

Brief to the Standing Senate Committee on Energy, the Environment and Natural Resources

May 7 2009

James A. Wood, Vice President

Ontario Recreational Canoeing Kayaking Association

Regarding “elements dealing with the Navigable Waters Protection Act (Part 7) of Bill – C-10, the Budget Implementation Act, 2009”

Good morning,

The Ontario Recreational Canoeing and Kayaking Association (ORCKA) is pleased to have this opportunity to address the committee regarding several issues that are of concern to its members.

These concerns are:

- A seeming lack of due diligence as applied to the original Commons committee hearings in regard to the seeking of input from the paddling organizations within a “reasonable” timeframe. These traditional waterway user groups are limited with respect to their ability to respond quickly, within two days in this case, being in large measure volunteers. Having received no input from the obviously existing stakeholders within the timelines should have alerted reasonable and responsible officials that there was a problem.
- The potential dismantlement and/or diminishment of the regulatory processes surrounding navigable waterways under the new Bill. This will inevitably lead to the degradation of these waterways and the quality of water contained within them.
- The designation of some navigable waterways in regulations to the lesser status of “minor.” This will effectively place any waterway so designated into a position of receiving less supervision. Inevitably, this will also result in the proliferation of “minor” intrusions such as docks, dams, and garbage dumping, each of which has the potential to damage the waterway or the water within it; thus making it unavailable or dangerous for other users.
- The recent comments of certain government officials who have appeared before this committee also have become a cause for alarm. Their comments, which indicate a general lack of understanding of present-day use of the navigable waterways by paddlers in general, and specifically by eco-tourism enterprises, leads ORCKA to believe that these same officials do not have accurate knowledge of current usage of the resource by paddlers and much less knowledge regarding the canoes and paddles utilised. ORCKA therefore does not have confidence in these officials to accurately speak to the issues before the committee in regard to present eco-tourism usage of navigable waterways. ORCKA finds statements by officials who presume to know the “mind” of paddlers and make judgmental statements as to the definition of “reasonable” paddlers to be demeaning and patronizing.

Following please find a description of ORCKA, why it is participating in the hearing, the paddlers’ definition of “navigable waterways”, and the relevance of the term “navigable” in today’s economic and social context.

## 1 What is ORCKA?

ORCKA is the sole representative of organized paddlers of Ontario. This brief contains the views and positions of some 6500 registered Ontario paddlers and many more who belong to ORCKA organizations but are not individual members.

ORCKA is composed of several membership categories:

- 180 accredited “organization members” which offer the ORCKA program to the public; for example, small “mom and pop” operations conducting business in remote locations, private and public childrens’ summer camps and community-based recreation programs ranging in size from ten to several hundred camper/participants and some very large recreation clubs with 700 or more members each. The ORCKA program they offer is the “industry standard” in Ontario and in fact is the program offered by many other paddling organizations across Canada, and unofficially in other parts of the world.
- Approximately 750 instructor members, who conduct ORCKA canoeing and paddling programs. Each of these instructor members acquired their instructor designation through instructor-level courses operated annually by ORCKA throughout Ontario and maintain their status in a rigorous program of compulsory triennial recertification and annual workshops. They are professionals conducting safe paddling programs in Ontario and more recently in other locations across Canada.
- approximately 50 individual members who joined ORCKA to advance ORCKA projects, serve on the ORCKA Board of Directors, or take part on one or more of the 15 active ORCKA committees.
- some 5500 affiliated members who have taken an ORCKA course in the past year.

These membership figures do not represent the several thousand “public contacts” made by individuals and organizations seeking advice from ORCKA on various canoeing and kayaking topics each year or those who are not registered in an ORCKA program but maintain a casual relationship.

It may be of interest to the committee that ORCKA is self-supporting. All its business is conducted through the efforts of its volunteers and a single office administrator. It also monetarily supports other paddling-related organizations such as the Canadian Canoe Museum and selected environmental groups.

## 2 Why is ORCKA participating in these hearings?

Having not had the opportunity to present our concerns to the Commons committee for reasons identified above, ORCKA welcomed the invitation from this committee and is participating in good faith that our concerns will be heard.

As the voice of paddlers in Ontario, ORCKA has been instructed by its members to convey to this committee their concerns. All of these paddlers and related businesses, many of whom are eco-tourism entrepreneurs, are dependent upon access to navigable water, as defined and guaranteed in the Constitution and as noted in case law. All paddlers rely upon waterways being unobstructed by man-made creations (often more dangerous than any natural obstacle) and seek some assurance that these waterways will not be polluted by noxious substances, emanating from human sources.

### 3 What is a “navigable waterway” for paddlers?

As major users of the waterways, ORCKA members can shed some insight into the definition of a navigable waterway both in the present and in historical contexts.

#### i. The present.

Paddlers today regularly move canoes and kayaks up and down waterways containing only an inch, and sometimes less, of water. The boats and paddles are indeed scraped, as they are designed to be. Modern watercraft and paddles of the type used by today’s paddlers are built to safely perform in such circumstances.

A large proportion of ORCKA members seek out these narrow and shallow waterways, often in remote locations, as the larger waterways are frequently congested with motorized craft. A good many of ORCKA’s eco-tourism members derive their very livelihood from providing these experiences to their clientele. The fact is that ORCKA members are “fleeing” to these locations in such great numbers as to cause ORCKA to identify a new form of recreational paddling termed River Running. ORCKA is at this moment conducting an instructor qualifying course to meet the demand of those who wish to visit these sometimes remote, often naturally obstructed, most certainly navigable waterways in a safe, knowledgeable, competent manner.

ORCKA therefore suggests that any modern definition of “navigable” specify a minimum depth of three centimeters of water, between banks as narrow as one metre averaged over the course of a waterway from headwater to entry point, flowing into any large body of standing water, e.g. a lake several km<sup>2</sup> in size or an ocean. Such a definition would be sufficient to meet the needs of our commercial members and reflect accurately the current use of waterways by recreational paddlers.

ORCKA is aware that the committee is having difficulty with the definition of a navigable waterway, and offers the following history-based thought on the matter.

#### ii. The historical perspective.

Perhaps the committee and officials are looking in the wrong place for a definition. The inclusion of the ability to “float a canoe” as being sufficient definition of a “navigable waterway” in 1882 was simply employing a “expression” of the day, to provide a ready reference in the cultural context of the times – no one carried a canoe around for measurement purposes. A cursory read of Canadian history clearly establishes that Canada was a waterway-based culture in 1882 and canoes were a common means of transport on these waterways. The framers of this legislation were employing a term that could readily be understood by all.

That the measure itself is ill-defined is without question. No one stated what kind of canoe was to be used for reference – the 8 metre or greater, fur-trade canoe or the 3 metre craft of the trapper? With the utmost respect for the framers of this definition and some knowledge of the culture they lived in, a culture that used every available waterway for life-sustaining transport, one is led to the reasonable conclusion that the framers were merely indicating that any and all bodies of water, however small, were to be placed and protected within in the public domain. Further, these waterways were to be specifically regulated by a standard that ensured unrestricted public access, multi- purpose usage, and degradation by no one.

4 How is the term “navigable” relevant to today’s society?

ORCKA believes that the above criterion of the ability to “float a canoe” indicated “the intent” of the 1882 legislators. This could also reasonably inform the legislative intent of today. All water is just too precious a commodity to be left unregulated or to be placed under any lesser regulatory regime than that which would call for the most stringent and strict examination of each and every usage of any water in any waterway, however small. Watersheds preserve the quality of the water within them, whether they flow through swamps, arid areas or any of the myriad of ecosystems. Modern science now recognizes all of these environments to be extremely fragile.

ORCKA believes that any lessening of stewardship function by government will inevitably and perhaps irrevocably lead to the degradation and potential destruction of the waterway environments upon which we depend for life. In particular, ORCKA members depend upon these waterways to earn a livelihood or pursue an ecologically-friendly recreational endeavour. Lessening the onerous task of providing supervision of this public resource, by delegating these tasks to other jurisdictions or entirely removing responsibility from those currently performing them, is not an acceptable way of resolving staffing matters within government.

ORCKA opposes the designation of any waterway as “minor”. Many navigable waterways may *appear* to be unused but that is to the credit of ORCKA paddlers who almost exclusively espouse a “leave no trace” philosophy. They take pride in themselves as paddlers in leaving no evidence as to either their passage through a waterway or that it may have been their abode for days. ORCKA is even now encouraging its members to join the ORCKA “Adopt A Waterway Program” which encourages them to become stewards of the waterways they use, both as individuals and organizations.

Perhaps it would be more appropriate to apply designations such as minor/major to the man-made intrusive projects that come before the regulators.

As the representative of “reasonable paddlers” ORCKA has developed and enjoys a productive “working relationship” in Ontario with the field offices of the Ontario Ministry of Natural Resources. ORCKA is informed of and offered active participation in each and every woodland management plan, as well as any projected official plan modifications, before they are implemented. This is an example of due respect to stakeholders on the part of government. ORCKA has a proven history of working with various government bodies to represent not only the paddlers’ interests but those of the public. We make the offer to establish such a relationship with any federal bodies concerning their work in Ontario as it pertains to navigable waterways. ORCKA has established a respectful relationship with these government bodies as we vigorously present the viewpoints and positions of paddlers. ORCKA further maintains a relationship with various “environmental” organizations which have the capability to carefully research the issues.

ORCKA has an “shareable” environmental policy, developed in 1991 and a paddlers’ “values” document developed in 2000, that it uses in all discussions with government agencies, and which are commonly used by these agencies when making waterway and surrounding land management decisions.

ORCKA believes that more, not less, supervision should be the order of the day.

In conclusion,

- ORCKA has learned from experience, that the verbal diminishment of a waterway by utilizing a term such as “minor,” meaning unworthy of attention, will in fact contribute to the destruction of that environment. ORCKA concludes that without sustained supervision a waterway will inevitably be degraded by unnoticed and “minor” encroachments. The cumulative effect is predictable and hopefully avoidable.
- To simply lessen the workload of officials by removing some responsibilities is not an acceptable way to solve a human resources problem. It is in fact simply pushing the consequences onto the shoulders of a future generation.
- To state that the Act will be reviewed in five years is to allow unfettered damage to be done for five years. It is an insufficient time period to determine whether damage is being done, especially in regard to such an important resource as waterways. The question will arise as to who gets to pay for the cleanup and will ORCKA commercial members, devastated by the predictable degradation, be compensated?
- To place the administration of the Act into the hands of officials, who by their very testimony before this committee, show no clear appreciation of either the extent of or type of use of these so-called minor and other waterways, by such large groups as ORCKA, is not reassuring to our commercial members. Will they will retain their right of access to the waterways and be assured that the waterways themselves will be free from pollution?
- Lastly, ORCKA has shown itself to be a responsible and reasonable entity interested in participating in and providing knowledgeable input to all matters pertaining to the waterways used by members and reiterates its willingness to do so in the matter of Navigable Waterways.

ORCKA wishes to extend its thanks for your attention to these matters and your patience in affording the opportunity to be heard. In return ORCKA extends an invitation on behalf of our commercial members, to the Senators and officials to paddle our beautiful waterways with a skilled paddler. Name the time and suggest a place where you would like to go, identify what you would like to see, and ORCKA people will get you there and back safely, help increase your knowledge of the waterway and perhaps even help you develop or improve your paddling competency. Most certainly you will find the experience exciting and enjoyable.