

Speaking Notes:

January 19, 2009

The following are a series of speaking notes prepared by the Canadian Rivers Network, that you can use when speaking to people, groups, your municipal, provincial, territorial or federal government representatives, or to the media on the topic of navigation rights in Canada and the move by the Harper government to strip navigation rights from thousands of waterways across Canada by gutting the navigable Waters Protection Act.

WHAT THE CONSERVATIVES WANT TO DO:

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 gut the Navigable Waters Protection Act 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.

HOW THEY PLAN TO GUT THE NWPA:

The Harper government launched a strategy in July of 2006, less than six months after taking office, to strip navigation rights from thousands of waterways across Canada, and eliminate the need for developers to consider impacts on the public right of navigation when building in or near water.

They plan to do this by amending the Navigable Waters Protection Act so that it does not apply on thousands of Canadian waterways.

The Harper government intends to:

- strip the four named works in the NWPA (bridges, dams, booms and causeways) and remove those types of works from automatic assessment for impacts on navigation
- exempt minor works from the provisions of the NWPA
- exempt minor waters from the NWPA

WHY ARE NAVIGATION RIGHTS IMPORTANT:

The public right of navigation in Canada pre-dates confederation. In fact public navigation rights date back to Roman law and are entrenched in some form in the laws of virtually all modern nations.

In 1882, while Sir John A. MacDonalld was Prime Minister of Canada, the Canadian parliament enacted one of the first truly national pieces of legislation and entrenched the common law right of public navigation through the Navigable Waters Protection Act (NWPA).

The intent of the NWPA at that time was to ensure that the extensive development taking place on waterways did not unnecessarily or extensively interfere with the long-established public right of navigation.

Protecting the public right of navigation was important in 1882 and it is important today, perhaps even more so.

The NWPA is an old piece of legislation but it is far from irrelevant. In 1990 the Supreme Court of Canada reaffirmed the value and critical importance of protection the public right of navigation in Canada in its Oldman River decision.

Canadian waterways have never in our history been under the level of development pressure that they are today. Developments in and around our waterways are being proposed and occurring at an ever-increasing rate.

If you strip the need to consider the public right of navigation when developing structures on waterways, you eliminate one of the pillars of protection on our natural environment, you put Canadian rivers at risk.

Canada was discovered, explored and developed through the navigation of our waterways. Navigation is an important part of our heritage and an integral part of the heritage of Aboriginal Canadians.

WHAT HARPER IS DOING:

The Harper government is using an international economic crisis as an opportunity to strip Canada's environmental laws. The government is acting radically. The government is breaching the public trust. Harper does not have a mandate from the Canadian people to gut our environmental laws.

This eagerness to turn a blind eye to the environmental impacts of runaway development will have negative impacts on Canada, our environment, and our international reputation for generations.

WHAT JOHN BAIRD IS SAYING:

Here's what Transport Minister John Baird said about the NWPA, the law in place to protect the right of Canadians to travel our waterways (National Post, January 12, 2009):

"We have a lot of rules in place to stop bad things from happening..."

Mr. Baird called the NWPA *"a huge regulatory burden that can really slow things down."*

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 NWPA is part of an overall strategy to remove environmental safeguards in Canadian law.

The current move to gut the NWPA dates is part of a multi-year strategy crafted within the Navigable Waters Protection Program of the Ministry of Transport dating back to July of 2006, less than six months after the Harper government first took office.

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 NWPA, without consulting anyone with any interest in preserving the public right of navigation in Canada.

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

WHAT THE HARPER GOVERNMENT WANTS TO DO:

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 NWPA. It is distinctly Canadian. It's part of our heritage.

The Harper government wants to eliminate that legal test and exempt thousands of waterways from the NWPA by calling them "minor waters". Here's a definition for "minor waters" proposed by Transport Canada in 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)

The government is also considering eliminating “recreational” navigation from the NWPA and exempting “minor works” from consideration under the NWPA, without saying what minor works are.

These NWPA amendments will effectively eliminate the public right of navigation in Canada.

The Harper government is acting radically. They do not have a mandate to eliminate the fundamental right of all Canadians to access and enjoy our waterways. They do not have a mandate to gut Canada’s environmental laws.

In fact, there is a principle of public trust that our government will protect our rights, not remove them arbitrarily.

This is an issue that affects anyone who access Canadian waterways for any reason. This is an issue that affects all Canadians.