

Lang Michener LLP

Lawyers – Patent & Trade Mark Agents

BCE Place, 181 Bay Street, Suite 2500
P.O. Box 747
Toronto ON M5J 2T7
Canada

Telephone: 416-360-8600
Facsimile: 416-365-1719

Reply to:
Peter Hayden, Q.C.
416-307-4054
phayden@langmichener.ca

VIA COURIER

July 8, 2005

The Hon. Irwin Cotler, P.C., M.P.
Minister of Justice and Attorney General of Canada
East Memorial Building, 4th Floor
284 Wellington Street
Ottawa, Ontario K1A 0H8

Dear Mr. Cotler:

Re: Revisions to the Animal Cruelty Provisions of the *Criminal Code*

We are writing to you on behalf of the hunting and fishing membership associations of seven provinces and two hunting and fishing industry associations in Canada, listed below (collectively the “Associations”), who together represent over 300,000 hunters and anglers across Canada.

We wish to register our strong support for the swift passage of Bill S-24 introduced by Liberal Senator John Bryden and to state our opposition to the passage of Bill C-50.

Bill S-24 accomplishes the Government’s primary objective in the reform of animal cruelty provisions, namely increasing the maximum penalties for existing offences of animal cruelty, as is done in Bill C-50. We object to the balance of Bill C-50 because, as Senator Bryden says of Bill C-22 and Bill C-50, they would substantively change the law of animal cruelty, and negatively impact “Canadians who hunt and fish lawfully”.¹

Specifically, we object to s. 182.2(1)(b), which, for the first time in Canadian history, makes it an offence to kill an animal brutally or viciously without defining those terms and does not exempt from this offence normal hunting and fishing. This new offence will be used by animal rights activists who will employ provisions of the *Criminal Code* to bring private prosecutions to harass lawful anglers and hunters.

For the reasons cited below, the oft-cited defences of legal justification, excuse, and colour of right in the *Criminal Code* would not be of much assistance to an angler or hunter charged under Bill C-50.

¹ *Canada Senate Debates* (8 February 2005, p. 647) Sen. John G. Bryden.

While you and your Department have said that the offence of cruelty to animals is not intended to forbid conduct that is socially acceptable or authorized by law, such as hunting and fishing,² Bill C-50 will have the ultimate effect of intimidating anglers and hunters who will be discouraged from participating in the outdoor heritage activities of hunting and fishing for fear of prosecution.

Support of Bill S-24

According to the Department of Justice, the primary objective in revising the *Criminal Code's* animal cruelty sections is to enable the courts to impose longer sentences commensurate with the severity of the animal cruelty offences. Bill S-24 achieves the goal of increasing penalties that may be imposed in cases of animal cruelty and allows the Crown to proceed either summarily or by indictment to achieve a result suitable to the crime committed. Bill S-24 also retains many current sections and offences under the *Criminal Code*, which has the additional advantage of leading to certainty of interpretation of these sections owing to the well established body of decided cases on the current animal cruelty provisions of the *Criminal Code*.

Anglers and Hunters Do Not Support Bill C-50

The Associations on whose behalf we are writing to you do not support Bill C-50. We understand that you received a letter dated November 22, 2004 (the "Coalition letter") purporting to be from all of Canada's animal-based sectors, which outlines the group's position of support for the "swift passage" of certain amendments to the *Criminal Code* "as rapidly as possible", namely the proposed animal cruelty provisions as contained in Bill C-22 which are the same as Bill C-50, with the exception of the provision for the protection of existing aboriginal or treaty rights in s. 182.6.

The Coalition letter did not in any way represent the interests of Canadian anglers and hunters. We note that these Coalition members have since sent a letter to Senator Bryden joining the Associations in registering their full support of Bill S-24 and their support of the rationale presented by Senator Bryden in moving second reading of Bill S-24.

Problems with Bill C-50

We have serious concerns about Bill C-50 and we have set out below what these concerns are.

The Department of Justice has clarified that beyond increasing penalties for existing animal cruelty offences, the objective of Bill C-22, and accordingly Bill C-50, is to "simplify, modernize and fill gaps in the offence structure of the animal cruelty regime".³ As Senator Bryden says, the changes to animal cruelty law in Bill C-22 and Bill C-50, other than the increasing of penalties, amount to **significant changes to the law**, which should require very careful and open debate.

² Minister of Justice and Attorney General of Canada, *Crimes Against Animals: A Consultation Paper* (Ottawa: Communications and Executive Services Branch, 1998) online: <<http://canada.justice.gc.ca/en/cons/caa/index.html>>.

³ *Canada Senate Debates* (10 March 2005; 15:10 – 15:40) Sen. John G. Bryden.

[T]hese housekeeping amendments went further than modernizing language and simplifying the law. Arguably, they would be substantively changing the law... If there is a consensus that the law on cruelty to animals needs reforming, then let us have that debate, but let us do so honestly, openly and in a transparent manner, engaging the Canadian public and parliamentarians as these important issues require.⁴

To that end, we would like to set out our serious objections to Bill C-50, other than the increasing of penalties, on behalf of the Associations.

1. S. 182.2(1)(b) makes it an offence to kill animals brutally and viciously, regardless of whether the animal dies immediately.

Hunting and fishing necessarily involve the killing of animals. Animal rights groups consistently attempt to portray these traditional Canadian heritage activities as inherently brutal and vicious. Under Bill C-50, a hunter or angler may be prosecuted and convicted of the offence of killing an animal brutally or viciously for engaging in normal hunting and fishing practices.

The killing of animals *simpliciter* has never been the activity the legislature intended to prevent. The killing of animals is a necessary result of most animal use industries and of hunting and fishing. Canadians' concerns regarding animal cruelty do not relate to the act of killing animals, but rather to activities resulting in unnecessary pain, suffering, or injury to animals. These concerns are met by the provisions of Bill S-24 in s. 445.1(1)(a), namely, "Everyone one commits an offence who wilfully causes or, being the owner, wilfully permits to be caused unnecessary pain, suffering or injury to an animal or a bird". This offence extends to activities which do not result in the death of an animal, and to those which do.

2. The phrase "regardless of whether the animal dies immediately" in s. 182.2(1)(b) prevents any participant in recreational hunting or fishing charged under this section from making the argument that because the death of an animal is immediate the death should not be considered to be brutal or vicious. Depending on the circumstances of the case before the court, such an argument may or may not succeed but it is not reasonable to prevent an accused from making this argument. Immediate death is a widely accepted definition of humane killing and this section attempts to change this standard. It is a commonly held view that it is more humane to kill an animal promptly and exactly than to allow an animal to suffer for a long period of time. In *R. v. Jones*⁵, the judge found that it was more humane to kill an animal quickly and cleanly than to allow it to suffer a prolonged death.

⁴ *Canada Senate Debates* (10 March 2005; 15:10 – 15:40) Sen. John G. Bryden.

⁵ [1985] B.C.J. No. 717.

3. If Bill C-50 becomes law, animal rights groups will harass and prosecute anglers and hunters. Liz White, a director of the Animal Alliance of Canada, one of Canada's major animal rights organizations, stated:

The onus is on humane societies and other groups on the front lines to push this legislation to the limit, to test the parameters of this law and have the courage and conviction to lay charges. That's what this is all about. Make no mistake about it.⁶

In the Second Reading of Bill S-24, Senator Bryden quotes Dr. Bessie Borwein, Special Advisor to the Vice-President of Research at the University of Western Ontario:

There are animal rights groups in Canada that have specifically and publicly stated their intention to use Bill C-10 [previous versions of Bill C-22 and Bill C-50] to further their agenda. They say they will use the law to press charges and to test it to the utmost. They will use peace officers or authorized organizations like the SPCA or humane societies sympathetic to their cause in order to press this....

While there are legislative mechanisms ensuring that both the federal Attorney General and provincial Crown Attorneys are able to oversee private prosecutions and intervene when appropriate,⁷ the Attorney General and the Crown Attorneys are not required to do so. The fear of private prosecutions by animal rights groups is not unfounded. So it is likely that individual anglers or hunters will be charged under Bill C-50 and will be drawn into the criminal court system for a period of time, whether or not such matter proceeds to trial.

Even if anyone charged under this section is ultimately acquitted, or if the Attorney General or Crown Attorney were to intervene to stay the proceeding, this long and involved process will certainly be costly and difficult for the anglers or hunters involved. Such prosecutions will clearly have a chilling effect on anglers and hunters across Canada.

4. Bill C-50 does not exclude from the offence of killing an animal brutally or viciously the death of animals occurring in the course of normal and lawful hunting and fishing. At least 28 States in the United States of America have exempted hunting and fishing activities from prosecution under their animal cruelty legislation.⁸ Some examples include:

⁶ *House of Commons Debates* (3 June 2003) at 1700.

⁷ Section 507.1 of the *Criminal Code*, and Section 11(d) of the *Crown Attorneys Act* (Ontario).

⁸ Alaska, Arizona, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Missouri, Montana, Nebraska, New Mexico, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming.

Alaska

Alaska Stat. tit 11 § 61.140 (b) It is a defense to a prosecution under (a)(1) or (2) of this section that the conduct of the defendant (3) was necessarily incident to lawful hunting or trapping activities.

Michigan

Mich. C.L. § 750.50 (8) This section does not prohibit the lawful killing or other use of an animal, including, but not limited to, the following: (a) Fishing. (b) Hunting, trapping, or wildlife control regulated pursuant to the natural resources and environmental protection act.

Texas

Tex. S. and C. tit. 9 § 42.09 (h) It is an exception to the application of this section that the conduct engaged in by the actor is generally accepted and otherwise lawful: (A) fishing, hunting, or trapping.

The absence of a similar exemption in Bill C-50 lays anglers and hunters bare to prosecution under s. 182.2(1)(b).

5. With respect to the common law defences added to Bill C-50, we do not believe that these defences will be helpful to anglers and hunters charged under this provision. Hunting and fishing are recreational activities of Canadians which are carried out in an intentional manner generally by well informed citizens and accordingly we do not believe that the defences of legal justification, excuse, and colour of right,⁹ will be of much assistance to an angler or hunter charged under this provision. And, in any case, these defences can only be pleaded after an angler or hunter has gone through the costly and difficult process of being charged and brought to trial.

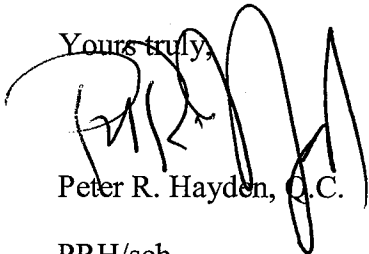
IMPACT OF BILL C-50 UPON THE HUNTING AND FISHING INDUSTRY

Bill C-50, if enacted, and the very visible prosecutions of anglers and hunters which will be promoted by animal rights activists, will be a serious disincentive to fishing and hunting by Canadians. As a result, there may well be a significant decline in recreational fishing and hunting activity and a significant damaging economic impact on the fishing and hunting industry which has an estimated annual value of over \$10 billion to the Canadian economy.

⁹ Section 429(2) of the *Criminal Code*.

For the reasons set out in this letter, on behalf of the seven hunting and fishing membership associations of Canada and the two hunting and fishing industry associations listed below, we urge you to support the swift passage of Bill S-24 in the Senate and in the House of Commons.

Yours truly,



Peter R. Hayden, Q.C.

PRH/seh

c.c. All Member of the House of Commons
All Members of the Senate of Canada

on behalf of,

British Columbia Wildlife Federation
Alberta Fish and Game Association
Manitoba Wildlife Federation
Ontario Federation of Anglers and Hunters
Fédération québécoise de la faune
New Brunswick Wildlife Federation
Nova Scotia Federation of Anglers and Hunters
Canadian Sportfishing Industry Association
Canadian Sporting Arms and Ammunition Association