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## VIA COURIER AND EMAIL

March 23, 2007

Canadian Sport Fishing Industry Alliance  
1434 Chemong Rd., Unit 11  
Peterborough, ON K9J 6X2

### **Attention: President Tom Brooke**

Dear Sirs:

### **Re: Bill S-213 and Bill C-373**

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You have asked for our opinion regarding the legal aspects of statements and Parliamentary press releases provided to Members of Parliament and Senators by MP Mark Holland regarding Bill S-213 and Bill C-373, and regarding statements made by organizations supporting Mr. Holland's effort on behalf of Bill C-373.

These Bills both propose amendments to Canada's laws regarding animal cruelty. Bill S-213 was introduced by Liberal Senator John Bryden and has been passed by the Senate of Canada, has received first reading in the House of Commons, and is currently being debated by Members of Parliament in the House of Commons. Bill C-373 is a private member's bill put forth by Mr. Mark Holland.

### **I. Bill S-213 and Bill C-373 – Mr. Holland's Position**

The statements sent out by Mr. Holland to all MPs and Senators and his Parliamentary press releases supporting Bill C-373 and opposing Bill S-213 make a number of misleading and incorrect statements in criticizing Bill S-213.

1. In Mr. Holland's press release from his Parliamentary office dated February 25, 2007, he states that he has joined with "all major animal welfare organizations to condemn Bill S-213". However, Mr. Holland notes in his February 25, 2007 press release that when Bill S-213 was

introduced many farmers, ranchers, medical researchers and members of the fur industry supported Bill S-213.

Bill C-373 is opposed by many animal use industries and recreational hunting and fishing organizations because it creates for the first time in Canadian history the problematic new offence of killing animals brutally and viciously. The killing of animals is a necessary result of recreational hunting and fishing and of most animal use industries. The terms “brutal and vicious” are not defined in the new law and are vague terms in the sense that some normal activities of recreational hunting and fishing and animal use industries might be considered to be brutal or vicious by some Canadians and not by others. Bill C-373 thus exposes persons involved in these recreations and industries to prosecution for brutally or viciously killing an animal. As discussed further below, if such persons were to be charged, they would have no useful defences and would have to prove that the killing was not brutal and vicious. Furthermore, even if ultimately acquitted, a hunter or angler charged with such offence would have to go through the costly and difficult process of being charged and brought to trial. There is no exemption from this new offence for hunters and anglers as there are in the case in 28 U.S. States.

3. Mr. Holland’s memo suggests incorrectly that hunters and anglers charged with killing an animal brutally and viciously would have available to them under common law and statute law “lawful excuses including hunting, fishing...”. In our opinion, there are no such generally available defences to a hunter or angler charged with killing an animal brutally or viciously. In particular, the defences of legal justification, excuse and colour of right would not generally assist anglers or hunters charged with this offence.

4. The most egregious error in Mr. Holland’s memo is the statement that Bill S-213 leaves in place wording that allows people to kill an animal brutally and viciously if the animal dies immediately. For example, he suggests, someone who kills an animal by tying an animal to a train track could avoid conviction under the Criminal Code as amended by Bill S-213 by arguing that the animal died quickly and did not suffer.

An existing provision of the Criminal Code, which would not be altered by either Bill S-213 or Bill C-373, provides that it is an offence to wilfully cause unnecessary pain, suffering or injury to an animal. Any person who tried to kill an animal by tying it to a train track would very likely be convicted of willfully causing unnecessary pain, suffering or injury to an animal. An

example is the case in *R. v. Power*<sup>1</sup> in which the accused was convicted of causing unnecessary pain, suffering or injury to an animal because he, and others, skinned a stray cat alive.

The use of the words “regardless of whether the animal dies immediately” in Bill C-373 is an attempt to rule out any defence that a killing was not brutal or vicious because the animal died immediately. The use of these words in Bill C-373 is an attempt to nullify the ruling in the case of *R. v. Jones*<sup>2</sup> which held that it was more humane to kill an animal quickly and cleanly than to allow it to suffer a prolonged death. Mr. Holland concludes from the absence in Section S-213 of these words, as well as the offence of killing an animal brutally and viciously, that under the Criminal Code as amended by Bill S-213 any person could kill an animal brutally and viciously and escape prosecution for such killing so long as the animal dies immediately. This is a ridiculous misinterpretation of the difference between Bills S-213 and C-373 and appears to be part of a desperate effort on the part of Mr. Holland to support his position.

5. Mr. Holland states that Bill S-213 “wild animals and strays are unprotected for some offences”. Case law interpreting the current animal cruelty provisions in the Criminal Code negate this erroneous assertion. For example, in *R. v. Power* mentioned above, the Ontario Court of Appeal reasoned that the conduct for which the accused primarily had to be punished was the cruelty done to the cat, and not the interference with some unknown person’s property rights in the cat. The wrong sought to be addressed in this legislation, and as expressed in S-213, is the cruelty to the animal, regardless of its status as a “domestic” or “stray” or “wild” animal.

6. Mr. Holland states that Bill S-213 does nothing to address training animals to fight other animals or betting on such fights. In fact, the current Criminal Code provides that it is an offence to in any manner encourage, aid or assist at the fighting or baiting of animals or birds.<sup>3</sup> This provision is carried over into Bill S-213 as well. Not only is this concern already addressed in current legislation and also reflected in Bill S-213, there have been at least four cases prosecuting individuals pursuant to this section.<sup>4</sup>

## II. Canadian Federation of Humane Societies Position

Mr. Holland’s private members Bill C-373 is supported by the CFHS. The CFHS maintains that Bill C-373 provides protection from prosecution for activities such as fishing and hunting. As described above, this is not the case. Bill C-373 with its new offence of killing animals brutally

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<sup>1</sup> (2003) 176 C.C.C. (3D) 209 (Ont. C.A.).

<sup>2</sup> [1985] B.C.J. No.717.

<sup>3</sup> Section 446(1)(d) of the *Criminal Code*.

<sup>4</sup> *R. v. Quilloy*, 144 A.R. 140; *R. v. Monster*, 2000 CarswellOnt 972 (Ont. S.C.J. Mar 23, 2000); *Walters v. Red River Exhibition Assn.*, [1998] 2 W.W.R. 422; and *R. v. Robert*, 140 O.A.C. 285, 2001 (Ont. C.A.).

and viciously exposes hunters and anglers to being charged with killing animals brutally and viciously and having no defence except to argue that the killing was not brutal or vicious.

Hunters and anglers would be particularly exposed to private prosecutions brought by animal right activists. The Federal Attorney General and provincial Crown Attorneys are able to oversee and intervene in private prosecutions but they are not required to do so. Animal rights groups have stated their intention to prosecute anglers and hunters and one of their spokespersons says they “have the courage and conviction to lay charges”. The chilling effect of such private prosecutions on anglers and hunters across Canada could have a serious effect on the hunting and fishing industries in Canada.

The only serious attempt to alleviate the fears of hunters and anglers under the new offence of killing an animal brutally and viciously is the continued and mistaken assertion by the former Ministers of Justice McLellan and Cotler, animal right activists, the Canadian Federation of Humane Societies and Mark Holland that there is no intention that the new law should interfere with traditional right of Canadians to fish and hunt. This is not correct. Canadian hunters and anglers will be faced with charges of killing animals brutally and viciously under the new law and they will have no defence but to argue that they did not brutally or viciously kill an animal.

Yours truly,

**Lang Michener LLP**



Per: Peter R. Hayden

PRH/cw