCME for airborne fine-particulate matter by 2010	Achieved
(i) Meet Canada-wide standard established by the CCME for ground-level ozone by 2010	Achieved
Natural Resources Management and Protection Goals	
(a) Legally protect 12% of the province's total land mass by 2015	In progress
(m) Development regulatory tools to stimulate the redevelopment of contaminated land by 2010	Achieved one year behind schedule
(o) Limit solid-waste disposal to 300 kg per person per year by 2015	In progress

(u) Adopt strategies to ensure the sustainability of the province's natural capital in forestry, mining, parks, and biodiversity by 2010	Achieved about one year behind schedule
Energy Goals	
(g) Obtain 18.5% of the province's energy needs from renewable sources by 2013	More ambitious longer term goals set and in progress, but not included in the <i>Act</i>
(r) Require all new residential dwelling units constructed within Part 9 of the <i>National Building Code of Canada</i> <sup>28</sup> to display an EnerGuide rating by 2008	Missed and arguably subsumed in exceeding the later goal of achieving an EnerGuide rating of 80 for all new dwellings
(s) Require all new residential dwelling units constructed after 1 January 2011 to either achieve an EnerGuide rating of 80 or meet energy conservation measures under the <i>Building Code Act</i> <sup>29</sup>	Exceeded
Water Quality Goals	
(j) Ensure municipal public drinking water supplies meet the province's treatment standards by 2008	Missed, work still in progress
(k) Develop a comprehensive water resource management strategy by 2010	Achieved
(l) Provide at least primary treatment to wastewater treatment facility discharge 2017	In Progress
(n) Establish a policy to prevent the net loss of wetlands by 2009	Achieved about two years behind schedule
(p) Operate septage treatment facilities in accordance with handling, treatment, and disposal of septage standards by 2011 <sup>30</sup>	Achieved as of December 2011, according to information provided by NS Department of Environment

28. National Research Council Canada, *National Building Code of Canada* (2005).

29. RSNS, c 46.

30. Nova Scotia Environment and Labour, "Guidelines for the Handling, Treatment and Disposal of Septage" (Nova Scotia: Nova Scotia Environment and Labour, 2006) online: <<http://www.gov.ns.ca/nse/wastewaer/regulations.tech.guidelines.asp>>.

Leading by Example - Government House in Order Goals	
(q) Develop and adopt a sustainable procurement policy for the province by 2009	Achieved
(t) Construction of a government facility as an efficiency and sustainability demonstration facility	Achieved

This table shows that the government is reporting, with Round Table validation, that it is meeting the majority of the goals that were scheduled for completion prior to 2012. This says little about what has been substantively accomplished in terms of environmental protection (to say nothing of economic prosperity) by meeting the goals that have been met. Such analysis, which is beyond the scope of this paper, might reveal that achieving some of the goals has not really enhanced environmental stewardship or improved it only marginally and superficially. This seems a particularly strong possibility relative to the goals that call for the development of policy frameworks without specification of any of the necessary features or attributes of those frameworks. Weak policies or policies that do not actually inform substantive decision-making or that are developed through a process that generates conflict and disagreement might all be said to comply with the *Act* even though they would do much less to advance the *Act*'s objectives than would robust policies developed through strong processes that are rigorously implemented. The detailed analysis by Peter Duinker of the process used and substantive outcomes achieved in developing a new forestry strategy under clause 4(2)(u) of *EGSPA* in this collection of essays demonstrates this point.<sup>31</sup>

Nevertheless, the quantitative track record is impressive by itself. Of the fifteen goals that were to be met before 2012, seven were achieved on time, one was achieved prior to the due date, and four were achieved late. In other words, twelve of fifteen goals (80%) have been achieved and slightly more than 50% have been achieved on time. Out of the three that have been missed, one (the labeling of all new dwellings with an EnerGuide rating) was subsumed in the achievement of a later and substantively more important goal (the achievement of a specified EnerGuide rating by all new dwellings), bringing the "achieved" rate to 87%.

31. The delay in the release of the wetlands policy in an effort to address ongoing stakeholder concerns about its impact on development might offer another interesting case study in this regard, as it is an example of the government choosing process and consensus building over the legislative timeline.

One other missed goal continues “in progress” (municipal water quality), while the third (reduction of mercury emissions by 70%) has been deferred by the government to a later date.<sup>32</sup> This latter goal is the only instance where government has openly given itself a different timeline from that specified in the *Act*. It is unfortunate that the government did not feel compelled to have the *Act* amended in this regard or to consult with the Round Table before changing the timeline; however, in changing the target date, government did acknowledge the continuing obligation to achieve the goal.

In short, none of the goals that have been missed have been ignored or abandoned, while the solid majority have been implemented either on time or only modestly behind schedule. It is disturbing that the unachieved goals relate to adoption of drinking water quality standards and the reduction of mercury emissions—two goals connected directly to human health and that address issues on which Nova Scotia lags behind other provinces. The municipal drinking water goal is, however, largely accomplished and the government has proposed to deal with the mercury reduction on a different timeline by pursuing a renewable energy target that goes well beyond the one set out in the *Act*.

Some criticism can also be leveled at government for being late in meeting four goals. It has to be noted, however, that three of the four goals achieved behind schedule called for the development of new policy frameworks in notoriously complex and contested areas of policy through processes that required the participation of many stakeholders: remediation of contaminated sites, wetlands protection, and the protection of natural capital in natural resources. Duinker's analysis of the disappointing nature of the forestry component of the process used to develop natural resources strategies notwithstanding, the achievement of new policy frameworks in these important policy domains may be more important than the fact that they were achieved behind schedule. Indeed, as Duinker points out, when it comes to policy development, the meeting of a deadline can be much less important than taking the time needed to complete a process that gives participants the time they need to come together around a common vision for the future that bridges or at least minimizes their differences.<sup>33</sup>

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32. Sierra Club, Atlantic Chapter, “Nova Scotians will pay the price for giving NS Power a pass on mercury regulations” (2010), online: <<http://mil.sierraclub.ca/fr/node/2763>>; New Democratic Party of Nova Scotia, “Province to hold NS Power accountable for new mercury emissions caps” (2010), online: <<http://www.ns.ndp.ca/news.asp?id=186>>.

33. Peter Duinker, “In Search of ‘Compass and Gyroscope’: Where Were Adoptive Management and Principled Negotiation in Nova Scotia’s Forest-Strategy Process?” (2012) 35 Dal LJ 55.



Turning to the six goals that are scheduled to be completed after 2012, less weight should be given to the status reports issued by the Minister of Environment, given that it is easy for government to label a goal which is not yet due as “in progress.” Nonetheless, it is encouraging that one goal (the construction of a demonstration facility under “leading” energy efficiency and sustainability standards) was achieved ahead of schedule and that another (requiring 18.5% of energy needs to be met with renewable energy) has been superseded by a more ambitious target that is enshrined in the government’s non-legislative *Renewable Electricity Plan* (not mandated by the *Act*), as well as in amendments to the *Electricity Act*.<sup>34</sup> Meanwhile, the high level of activity since enactment of *EGSPA* in 2007 on the designation of protected areas to meet the goal of bringing 12% of the province under legal conservation protection by 2015 suggests that the legislating of this goal (one of the ones that pre-dated *EGSPA*) has had considerable impact on government decision-making and priority-setting.<sup>35</sup> In this regard, it is important to note that designation is a cabinet-level decision that depends on input from both the departments of environment and natural resources.

The actions of government in pursuit of *EGSPA* targets have no doubt been influenced by many factors other than the *Act* itself. But, given the general level of effort that must have expended in meeting the diverse goals laid out in *EGSPA*, it appears evident that the *Act* has offered significant impetus for activity. This bodes well not only for the future of *EGSPA* but for other legislation that seeks to improve the policy performance of governments in environmental governance by giving the weight of law to specific environmental policy commitments. The significance of this is further highlighted when various contextual factors are taken into account that might have interrupted the implementation of the *EGSPA* goals. Among these factors are the long term difficulties that departments of environment across Canada have faced in getting the central decision-making processes of government to treat environmental policy as a high

34. Nova Scotia Department of Energy, *Renewable Electricity Plan: A path to good jobs, stable prices and a cleaner environment* (Halifax: Nova Scotia, 2010); *An Act to Amend Chapter 25 of the Acts of 2004, the Electricity Act*, SNS 2010, c 14; *Renewable Electricity Regulations made under Section 5 of the Electricity Act*, SNS 2004, c 25.

35. Aaron Bewick, “Nova Scotia protects more natural spaces,” *Chronicle Herald* (7 June 2012) A4.

governmental priority.<sup>36</sup> There is every reason to think that these difficulties have been as challenging for environmental policy-making in Nova Scotia as elsewhere.<sup>37</sup>

Other factors reflect the changes in the political and economic context that surrounded *EGSPA*'s adoption in 2007. On the political side of the equation, the Conservative government of Premier Rodney MacDonald appeared to have lost interest in both *EGSPA* and the animating philosophy of sustainable prosperity soon after *EGSPA* was enacted. This government was voted out of office in 2009, to be replaced with the NDP government of Premier Darrel Dexter. Thus, much of the work for implementing *EGSPA* has fallen to a different government than the one that introduced the *Act*.

As indicated, the new government has performed well in implementing the specific goals of *EGSPA*. It has also introduced a more aggressive set of policy initiatives, outside of the framework of *EGSPA*, relative to the "greening" of Nova Scotia's carbon-intensive electricity system—a huge component of the challenge if Nova Scotia is to become the prosperous green economy envisaged by *EGSPA*.<sup>38</sup> Nonetheless, the new government has not turned the implementation of *EGSPA* into a driving force of broader governmental policy-making. For example, in 2011 the NDP government adopted an economic growth strategy with less focus on the environmental economy than the economic strategy that had, under the previous government, provided much of the conceptual policy framework for *EGSPA*.<sup>39</sup>

36. Stepan Wood, Georgia Tanner & Benjamin J Richardson, "What Ever Happened to Canadian Environmental Law?" (2010) 37 Ecology LQ 981; Ecojustice, Press Release, "Federal government failing to enforce Canada's environmental laws: report" (12 December 2011), online: Ecojustice <<http://www.ecojjustice.ca/media-centre/press-releases/federal-government-failing-to-enforce-canada2019s-environmental-laws-report>>; W Amos, *Environmental enforcement by Canada's federal government* (Toronto: Ecojustice, 2011); H Scofield, "Environment Commissioner Scott Vaughan says federal government will likely fall short on 2020 greenhouse gas targets," *The (Toronto) Star* (8 May 2012); H Scofield, "Double blow: Canada's environmental record slammed by auditor, Europeans," *The Hook* (4 October 2011), online: The Tyee <<http://thetyee.ca/Blogs/TheHook/Environment/2011/10/04/EU-Blacklist-Oilsands/>>; T Boyle, "Poor environment record places Canadians' wellbeing at risk, report says," *The (Toronto) Star* (7 April 2011); D Boyd, "Little green lies: Prime Minister Harper and Canada's environment" (8 February 2012), online: iPolitics <<http://www.ipolitics.ca/2012/02/08/david-boyd-little-green-lies-prime-minister-harper-and-canadas-environment/>>; CUPE, "Fact Sheet: Environment, Federal Election" (2011), online: <<http://cupe.ca/s4d920c565467d/sheet-environment>>.

37. E Marchington, *2012 Green Provinces Report* (Corporate Knights Magazine, 2012); A Mayer, "B.C., Ontario score highest in environmental progress," *CBC News* (2012), online: CBC <<http://www.cbc.ca/news/canada/british-columbia/story/2012/06/06/f-green-provinces-report.html?cmp=rss>>.

38. Nova Scotia Department of Energy, "Renewable Energy: A cleaner, more secure, sustainable energy future" (2010), online: <<http://www.gov.ns.ca/energy/publications/Renewable-Energy-Handout.pdf>>; Nova Scotia Department of Energy, "The Lower Churchill Hydroelectric Project" (2010), online: <<http://www.gov.ns.ca/energy/renewables/current-activity/lower-churchill-project.asp>>.

39. Nova Scotia, *jobsHere: the plan to grow our economy* (Halifax: Nova Scotia, 2010).

The result is that it is not apparent that *EGSPA* has ever really enjoyed the robust governmental embrace that it probably needed if it was to be optimally administered. More broadly, Nova Scotia (like the rest of the world) experienced the economic setback and uncertain aftermath of the 2008 recession. In that context, it has more recently experienced the downsizing of its pulp and paper industry—one of the more significant sectors in the province's limited industrial base. These global events and their local ripple effects have coincided with, and no doubt contributed to, the preoccupation of the NDP government with fiscal restraint, a mindset typically not fertile ground for ambitious environmental policy. Meanwhile, electricity rates have continued to rise largely because of the increases in the price of the fossil fuels that Nova Scotia power stations burn, but also because of the cost of renewable energy and energy conservation and efficiency initiatives being taken to reduce the province's fossil fuel dependency.<sup>40</sup>

In total, these circumstances may have undermined some of the 2007 pre-*EGSPA* confidence that environmental protection and economic prosperity could not only be reconciled in Nova Scotia but aligned in mutually reinforcing ways.<sup>41</sup> Similarly, in and beyond Nova Scotia, evidence indicates that voters are currently attaching less importance to environmental issues in general, and to climate change in particular, than appears to have been the case in and around 2007.<sup>42</sup>

It is not possible to say what impact this combination of factors might have had on environmental policy-making by the Nova Scotia government in the absence of *EGSPA*. Nevertheless, it seems reasonably safe to conclude that *EGSPA* maintained (or at least helped to maintain) focus and commitment on a fairly long and demanding list of specific environmental policy priorities over a significant number of years, during

40. Investments in renewable energy may reduce the cost of energy in the long-term and contribute to greater price stability or both in the longer term. Investments in energy efficiency and conservation reduce the costs of energy by reducing the amount of energy required, both in the short and longer term. Both produce ancillary economic benefits and environmental benefits. In the meantime, both contribute to the upward pressure on electricity rates.

41. At the same time, of course, the long-term benefits of reducing our dependence on fossil fuels for the generation of our electricity have also been highlighted by the rise in prices.

42. C Borick, E Lachapelle & B Rabe, *Climate Compared: Public opinion on climate change in the United States & Canada* (Ottawa: Canada's Public Policy Forum, 2011); Climate Action Network, "Climate Change: Three Quarters of Canadians believe that our government must do more" (2009), online: <[http://climateactionnetwork.ca/archive/e/news/2009/release/index.php?WEBYEP\\_DI=35](http://climateactionnetwork.ca/archive/e/news/2009/release/index.php?WEBYEP_DI=35)>; Environics Research Group, *2010 Vital Signs: National Public Opinion Survey* (Ottawa: Community Foundations of Canada, 2010); Environment Canada, "Public Environment Analysis" (no date) [copy on file with author].

which a combination of other influences might otherwise have diverted attention and effort.

A detailed and thorough comparison of *EGSPA*'s effectiveness with the effectiveness of non-legislative policy frameworks in other Canadian jurisdictions is beyond the scope of this paper. But it would appear that *EGSPA* has had more success in getting a defined program of environmental policy goals implemented in Nova Scotia than non-legislated environmental policy frameworks have generally had elsewhere. The evaluations of provincial government "green plans" (that are readily available) suggest that, like *EGSPA*, none have succeeded in transforming the policy-making process that they seek to guide or to direct.<sup>43</sup> Such evaluations, however, also suggest that few if any of these plans have been as successful as *EGSPA* in ensuring follow-through by government on specific policy commitments. For example, in 2004, the Organization for Economic Co-operation and Development (OECD) reviewed Canada's environmental performance and reported, based on annual reports of the federal Commissioner of the Environment and Sustainability, that federal departments had on average met 11% of the commitments contained in their sustainable development strategies in 1998 and an average of 35% of their commitments in 2001.<sup>44</sup> In addition, the OECD cited the reports prepared by NGOs on "provincial and local sustainable development initiatives" to suggest that "implementation of sustainable development policies at subnational level is very uneven and subject to radical shifts following political turnover."<sup>45</sup>

In this admittedly rudimentary comparison, we suggest that it matters that *EGSPA*, unlike its non-legislated comparators, is rooted in legislation. The regulation of policy-making that *EGSPA* brings to bear may be "soft" and the accountability mechanism it prescribes may be basic, but *EGSPA*, unlike non-legislated alternatives, nevertheless makes action on policy commitments obligatory. The significance of this distinction comes through not only in the relatively high compliance rate that *EGSPA* has

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43. Robert JP Gale, "Canada's Green Plan" in *Nationale Umweltpläne in ausgewählten Industrieländern (A Study of the Development of a National Environmental Plan with expert submissions to the Enquete Commission 'Protection of People and the Environment')* (Berlin: Bundestag, 1997). See also, Sinclair's contribution to this special issue for a detailed assessment of Manitoba's performance under a more traditional, non-legislative approach to policy implementation: "From Idea to Practice: Sustainable Development Efforts in Manitoba (2012) 35 Dal LJ 31.

44. Organization for Economic Co-operation and Development, *OECD Environmental Performance Reviews: Canada* (Paris: OECD, 2004) at 103. This report also noted "the shortcomings highlighted in the Commissioner's reports are *not unique to Canada*," (original emphasis) which suggests that *EGSPA*'s performance may also compare favourably to that of non-legislated environmental policy frameworks outside of Canada.

45. *Ibid* at 104.

garnered, but also in the extent to which the obligatory force of the *Act* has been recognized by Nova Scotia's government when it has failed to meet goals on time or decided (in the case of mercury emissions) to delay compliance with a goal. More generally, the obligatory force of the *Act* has probably been reinforced and strengthened by the fact that it was taken seriously by the NDP government that came into office in 2009.

Nova Scotia's experience shows, therefore, that a legislated green plan along the lines of *EGSPA* can influence policy priorities and change priorities of the party in power into priorities of the state. In this respect, the experience of Nova Scotia under *EGSPA* looks like a replication on a wider scale of Nova Scotia's experience under the *Environment Act* that was adopted in 1995 and that enshrined in law the target set by the Canadian Council of the Ministers of the Environment in 1989 of diverting 50% of solid waste from landfills by 2000.<sup>46</sup> There are many reasons for Nova Scotia being the first province to accomplish this target, but one of them was almost certainly that it used law to make the target obligatory for successive governments and for a municipal sector that needed to take a long-term strategic approach in organizing itself and its systems to make the goal attainable.<sup>47</sup>

Of course, legislation that seeks to direct governmental policy-making has its limits, unless the political process has the will and the means, as in a minority government situation, to enforce it against resistant governments. It is legislation that can be ignored with legal impunity. This is illustrated by the fate of the federal *Kyoto Protocol Implementation Act*.<sup>48</sup> In the case of *EGSPA*, it surely matters that the *Act* was inherited by a government that had other priorities, but which was not indifferent or hostile to positive environmental policy. Even then, many issues can divert the attention of governments from the implementation of a wide-ranging and multi-faceted environmental policy agenda. The experience of Nova Scotia under *EGSPA* suggests that putting the agenda into law can keep that agenda in the forefront.

46. *Solid Waste-Resource Management Regulations*, NS Reg 25/96; *Environment Act*, *supra* note 7, s 93(1): "The Province shall maintain a goal of fifty per cent solid-waste diversion"; Nova Scotia, *Our Path Forward: Building on the success of Nova Scotia's solid waste resource management strategy* (Halifax: Nova Scotia, 2010) online: <<http://www.gov.ns.ca/nse/waste/docs/Solid.Waste.Strategy-Our.Path.forward.2011.pdf>>.

47. Novaknowledge, *Evaluating Nova Scotia's Solid Waste-Resource Management Model: Elements of Success* (Halifax: Novaknowledge, 2010).

48. *Kyoto Protocol Implementation Act*, SC 2007, c 30. This act was repealed in 2012 as part of the budget, Bill C-38, *Jobs, Growth and Long-term Prosperity Act* 1st Sess, 41st Parl, 2011-2012.

### 3. *Performance in integrating environmental and economic policy-making*

The question is: has the implementation of *EGSPA* produced greater integration of environmental and economic policy-making within the Nova Scotia government? Evaluating *EGSPA*'s impact in this sphere is more difficult than evaluating its impact in terms of the implementation of the twenty-one goals listed in subsection 4(2). In the context of its five-year review of the *Act*, the Round Table concluded that limited or uncertain progress has been made under *EGSPA* on integrating environmental and economic policy-making, either in respect of the implementation of the specific *EGSPA* goals or more broadly.<sup>49</sup>

The contributions that *EGSPA* has made can be evaluated from at least two perspectives regardless of whether or not they are matters covered by *EGSPA*'s specific goals—first from the perspective of whether *EGSPA* can be said to have been administered with integration as an objective and second, from the perspective of *EGSPA*'s broader influence within government on matters that are relevant to *EGSPA*'s objective of policy integration.

From the perspective of how *EGSPA* has been administered, there is little evidence that policy integration has been aggressively pursued as an overarching objective. Judging by the four annual reviews that have been published, implementation of the *Act* has been overwhelmingly limited to the achievement of twenty-one discrete environmental goals. Each of the reports usually includes general references to the economic benefits that flow from meeting these goals, but none addresses the question of how either specific goals or the goals as a whole link to economic policy. Indeed, none of the reports deal directly with economic policy at all.<sup>50</sup> This is not surprising given that the annual reports are reports from the Department of Environment that largely document what the Department

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49. M Janowitz (chair), *Report to the Minister of the Environment Regarding Environmental Goals and Sustainable Prosperity Act (EGSPA)* (Halifax: Round Table on Environment and Sustainable Prosperity, 2012).

50. Nova Scotia, Environmental Goals and Sustainable Prosperity Act: *Annual Report 2008* (Halifax: Nova Scotia, 2008) online: NS <<http://gov.ns.ca/nse/EGSPA/docs/EGSPA2008ProgressReport.pdf>>; Nova Scotia, Environmental Goals and Sustainable Prosperity Act: *Annual Report 2009* (Halifax: Nova Scotia, 2009) online: NS <<http://gov.ns.ca/nse/EGSPA/docs/EGSPA.2009.Annual.Report.pdf>>; Nova Scotia, Environmental Goals and Sustainable Prosperity Act: *Annual Report 2010* (Halifax: Nova Scotia, 2010) online: NS <<http://gov.ns.ca/nse/EGSPA/docs/EGSPA.2010.Annual.Report.pdf>>; Nova Scotia, Environmental Goals and Sustainable Prosperity Act: *Annual Report 2011* (Halifax: Nova Scotia, 2011) online: NS <<http://gov.ns.ca/nse/EGSPA/docs/EGSPA.2011.Annual.Report.pdf>>.

of Environment is doing to achieve goals that primarily “belong” to the Department of Environment.<sup>51</sup>

The focus on discreet environmental goals in the implementation of *EGSPA* also reflects the emphasis that the *Act* places on the achievement of environmental goals. This goes beyond the absence from the *Act* of any specific economic goals. In addition to the twenty-one articulated goals, the legislation enables the Governor in Council to add new goals.<sup>52</sup> Unfortunately, whereas this provision could have mandated the establishment of economic goals or, even better, integration goals, it is instead expressly limited to the creation of additional environmental goals. This imbalance is a major theme in the five-year review of the *Act* recently completed by a sub-committee of the Round Table on Environment and Sustainable Prosperity.<sup>53</sup> In light of this legislative asymmetry, the lack of attention in the administration of the *Act* to the objective of integration is not altogether surprising.<sup>54</sup>

As to whether *EGSPA* has had a broader influence on policy-making that is relevant to *EGSPA*’s objective of integration between environmental and economic policy-making, there is some evidence of this broader influence at play. The work carried out by the Department of Energy to produce climate change and renewable energy strategies was completed explicitly under the framework of the general principles and objectives laid out in *EGSPA*.<sup>55</sup> The same can be said of the work carried out by or under the direction of the Department of Natural Resources to create strategies for sustaining natural capital in forestry, mining, parks, and biodiversity.<sup>56</sup> Economic implications or benefits have also been significant influences in

51. This, of course, does not mean that there are not economic benefits associated with the implementation of various goals. Nor does it mean that these economic benefits were not pursued at the implementation stage. It is, however, noteworthy that the annual *EGSPA* reports to the legislature do not focus on this.

52. *EGSPA*, *supra* note 1, s 4(3)(c): “establishing additional environmental goals from time to time.”

53. See Janowitz, *supra* note 49.

54. An encouraging sign is the move to incorporate a fairly comprehensive set of performance indicators that emphasize economic performance into annual reporting in the future: see Nova Scotia Department of Environment, *Indicators of Prosperity—Technical Report, 2011* (Halifax: Nova Scotia, 2011) online: <<http://www.gov.ns.ca/finance/publish/iop/2011%20Indicators%20of%20Prosperity%20-%20Final%20-%20August%2025.pdf>>.

55. M Adams & D Wheeler, *Stakeholder consultation process for: A new renewable energy strategy for Nova Scotia* (Halifax: Dalhousie University, 2009); Nova Scotia Department of Energy, *Towards a greener future: Nova Scotia’s Climate Change Action Plan* (Halifax: Nova Scotia, 2009); Nova Scotia Department of Energy, *Renewable Electricity Plan: A path to good jobs, stable prices and a cleaner environment* (Halifax: Nova Scotia, 2010).

56. Nova Scotia Department of Natural Resources, *The Path We Share: a Natural Resources Strategy for Nova Scotia 2011-2020* (Halifax: Nova Scotia, 2011).

the work of the Department of Environment in addressing goals pertaining to water quality and resource management.<sup>57</sup>

At the same time, *EGSPA* has been unevenly invoked when major issues at the interface between environmental sustainability and economic prosperity have been addressed. In some cases—such as the decision to increase the 2020 renewable energy target from 25% to 40%, the decision to regulate GHG emissions from NS Power Inc., and the decision to include the harvesting of forest biomass under the renewable energy portfolio—*EGSPA* has been invoked as part of the context or the rationale for major decisions that are said to reflect a combination of economic and environmental objectives. In other cases—such as the government's effort to attract a wind turbine manufacturer to Nova Scotia, or its support for industries such as the existing pulp and paper plants and the growing finfish aquaculture—*EGSPA* has not been mentioned or barely acknowledged despite the relevance of the decisions to *EGSPA*'s core concern with integration of environment and economy. More significantly, in some of these decisions, the understanding of the interdependence of environmental and economic considerations relevant to the decision has been unclear or the decision has been dominated by a traditional paradigm in which economic considerations prevail as long as environmental impacts can be sufficiently controlled or mitigated.

More broadly, Nova Scotia's adoption of a new economic development strategy, called *jobsHere*, relegates environmental stewardship to a subordinate role to economic prosperity, at least relative to the role that it was given in the economic strategy referenced in *EGSPA*. This suggests a step away from the goal of policy integration at the centre of *EGSPA*.<sup>58</sup>

These facts suggest that the broad framework that the *Act* creates for the integration of environmental and economic policy has not been fully embraced either by the government that initiated *EGSPA* or the one that has overseen much of its implementation. For example, the Deputy Minister's Forum on Sustainable Prosperity, which was formed immediately after the adoption of *EGSPA* to oversee progress in implementation of *EGSPA*, does not appear to have been sustained or replaced with an alternative mechanism.<sup>59</sup>

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57. Nova Scotia Department of Environment, *Water for Life: Nova Scotia's Water Resource Management Strategy* (Halifax: Nova Scotia, 2010); Nova Scotia Department of Environment, *Nova Scotia Wetland Conservation Policy* (Halifax: Nova Scotia, 2011).

58. Nova Scotia, *jobsHere*, *supra* note 39.

59. Nova Scotia, *Environmental Goals and Sustainable Prosperity Act: Annual Report 2008*, *supra* note 50.



To be fair, and according to the bulk of public administration literature on the challenges that governments face in achieving optimal “horizontality,”<sup>60</sup> achieving integration between branches of policy that are allocated to different government departments is not easy. It is not as straightforward as implementing even a long and demanding list of discrete policy commitments that are largely severable among government departments. So, in a significant sense, it is not unexpected to find that *EGSPA* has had less success in this dimension of its regulatory task than it has had in the regulation of government’s performance in implementing specific environmental policy commitments. But given the generality of *EGSPA* on integration and the absence from *EGSPA* of any institutional apparatus for making integration happen, this finding does not justify the conclusion that legislation such as *EGSPA* cannot be successful in moving environmental and economic policy towards greater and more comprehensive integration. It does, however, argue strongly in favour of the conclusion that if goal-setting legislation such as *EGSPA* is to be effective, it has to be much more specific than *EGSPA* is on what integration means and requires.

### III. *Improving the regulation of governmental policy performance at the interface of environmental and economic governance*

The Round Table submitted its five-year review of *EGSPA* in March of 2012. The report endorsed the goal of integrating environmental leadership with economic prosperity, and suggested that more attention is necessary to ensure that the integration actually occurs. In particular, the Round Table noted it was difficult to actually confirm that the existing environmental goals have contributed to the economic prosperity of the province. While it is clear from the report that there was a diversity of opinions among stakeholders represented at the Round Table around the specific environmental goals and the relationship between environmental goals and Nova Scotia’s economic well-being, the final report does achieve a remarkable level of consensus on the value of integration between environmental and economic policy. It also includes a number of recommendations that could, if adopted, help to make that integration happen.<sup>61</sup>

Integration of environmental and economic policy within a legislative framework that gives equal weight to a clean environment and a productive

60. BG Peters, *Managing Horizontal Government: The politics of coordination*, Research paper no. 21 (Ottawa: Canadian Centre for Management Development, Minister of Supply and Services Canada, 1998).

61. See Janowitz, *supra* note 49.

economy can take place in at least two ways. First, the integration can come about through the mechanisms chosen to achieve specific policy goals, such as the twenty-one goals currently listed in *EGSPA*.<sup>62</sup> For example, the manner in which a given GHG emission reduction target is met can have significant short, medium and long-term economic implications. In the short term, the least costly method of reducing GHG emissions to meet the target is likely to have the lowest negative economic impact, but it may also provide the fewest opportunities to integrate environmental and economic prosperity. In the longer term, making the extra effort to reduce emissions in a manner that results in economic opportunities and improved efficiencies is likely to make a greater contribution to the integration of economic and environmental prosperity.

The second way that the integration of economic and environmental prosperity can manifest itself under *EGSPA* is through the development of additional goals. If the primary objective of the initial goals was to slow and eventually reverse the degradation of environmental quality in Nova Scotia, and opportunities for directly integrating economic prosperity into the implementation of these goals prove limited, the *Act* clearly contemplates that additional measures will be needed to meet the larger transformative goals of the *Act*. To ensure that these measures encompass economic policy and the critical integration of environmental and economic policy, *EGSPA* needs to be amended to ensure that it enables the establishment of economic and integration goals as well as additional environmental goals. Future goals could then more explicitly target the integration of the environment and the economy, such as setting benchmarks for green jobs or for specific green industries.

Both in relation to existing and newly established goals, the role of *EGSPA* in achieving economic prosperity could be more clearly stated. It is important to carefully consider the short, medium, and long-term connection between *EGSPA* and economic prosperity, particularly since some opportunities to integrate the environment and the economy come at a short-term economic cost. Setting unrealistic economic goals for the short and medium term, therefore, can serve to undermine integration efforts rather than support them.

Consideration should also be given to the appropriate baseline against which the economic impact of *EGSPA* should be measured and to the appropriate measures of economic prosperity. A baseline of the average economic performance of Canadian provinces introduces a range of influences that are well beyond the control of *EGSPA*. A baseline of what

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62. *EGSPA*, *supra* note 1, s 4(2).

would have happened in Nova Scotia without *EGSPA* might be a more appropriate benchmark against which to measure the economic impact of the *Act*.

Where there are clear opportunities for integration, future goals should be carefully designed to encourage the full exploration of these opportunities. For example, goals around solid waste, renewable energy, and energy efficiency and conservation could be associated with specific economic goals, such as the number of new jobs created or revenues retained in the province as a result of avoided imports of fossil fuels, or the direct connection of the goal to improvement in economic productivity.

Similarly, goals that explore the relationship between environmental sustainability and economic prosperity could be developed on a range of issues not yet addressed in *EGSPA*. One example may be the recommendation of the Round Table for a new goal to increase Nova Scotia's energy productivity.<sup>63</sup>

Sustainable local food production provides another example that illustrates different aspects of the challenge. Local food production offers opportunities to reduce the environmental impact of the food that Nova Scotia produces and consumes. By increasing the amount of local product consumed, employment is created in Nova Scotia and the environmental impact associated with the transportation of food is reduced. Yet the environmental gains from lower transportation impacts will only be realized if the local production is at least as sustainable as the production in jurisdictions from which we are now importing our food.

This means that a goal to increase the consumption of local food would have to be carefully designed to ensure that it actually achieves the goal of environmental sustainability. Similarly, it cannot be assumed that more local food production will lead to economic prosperity. Whether in relation to local food production or other subject-matter, the opportunity to maximize integration is more likely to be realized if the goal clearly sets out how the meeting of the goal is to contribute to economic prosperity and to environmental sustainability. This definitional clarity would also more clearly rule out goal implementation options that comply with the *Act* in form but not in substance.

### *Conclusions*

*EGSPA* has demonstrated the value of governance through legislative goal setting. The results are encouraging. Over a five-year period, not a single specific goal set in *EGSPA* was abandoned. The majority of the goals that

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63. See Janowitz, *supra* note 49 at 18-20.

were to be achieved before 2012 were met and met on time. Several of the goals that are to be met after 2012 have either already been met or are clearly part of the impetus for significant work that is going on to ensure that these goals are met in the future.

*EGSPA* has played an important role in concentrating and maintaining government's attention on a range of worthwhile environmental policy goals that have been addressed or gained momentum. In doing so, it has functioned as a meaningful counterweight to a range of forces that might easily have postponed or derailed these goals.

This suggests that *EGSPA* has largely achieved one of its core functions: to improve the performance of government in implementing its environmental policy commitments, including those which require sustained policy effort across the mandate of multiple governments.

At the same time, *EGSPA* has not yet put Nova Scotia on a trajectory to be "one of the cleanest places on earth" with economic prosperity that is integrated with environmental stewardship. The *Act* has strengthened, but not transformed environmental governance in Nova Scotia. It has, so far, not transformed the making and implementation of government environmental policy in the province. Specifically, it has not yet achieved the integration of policy-making in the environmental and economic governance that it envisages.

Nonetheless, the legislative model represented by *EGSPA* should be continued in Nova Scotia and considered for adoption by other jurisdictions.<sup>64</sup> The success it has enjoyed in meeting its more modest ambition, to improve the performance of government in implementing its environmental policy commitments, is itself a significant achievement. With a more careful and perhaps somewhat more modest articulation of the goal of integrating environmental sustainability with economic prosperity in combination with goals more directly designed to promote the integration, the loftier goals of *EGSPA* are not out of reach. As with the government's performance under the existing twenty-one goals, effective reporting and accountability for the integration of environmental sustainability and economic prosperity will be a key ingredient of success in this more ambitious endeavour.

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64. For an argument that environmental law more generally needs to go further than it typically does in establishing the substantive goals as well as the processes of environmental governance, see Annecoos Wiersema, "A Train Without Tracks: Rethinking the Place of Law and Goals in Environmental and Natural Resources Law" (2008) 38 *Environmental Law* 1239.

*Appendix*

Subsection 4(2) of the *Environmental Goals and Sustainable Prosperity Act*

4 (2) To achieve the long-term objectives set forth in subsection (1), the Province's environmental and economic goals are to ensure

(a) twelve per cent of the total land mass of the Province will be legally protected by the year 2015;

(b) the Province will adopt emissions standards for greenhouse gases and air pollutants from new motor vehicles, such as the standards adopted by the State of California by the year 2010;

(c) emissions of nitrogen oxides will be reduced by twenty per cent by the year 2009 relative to emissions in the year 2000;

(d) sulphur dioxide emissions will be reduced by fifty per cent by the year 2010 from sources existing in 2001;

(e) greenhouse gas emissions will be at least ten per cent below the levels that were emitted in the year 1990 by the year 2020, as outlined in the New England Governors and Eastern Canadian Premiers Climate Change Action Plan of 2001;

(f) mercury emissions will be reduced by seventy per cent by the year 2010 relative to pre-2001 levels;

(g) eighteen and one-half per cent of the total electricity needs of the Province will be obtained from renewable energy sources by the year 2013;

(h) the Province will meet the Canada Wide Standard established by the Canadian Council of Ministers of the Environment for airborne fine-particulate matter by the year 2010;

(i) the Province will meet the Canada Wide Standard established by the Canadian Council of Ministers of the Environment for ground-level ozone by the year 2010;

(j) municipal public drinking-water supplies will meet the Province's treatment standards by the year 2008;

(k) a comprehensive water-resource management strategy will be developed by the year 2010;

(l) wastewater treatment facility discharges will be provided at least primary treatment by the year 2017;

(m) regulatory tools that use the framework within the *Environment Act* to stimulate redevelopment of contaminated land and contribute to economic development while protecting the environment will be developed by the year 2010;

(n) a policy of preventing net loss of wetlands will be established by the year 2009;

- (o) the solid-waste disposal rate will be no greater than three hundred kilograms per person per year by the year 2015 through measures that include the development of new programs and product stewardship regulations;
- (p) septage treatment facilities will be operated in accordance with the Guidelines for the Handling, Treatment and Disposal of Septage by the year 2011;
- (q) a sustainable procurement policy for the Province will be developed and adopted by the year 2009;
- (r) all new residential dwelling units constructed in the Province that are within the scope of Part 9 of the National Building Code of Canada will be required to display an EnerGuide rating by the year 2008;
- (s) all new residential dwelling units constructed in the Province will be required to achieve an EnerGuide rating of 80, or meet energy conservation measures adopted in the Nova Scotia Building Code Regulations made under the Building Code Act after 1 January 2011;
- (t) a government facility will be constructed as a demonstration facility in accordance with a leading standard for building energy efficiency and sustainability, such as the Leadership in Energy Efficiency and Environmental Design standard by the year 2015; and
- (u) the Province will adopt strategies to ensure the sustainability of the Province's natural capital in the areas of forestry, mining, parks and biodiversity by the year 2010.

