

## Briefing Note:

January 19, 2009

### Canadian Navigation Rights at Risk

The Harper government is poised to erase the historic right of navigation in Canada, a common law right that pre-dates confederation.

In public announcements published in the major media January 12 and 13, 2009, the Harper government stated its intent to eliminate the Navigable Waters Protection Act (NWPA) as part of its plan to inject billions of dollars into infrastructure programs across the country.

The Harper government says the NWPA is antiquated and they want it out of the way.

#### WHAT'S WRONG WITH THIS PICTURE?

- 1) The common law public right of navigation pre-dates confederation, in fact it dates back to Roman law and is entrenched in the legal systems of virtually all modern nations.
- 2) The public right to navigate waterways in Canada is an important part of our heritage and an integral part of the heritage of Canada's Aboriginal peoples.
- 3) Navigation rights are one of the pillars of environmental protection on Canadian waterways. If you take away navigation rights, you put Canadian waters (our lakes and rivers and streams) at risk.

#### WHAT THE GOVERNMENT IS SAYING:

Here's what Transport Minister John Baird says about the NWPA, the law in place to protect the right of Canadians to travel our waterways:

It's a "...huge regulatory burden that can really slow things down," he said.

The government is also talking about "...overhauling the environmental assessment process, which addresses the effect of a project on the surrounding area."

So the Harper government's strategy in responding to Canada's current economic challenge is to:

## Save the economy by gutting the environment.

### WHAT THE HARPER GOVERNMENT ISN'T TELLING YOU:

Their plan to erase navigation rights in Canada has nothing to do with the current economic situation. The plan to gut the NWPAs is part of an overall strategy to remove environmental safeguards in Canadian law.

The current move to gut the NWPAs is part of a multi-year strategy crafted within the Navigable Waters Protection Program of the Ministry of Transport dating back to the summer of 2006.

This strategy hit the public last May when it became known that the Parliamentary committee for transportation, infrastructure and communities was holding hearings on proposed changes to the NWPAs, without consulting anyone with any interest in preserving the public right of navigation in Canada.

That parliamentary committee then rushed a report in June recommending the changes to the NWPAs, the effect of which is to remove navigation rights from thousands of waterways across the country.

### WHAT THE HARPER GOVERNMENT WANTS TO DO:

As early as April of 2007, the people responsible for protecting the right of all Canadians to navigate our waterways, had already crafted NWPAs amendments that would eliminate protection of navigation rights on what it calls "minor waters" in Canada.

The historic test for navigable in Canada is, if you can paddle a canoe in it, it's a navigable waterway. There is probably not a more appropriate test in Canadian legal tradition than this "float a canoe" test in the NWPAs. It is distinctly Canadian. It's part of our heritage.

Here's what Transport Canada and the Harper government want to do to that Canadian tradition, a proposed definition for "minor waters" dating to 2007:

#### *Minor Waterways Criteria – Proposed National Criteria*

- less than 60 cm depth at high water mark
- less than 3 m wide at high water mark
- channel slope greater than 2 percent
- sinuosity\* (bends in the river) greater than 2
- natural obstacle frequency\* greater than 3

*Sinuosity Ratio = ratio of the length of the centreline of the stream to length of a straight line connecting the same points along the channel*

*Natural Obstacle Frequency = number of natural obstructions (see definitions) along a stream length of 500m (250m upstream, 250m downstream)*

### WHAT YOU CAN DO:

Voice your opposition to the Harper government's to plan to save the economy by gutting the environment.

Tell your municipal, provincial/territorial and federal representatives that you don't want the historic right of navigation diminished in Canada. You want it protected for the future.

Visit our website for information on ways that you and your organization can help.

[www.ispeakforcanadianrivers.net](http://www.ispeakforcanadianrivers.net)