



NOVA SCOTIA
OFFICE OF THE PREMIER

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September 15, 2024

Dear Nova Scotia Federal Liberal Caucus,

As you are aware, the Chignecto Isthmus (the “Isthmus”) is Nova Scotia’s connection to the rest of Canada and North America.

This is the corridor that ensures that Nova Scotia and Newfoundland are connected to the rest of the country and are able to receive goods and supplies necessary for survival.

This is also the corridor that transports goods arriving at the Halifax Port (and other locations) to the rest of the country. It is the corridor that allows Nova Scotia and Newfoundland to trade their goods with the rest of Canada.

In fact, the Isthmus sees nearly \$100 million of trade every day and \$35 billion of trade every year.

It’s impossible to properly stress the importance of this corridor to our region and country.

With our changing climate, now, more than ever, it is important that we determine our vulnerabilities and mitigate future risks. Much like with healthcare, it is far better for both our health and our expenses if we take preventative measures, rather than reactive ones.

The Isthmus is vulnerable. One severe weather event could have significant, cascading ramifications. The impact this would have on Nova Scotia, New Brunswick, Newfoundland as well as the rest of the country, could be dire and potentially prevent all goods or services from being able to enter or exit Nova Scotia by land or rail.

Given the importance of this connection to the country, Nova Scotia and New Brunswick jointly asked the Federal Government to cover all of the costs associated with the mitigation work on the Isthmus. We feel very strongly that this is a responsibility of the Federal Government.

Despite countless discussions with Federal officials, there has been a refusal to accept the national significance of this connection. This is shocking and I am hard pressed to understand how this corridor that connects Atlantic Canada with the rest of the country would *not* be viewed by the Federal Government as integral to interprovincial infrastructure of national significance and therefore, a federal responsibility.

This has backed us into a corner and forced Nova Scotia and New Brunswick to turn to the courts. We submitted a Constitutional reference to the Nova Scotia Court of Appeal for a determination on who is responsible for the Isthmus: the Federal Government or the provinces.

The lawyers have determined that we have a very strong case. They agree with us, and most objective observers, that this is clearly a federal responsibility. I am including a copy of our factum for your review so you can see the strength of the facts and law supporting the Province's position. I would encourage you to discuss this with your colleagues in the Liberal Caucus and impress upon them the obvious importance of this connection to the entire country.

It's not just my opinion or assertion that the Federal Government bears full responsibility for the cost of this infrastructure, past precedent also supports our position. The constitutional arguments also solidly support us.

Under sections 91(29) and 92(10)(a) of the *Constitution Act, 1867*, **the Federal Government is responsible for regulating interprovincial transportation and communications infrastructure and enterprises**. This authority includes infrastructure that is 'integral' to an interprovincial infrastructure or enterprise. For example, in a 1955 case, the Supreme Court of Canada decided that a local stevedoring company in Ontario was subject to federal regulation because its work was integral to interprovincial and international shipping through the port.

In order to be considered 'integral', the local infrastructure must be necessary to the operation of federally-regulated infrastructure. In other words, the federally-regulated work must depend on the local infrastructure. The dependence must be ongoing rather than occasional, and it must be the dominant or primary character of the local infrastructure.

Obviously, this local infrastructure is necessary in order to connect Nova Scotia to the rest of the country. The Isthmus' shoreline protection infrastructure (dikes, water control structures, etc.) is integral to the interprovincial transportation and communications infrastructure that connects New Brunswick and Nova Scotia across the Isthmus. The Chignecto trade corridor infrastructure (railway, highway, telecommunications and electrical transmission) depends on effective shoreline protection. The dependence is ongoing. Protection of the interprovincial transportation and communication infrastructure is the primary purpose of the shoreline protection infrastructure.

The result of a successful argument by the Province will mean an opinion of the Court that the Federal Government has exclusive constitutional responsibility for the shoreline protection infrastructure. That will give New Brunswick and Nova Scotia a firm constitutional basis to request that the Federal Government fund the shoreline protection project up to one hundred percent.

The Federal Government has a history of covering one hundred percent of the costs in infrastructure projects it has deemed integrally significant to national importance. I am referring to projects like the Champlain Bridge in Montreal, where the Federal Government assumed one hundred percent of the \$4.2 billion in costs. I also remind you of the passage of the federal *Maritime Marshland Rehabilitation Act* under which the Federal Government committed to funding one hundred percent of the construction and reconstruction of dikes and dams in the Tantramar area.

It would be a shame for the Federal Government to force the provinces to rely on the courts to force it to do what is right and obvious.

There is an alternative. The Federal Government could take jurisdiction over a local infrastructure project if Parliament declares it to be for the general advantage of two or more provinces. This is a discretionary power. However, this approach has the advantage for the Federal Government of avoiding a precedent-setting court decision that Ottawa is responsible for shoreline infrastructure that protects transportation and communication links between provinces in general.

As you are aware, this declaratory power under 92(10)(c) has been exercised hundreds of times by the Federal Parliament - mostly to assert authority over local railways, but also canals, bridges, dams, tunnels, harbours, wharves, telegraphs, telephones, mines, mills, grain elevators, hotels, restaurants, theatres, oil refineries and factories of various kinds.

I am confident that, in the fullness of time, the Province will be successful in advancing our constitutional arguments and we will seek full recovery of any and all costs incurred by the Province.

However, while we wait for the Federal Government to do what is right and fair, we will not put the area at risk while we are made to resort to the courts.

Therefore, despite receiving no financial support from Ottawa, Nova Scotia is moving forward with the work that needs to be done to protect Nova Scotians, including incurring tens of millions of dollars in cost.

That means that we have a case before the courts and are spending significant money towards the mitigation costs, while the Federal Government continues to suggest that this trade corridor connecting Nova Scotia to the rest of Canada is **not** integral to interprovincial trade.

At the same time, the Liberal government pushed and forced Nova Scotia and New Brunswick to jointly submit an application for funding under the Disaster Mitigation and Adaptation Fund ("DMAF"). Applications under the DMAF are only eligible for fifty percent cost recovery from the Federal Government, with the rest of the costs being borne by the respective province(s).

In this case, with the Federal Government taking the absurd position that this corridor is **not** integral to interprovincial infrastructure of national significance, Nova Scotia and New Brunswick are essentially being forced to make application under the DMAF, to incur at least half the costs of this infrastructure and take away much-needed spending from provincial responsibilities - like healthcare - to pay for Nova Scotia's link to the rest of the country.

It should also be noted that with the Federal Government not taking responsibility and funding this project, and instead essentially forcing the Province into making its DMAF application, Nova

Scotia is forced to forego projects that would improve and protect communities across our province. This is the very definition of adding insult to injury.

By taking the position that the Isthmus is **not** integral to interprovincial infrastructure of national significance, you are forcing us to choose between applying for a project that is exclusively within the Federal Government's responsibility or projects like:

- Designing and constructing a new seawall along the Halifax waterfront to adapt and protect this area from future climate events (projected cost: up to \$50,000,000).
- Recapitalization of waterfront assets on the Lunenburg waterfront (projected cost: \$12,600,000).
- Coastal infrastructure protection along the Dominion Beach seawall (projected cost: \$4,000,000).
- Relocating park infrastructure and parking lot away from the shoreline and armoring the rock wharf at Pondville Beach (projected cost: \$2,200,000).
- Shoreline protection and structure placement along Route 316 - Goldboro and Charlos Cove (projected cost: \$8,300,000).
- Building resiliency to prevent recurring flooding on reserve in the Cape Breton Regional Municipality (projected cost: \$4,000,000).

These are just some examples of areas of Nova Scotia that will lose out on much-needed support because the Federal Government does not see the Isthmus as a corridor of national integral significance and is therefore forcing the Province to choose this project over others.

If you did your part, we could protect all of these areas of the Province. You can help make this right.

Climate change is real and is impacting us more and more. We have to do all of this, but your government is forcing us into an either/or situation.

I write to you today because we all, as elected Nova Scotia officials, have an obligation to do what is right and fair for our communities and our families.

First and foremost, our Province should not have to take away from healthcare spending or any other provincial priority for something that is the exclusive responsibility of the Federal Government. It is extremely disappointing that we are being forced into making this decision. Let's work together to fix it.

I ask that you use your position to urge your Government to reconsider its position and take full responsibility for the costs of the Isthmus, whether that be through voluntarily covering the entirety of the project or by way of a declaration in Parliament or through some other funding mechanism. The Province will be there to support with design and in any practical capacity. The alternative will mean a protracted matter before the Courts, in which I am confident the Province will be successful.

I will not put Nova Scotians at risk in the interim. However, I am hopeful the Federal Government will take a reasoned and informed approach and not force us down a path of choosing one project (that is a Federal responsibility) over protecting a multitude of other areas.

Yours truly,

A handwritten signature in blue ink that reads "Tim Houston". The signature is written in a cursive style with a large initial "T" and a long horizontal stroke.

Honourable Tim Houston,
Premier of Nova Scotia

CC: Prime Minister Justin Trudeau
Pierre Pollievre
Jagmeet Singh
Premier Blaine Higgs