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June 8, 2005

The Honourable David Ramsay
Minister of Natural Resources
Queens Park
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Dear Mr. Ramsay:

Thank you for sending me a copy of your letter of June 7, 2005 concerning the *Ontario Fishing Regulations*, the disallowance report of the Standing Joint Committee for the Scrutiny of Regulations and Bill C-52.

The Committee concluded that s. 36(2) of the *Ontario Fishing Regulations* was illegal; it “not only lacks legal authority, but trespasses unduly on rights and liberties and represents an unusual and unexpected use of the enabling authority.” Section 36(2) purports to give to the administrative staff of your department the authority to write terms and conditions that if contravened would subject fishermen to criminal prosecution. You must be aware just how unusual and potentially troublesome such a provision would be, even if it were clearly authorized by Parliament.

You have not challenged the Committee’s conclusion that s. 36(2) of the *Ontario Fishing Regulations* is illegal. As a Minister of the Crown you cannot rely on a provision that is patently illegal merely because it is administratively convenient.

Do you understand why the Committee concluded that it “would be remiss in its statutory responsibility if it allowed this policy preference to override the principle that the Executive may not create offenses punishable by criminal sanctions without clear authority granted by Parliament”?

With respect, your response indicates that your office may not understand the objections of the Committee. The objection is not whether your Department’s objective is wise from a policy perspective. Its sole concern must be whether s. 36(2) of the *Ontario Fishing Regulations* is authorized by the *Fisheries Act*.

In other words, does your Department have the legal authority to prosecute fishermen who violate the terms or conditions of a fishing licence? The Committee and its legal advisors conclude that you do not have that authority. Your wish to "impose criminal liability for the breach of a term or condition of a licence is entirely lacking in any of the provisions" of the *Fisheries Act*.

Nevertheless, you appear to be asking Parliament to overlook illegal prosecutions because your department desires "a broad range of adaptable enforcement tools" that include criminal sanctions against those that breach a term or condition attached to a fishing license by departmental staff.

Furthermore, you seek to have Parliament amend the *Fisheries Act* to give your Department the ability to launch such criminal proceedings against fishermen who might breach a term or condition established by your officials. The Committee has already refused to endorse such a course of action and on April 14, 2004 it warned:

"Our acknowledgement that the amendments ... would resolve the Committee's objections to the legality of the relevant regulatory provisions does not imply an endorsement of those amendments. Particularly as regards the proposed section 10(1), which would impose a legal duty to comply with the terms and conditions of a license, we can conceive that some parliamentarians might object to subjecting such non-compliance to penal sanctions that include imprisonment. To deprive a citizen of his liberty on the ground that the citizen has failed to abide by a requirement imposed by a public official in the exercise of an administrative power, such as a term or condition of license, could be thought undesirable as a matter of legislative policy."

In reality the *Fisheries Act* has always provided authority for your Department to use license sanctions to enforce licence terms and conditions. Under the *Fisheries Act*, licence suspensions can be tailored to meet a variety of offenses by imposing licence suspensions ranging from a single day to a permanent cancellation. Your conclusion that a person committing a minor infraction would see their licence cancelled stems from a misunderstanding of the *Act*.

I do agree that your authority to impose licence conditions is limited to matters related to the fishery, but that does not reduce the serious nature of our concerns. It makes no difference whether a fisherman is prosecuted for a condition relating to a species of fish or the size of a net; the illegal prosecution still occurs without the consent of Parliament.

You are asking for authority that Parliament has never granted to departmental officials. Your Department wants a blanket authority to fine or imprison citizens, but does not want to abide by the public safeguards set out in the *Statutory Instruments Act* to protect the interests of citizens subject to the regulation.

With respect, I also disagree with your conclusion that without the power to prosecute for the violation of the terms and conditions of a licence "Ontario would literally have its hand tied with respect to enforcement of the commercial fishery."

As the Committee noted in its disallowance report, "Disallowance of that section may change the manner of enforcing compliance with terms and conditions of licenses, but would certainly not affect in any way the ability to impose such terms and conditions . . . The imposition of a fine or a jail term for breach of a licence condition, as opposed to suspending or canceling the same licence, has nothing to do with the sustainability of the fishery resource."

In summary, your Department has two options available to protect the Ontario fishery:

- a. It may continue to impose terms and conditions on a licence and may employ licence sanctions as an effective means of censure. Nothing in the disallowance report prevents the continued use of licence conditions to manage the fishery;
- b. It can develop and seek passage of regulations to replace existing licence conditions. This would allow your Ministry to initiate the prosecution of fishermen who violate the regulations, a power that has always existed in the *Fisheries Act*.

These two options are the means used to manage Canadian fisheries for more than 100 years. These regulatory tools provide a solid base for the sustainable management of the Ontario and other Canadian fisheries

As a fellow Parliamentarian, you understand that the Executive cannot grant the Ontario Ministry of Natural Resources authority which Parliament has not granted to the Executive. The authority to prosecute citizens in the courts and invoke the payment of fines or jail terms is an authority that is cautiously guarded by Parliament. I am confident that you share my belief that no power should be more carefully scrutinized by Parliament than that with the potential to deprive a citizen of their liberty.

Yours truly,



John Cummins, M.P.
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