

Submission as Intervener
September 21, 2023

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Cumberland North MLA

IN THE MATTER of Sections 3 and 4 of the Constitutional Questions Act, RSNS 1989, c 89; AND IN THE MATTER OF a Reference by the Governor in Council concerning the constitutional responsibility of infrastructure which protects the interprovincial transportation, trade and communication links across the Chignecto Isthmus as set out in Order in Council 2023-202 dated July 19th, 2023.

Thank you for allowing my application to participate today as an Intervener, in this case, as a representative of the people living on or near the Chignecto Isthmus. I am the elected representative for the constituency of Cumberland North and work with neighbouring MLA in Westmoreland County in NB on this critical issue as well as municipal councillors, Mayors, the local Member of Parliament, Dr. Stephen Ellis and local farmers and land owners.

The people living on or near the Chignecto Isthmus have growing fears that a storm or hurricane will cause catastrophic flooding that will affect their homes and properties. The nearby towns of Amherst, NS and Sackville, NB would be devastated. Flooding is predicted to occur on the Chignecto Isthmus due to the rising sea levels and increased incidence of storms. It's only a matter of time.

There is a real threat to critical infrastructure if the existing dikes are breached along the Chignecto Isthmus. Local and national Supply chains would be broken, as well as telecommunications, electrical infrastructure and natural gas transmission lines. Significant hectares of farmland could also be flooded and damaged due to salt water. This would harm local food production.

The outgoing Chair of the Halifax Port Authority recently cited that the most significant risk to the Port was the Chignecto Isthmus.

Table article

Just this past weekend, people's anxieties were high as we prepared for Hurricane Lee, which turned into a Post-Tropical Storm.

Every storm anxiety is heightened in our area as local people wonder if will this be the storm or hurricane that will cause irreparable damage.

There is a report revised December 2012 called "An Evaluation of Flood Risk to Infrastructure Across the Chignecto Isthmus" that was commissioned by the Atlantic Climate Solutions Association, a non-profit organization formed to coordinate project management and planning for climate change adaption initiatives in Nova Scotia, New Brunswick, Prince Edward Island and Newfoundland and Labrador and supported through the Regional Adaptation Collaborative, a joint undertaking between Atlantic

provinces, Natural Resources Canada and regional municipalities and other partners.

This report speaks directly to the concerns of the local people that I represent.

“With sea-level rise estimates of 1-5 m predicted for the Chignecto Isthmus by 2100, and more intense storms another likely consequence of climate change, Nova Scotia Transportation and Infrastructure Renewal has real concerns for protecting the significant public infrastructure it has to manage. At present, a system of agricultural dikes and the Canadian National Railway in Nova Scotia and New Brunswick hold back the sea and protect the Trans-Canada Highway, many secondary roads and residents of Amherst, NS and Sackville, NB and thousands of hectares of dike land with public and private assets exceeding \$100 million.

The area has flooded many times over the past +300 years, including major flooding events in 1758, 1869 (Saxeby-Gale), 1887, 1958, and 1976 (the Groundhog Day Storm). These flooding events led to considerable property damage and loss of lives. All were associated with storm surges that coincided with very high tides.

Flood modelling using a new high-resolution digital elevation model (Lidar-DEM) of the Isthmus terrain between the Bay of Fundy (Cumberland Basin) and the Northumberland Strait (Baie Verte) clearly shows:

1. Critically low segments within agricultural dikes in NS and NB that would flood during storm surges that coincide with high tides,
2. Dike overtopping at these low areas and flooding portions of the CNR and TCH causing delays in inter-provincial and

international trade with a value of \$50 million a day (with inflation from 2012 to now estimated to be 34%, that number could be as high as \$67 million),

3. Extensive flooding of local roads and protected dike lands, and
4. Saltwater damage to agricultural lands and the many non-agricultural, public and private assets.

With extreme predictions of sea level rise of 4-5 m by 2100, Nova Scotia could become an island, particularly during storm surges, unless the dike system is considerably upgraded or other adaption options are implemented.

This study can be tabled today, and if Your Honour would like to read the report, it provides detailed information on elevation points concerning key infrastructure such as TCH and CNR. It includes Lidar mapping based on flood risk mapping.

The mapping reports mention that the current system of agricultural dikes, the CNR and the TCH collectively protect the low-lying land behind it, but once any portion of the system is over-topped, a large area of land is vulnerable to flooding because of its elevation. In addition to the low elevation, much of the land north of the TCH and CNR consists of wetlands and lakes, indicating that the land is already saturated and the water table is very high in this area.

“If portions of the dikes were to be overtopped by a storm surge, the land would not be able to absorb much of the water and thus increase the residence time of the flood water behind the dikes. The dike system holds back the

ocean at 7.7 m. The rail line at 8.7 m acts as the main dike protecting the TCH along the Tantramar Marsh at this water level.

However, at 7.8 m, portions of the adjacent agricultural dikes in New Brunswick begin to overtop and flood the highway, a low section of CNR (at 6.8 m) and agricultural land near the NS-NB border.

“This event would still be a disaster for many people in the Amherst and Sackville areas. “

Table Photos

High water, spring tide Nov 9th, 1980 - photo submitted by Elly Desplanque.

High water up to the CNR on the dike, protecting the TCH - photo submitted by Michael Johnson photo, EMO Coordinator for Cumberland County, NS

I will admit that I have minimal knowledge of constitutional law and jurisdictional boundaries between levels of government that

will be presented in court. I gladly leave it to the experts in the field to do that. Despite being an MLA and helping create laws through a democratic approach, I have not studied law, nor am I a legal expert.

Elected governments' duties and responsibilities in a federal state like ours are to look after and protect its people when they face a predictable danger and rise above constitutional technicalities.

There are examples, as recent as this past week when the provincial and federal governments worked together financially to restore wetlands in three areas of Nova Scotia, two of which are in Cumberland County, the same county as the Chignecto Isthmus. This includes works on existing dike land.

Considering the significant catastrophic risk not just to local northern NS and Southern NB but to all Nova Scotians and Canadians if the supply chain is broken, if telecommunications are damaged if electrical and natural gas transmission lines are severed, I cannot understand why this is not a priority for both NS and NB governments. Why can our province invest in these areas identified this past week but not the Chignecto Isthmus?

The Chignecto Isthmus Climate Change Adaptation Comprehensive Engineering and Feasibility Study was completed and cost \$ 700,000. It was paid 50% by the federal government, 25% by New Brunswick and 25% by the Nova Scotia government. It was issued in July 2019 and was released to the public on March 16, 2022.

In general, stakeholders and local citizens were concerned with the length of time it took to get the study completed and results

released to the public. Reportedly, the study was done six months before being finally made public.

There were numerous recommendations given in the report, and the transportation study recommended three options:

- Raising the dikes
 - Building new dikes
 - Raising the existing dikes and installing steel sheet pile walls at select locations

The press release the day the study was released stated the two provinces will decide on a course of action after discussing these options with the federal government. The costs of each option range from about 190 million to more than \$300 million. There was never mention of not working together and expecting one level of government to pay the costs.

There has never been any mention of whose constitutional responsibility it was to cover the costs for the needed work at the Chignecto Isthmus until just recently when Premier Houston made the statement on or about June 15, 2023.

In fact as recent as April 5th, 2023, when I asked the Minister about this in the Legislature, the Minister for Public Works' response was:

“This is something that I have talked about in this Legislature and outside this Chamber several times now. I have been very clear that we in this province and in New Brunswick

understand the importance of the Chignecto Isthmus. I have been very clear in my messaging that we continue to work together weekly - partners in New Brunswick, partners here in Nova Scotia, federal partners - that we are working together.

I wish, Mr. Speaker, it was as easy as putting band-aid on it and fixing it. Guess what? It's not. It's complicated, it's going to take time, and it's going to take money. We're committed to it, and we will make sure it is done."

When I talk to local landowners and farmers and read the studies that have been done, it is evident that there is work that could and should be started now.

Thirteen locations are identified where sections of the dike elevation are low enough to allow overtopping at critical water level elevations. These thirteen areas should have works started now, especially on the dike on the west side of the Missaguash River south of the rail line on the NB side (Table page 33). There are also vulnerable dikes along the LaPlanche River, and these critical areas known to be high risk could have work started ASAP. They should be raised as part of the adaptation solutions.

It is well-studied and known now that a significant storm associated with strong Southwest wind and high tides could be catastrophic. These are the words of the experts.

“Coincidence of the storm and high tides could generate a 1.5 to 2 m surge that would cause extensive flooding possible loss of life, a temporary halt in traffic through the Atlantic Gateway (both TCH and CNR with projected trade loss of \$50 million day) and serve damage to a wide variety of public and private assets in the Amherst and Sackville areas. In the longer term Nova Scotia will become an island when sea-level rises to 12 m, following a storm surge or during a higher sea-level rise period. The Bay of Fundy will join the Northumberland Strait.”

There are precedents in the history of our nation when certain limitations laid out by the British North America Act, now the Canadian Constitution Act, were overcome to protect the health and welfare and safety and the property of individuals, as well as the economic and environmental welfare of a portion or the whole country.

In recent years, Nova Scotia has had the Canadian Armed Forces come to the province to assist in the clean-up of Hurricane Fiona.

This past year, Nova Scotia experienced the worst forest fires in our province's history. The federal government and other provinces, in fact, other countries, came to assist due to the

urgent need. Jurisdictional rules were set aside for the sake of the greater good and the immediate need.

During the pandemic, provincial and federal health jurisdiction was set aside to save lives.

After Nova Scotia experienced the worst massacre in the history of Canada, which I might add was experienced mainly by the residents of Cumberland and Colchester Counties in Nova Scotia, the provinces and federal government came to our aid because it was the right thing to do.

I humbly ask that my submission to the court today be considered when considering your decision. May I ask the courts to consider the people who live with the anxiety and fear of suffering devastating flood damage, possible loss of life, food supply disruption, power and internet? The people I represent have been through hell in the last few years. Border towns suffered greatly during the pandemic when provincial borders were closed, and we suffered tremendous trauma from the Mass Murders in 2020. The people who live on or near the Chignecto Isthmus do not deserve to be in the middle of a battle for money between the province of NS and the Federal government. I ask on their behalf for the court to order the protective work to start now and for everyone to work together collaboratively for the good of all people, especially the people I represent who live on or near the Chignecto Isthmus.