



May 4, 2009

Standing Senate Committee on Energy, the Environment and Natural Resources/Comité sénatorial permanent de l'énergie, de l'environnement et des ressources naturelles

c/o Lynn Gordon

Clerk/Greffier

The Senate/Le Sénat

1053 Édifice Chambers Building, 40 rue Elgin Street

Ottawa Ontario K1A 0A4 Canada

Via email: gordol@sen.parl.gc.ca

Re: The *Navigable Waters Protection Act*; summary for May 7, 2009 presentation

On Thursday, May 7 2009, Lake Ontario Waterkeeper is pleased to speak to members of the Standing Senate Committee on Energy, the Environment and Natural Resources/ Comité sénatorial permanent de l'énergie, de l'environnement et des ressources naturelles regarding the recent changes to Canada's *Navigable Waters Protection Act*.

Lake Ontario Waterkeeper is one of eight "Waterkeeper" organizations in Canada and 185 around the globe. We are a grassroots movement of independent public interest organizations dedicated to clean water and strong communities. Our goal is to restore and protect swimmable, drinkable, and fishable waters for every person in every community.

Our vision of a swimmable, drinkable, fishable Canada is rooted in our respect for the environmental rights that have protected communities and individuals for thousands of years. These rights transcend legal systems, cultures, and continents.

The right to free passage of waterways is one of the oldest, most precious rights on earth. It is the bridge between a healthy civic society and a healthy environment. For more than 2500 years, people have enjoyed a common right to free passage on public waterways. This right can be traced from the Roman era, through such influential documents as the Magna Carta of 1215, to modern times.

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Canada's *Navigable Waters Protection Act*, passed in 1882, recognizes the importance of protecting navigable waterways. At the same time, the Act allows individuals and agencies to proceed with projects that interfere substantially with navigation, provided they obtain approval from the Minister. In this sense, the Act both reinforces the historic common right to navigation for Canadians and creates a legal process for limiting or interfering with this right.

On April 17, 2008, Waterkeeper received an invitation from Mr. Mervin Tweed, Chair of the Standing Committee on Transport, Infrastructure and Communities, to provide a submission regarding proposed amendments to the *Navigable Waters Protection Act*. A list of seven proposed changes was included in the letter. Waterkeeper provided written submissions on May 12, 2009 and, on very short notice, had an opportunity to appear before the Transportation Committee on May 29, 2008. To our knowledge, we were the only organization expressing concerns that had an opportunity to appear.

On June 12, 2008, the Committee presented its recommendation to Parliament and promised additional public consultation would occur. The next time information was released to the public was February, 2009, with the *Budget Implementation Act*.

In February, 2009, Lake Ontario Waterkeeper had an opportunity to speak to the Finance Committee of the House of Commons. Again, we were one of a handful of organizations chosen to speak. On this occasion, we explained to the Committee members that none of the concerns raised in 2008 had been addressed in the proposed changes to the Act. When the *Budget Implementation Act*, no improvements had been made to the Part relating to navigable waters. As a result, the newly-amended *Navigable Waters Protection Act* contains a number of flaws that undermine public rights and do little to accomplish the administrative goals articulated by Transport Canada's staff.

Our primary concerns with the revised *Navigable Waters Protection Act* are as follows:

- 1. It undermines accountability, in part because it reduces transparency in the decision-making process.**
- 2. It politicizes decisions that should be based on science.**
- 3. It institutionalizes "two-tier" environmental protection.**

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We understand that your Committee is reviewing the new Act and will release a report to the public by mid-June, 2009. In our presentation on May 9, 2009, we hope to provide a brief overview of the primary questions and issues that a successful report will address.

We respectfully recommend that the following matters be investigated, studied, and analyzed in your Committee hearings and subsequent report:

- 1. Where did the pressure to change the *Navigable Waters Protection Act* originate? Who shepherded them through the unusual legislative process?**
- 2. Who are Transport Canada's "clients"?**
- 3. Independent, rigorous environmental assessments are becoming increasingly rare in Canada. What role do/will the changes to the Act play in this trend?**
- 4. Do Canadians still have the right to navigate freely on the nation's waterways?**
- 5. Who was consulted about the changes to the Act? When? How?**
- 6. Who should be consulted about future changes to the Act? When? How?**
- 7. What processes will ensure transparency and accountability when decisions are made under the new Act (including the creation of regulations)?**

Thank you for granting us an opportunity to speak. We look forward to the presentation and to your questions.



Mark Mattson
Waterkeeper & President



Krystyn Tully
Vice President

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Mark Mattson, President & Waterkeeper

As President and Waterkeeper of Lake Ontario, Mark Mattson works tirelessly to promote and defend the ideals that safe waterways belong to the people. Mark founded Lake Ontario Waterkeeper in 2001 to give a voice to the cares and concerns of the millions of people who live in the Lake Ontario Watershed., Mark received his Bachelor of Arts from Queens University, graduated of the University of Windsor School of Law, and is a member of the Law Society of Upper Canada.

Since Mark made the move from criminal law to a practice focused on environmental and regulatory matters, he has acted as counsel for environmental and public interest groups at over fifty hearings, including the Walkerton Inquiry. Mark has also appeared on behalf of clients in front of the International Water Tribunal in Amsterdam. He serves as the Canadian representative to Waterkeeper Alliance's Board of Directors and is President of Fraser Riverkeeper.

Mark is the supervising attorney with the Clean Water Workshop, a program dedicated to mentoring law students and providing legal tools to citizens fighting for clean water in their communities. Mark has been investigator and/or co-counsel on nearly every Fisheries Act private prosecution in Canada. He has been credited with helping Ontario residents win some of the largest fines levied under Canada's Fisheries Act.

Prior to launching Lake Ontario Waterkeeper, Mark Mattson founded the volunteer-based Environmental Bureau of Investigation, dedicated to identifying and prosecuting environmental offenders and served as a board member of Great Lakes United., Mr. Mattson is co-author of The Citizens Guide to Environmental Investigation and Private Prosecution. Mark is host of the weekly radio show Living At the Barricades.

Krystyn Tully, Vice President

As Vice President, Krystyn Tully oversees Lake Ontario Waterkeeper's many programs and people, all working to create a swimmable, drinkable, and fishable Lake Ontario. After graduating with a degree in Radio and Television Arts, Krystyn worked with Mark Mattson as a researcher at the Walkerton Inquiry. She helped found the organization in 2001. She currently working towards her second degree in Public Administration and Governance.

On behalf of LOW, Krystyn has written many comments on licenses and legislative proposals that have contributed to better decisions and environmental protections. She has appeared before the Federal Standing Committee on Transportation, Infrastructure and Communities (TRAN), and the Ontario Government Standing Committee on Legislative Affairs. Krystyn has also been a two-time contributor to the Great Lakes Town Hall, an international organization dedicated to identifying and addressing common issues across our shared Great Lakes.

For many years, Krystyn Tully was the Lake Ontario Advisor to Great Lakes Aquatic Habitat Network Fund, now Freshwater Future., In addition to the day-to-day management of the LOW organization, Krystyn is the editor of Waterkeeper.ca Weekly and co-host of Living at the Barricades..

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