

# 308 SARA Reservations E-Mail Message

From: "R. Fowler <opera@bmts.com>

Dated: March 20, 2008 11:43 AM

## "IT'S ABOUT TRANSPARENCY AND ACCOUNTABILITY"

### TO OPERA MEMBERS & SUPPORTERS:

In her March 7 response to OPERA's Nov./07 letter MNR Minister Cansfield did not provide a clear yes or no answer to these SARA queries:

1. Does Bill 184 acknowledge the four Senate recommendations that emerged from federal SARA hearings?
2. Can designation of species or their habitat affect mortgage worth and market value of private land?
8. Will notice and details of Recovery Programs be announced for public comment outside the Internet?
9. Do MNR databases identify species at risk habitat and have owners been notified and asked for consent?

Answers to the following questions encourage OPERA comment noted below:

6. Is Bill 184 to be enforced and are alleged violators to be punished under government criminal law powers?

#### **Ministerial Response:**

The new ESA 2007 will be enforced by MNR. The act is a provincial statute and enables the creation of regulatory offences. If a person is charged under ESA 2007, that person will be prosecuted in provincial court. A charge under this act is not a criminal charge and a conviction would not result in a criminal record.

#### **OPERA Comment:**

The original provincial SARA Discussion Paper stated that Bill 184 would "meet or exceed" the conditions of its federal counterpart, a statute that is enforced under government criminal law powers. Since Bill 184 does not include the specific assurance offered by Minister Cansfield, a written opinion from the Office of the Attorney General on this point is required.

7. Does "strict liability" presume guilt and "due diligence" require defendants to prove innocence at their cost?

#### **Ministerial Response:**

As Minister of Natural Resources, I am not in a position to provide legal advice. However, I understand that strict liability offences do not presume guilt nor do they require a defendant to prove his or her innocence.

#### **OPERA Comment:**

Bill 184 is silent on whether or not the term "strict liability" will be invoked in SARA prosecutions, a deficiency that requires clarification in the legislation itself or a written disclaimer from the Office of the Attorney General. Meanwhile, Clause 39 of the Bill reads *"A person shall not be convicted of an offence under this Act if the person establishes that (a) the person exercised all due diligence to prevent the commission of the offence; or (b) the person honestly and reasonably believed in the existence of facts that, if true, would render the person's conduct innocent".*

Just how and, given requisite legal and witness expenses, at what massive personal cost a person can "establish" innocence via "all due diligence" in a provincial court is left to our imagination.

Minister Cansfield and her officials can expect other questions from landowners-at-risk whose lives and property may be negatively affected by bureaucratic interpretations of Bill 184. Some examples:

Are public hearings of necessity prescribed for affected landowners prior to species/habitat designation?

Can the Minister (read senior MNR staff) unilaterally amend or extend any part of Bill 184?

Are private land claims and aboriginal land claims equally recognized under this legislation?

What does "exercise discretion in unique circumstances with undesirable impacts" actually mean?

Is "significant habitat introduced by regulation" code for bureaucratic license with no public input?

Will landowners be told in advance that prescribed penalties can be multiplied by number of individual plant/animals allegedly neglected?

Are landowners expected to protect species at risk imported into selected areas at MNR discretion?

How can a landowner practice "all due diligence" if not personally advised in advance of species to be protected?

Will Bill 184 regulations provide for "mens rea" defence that would compel MNR to prove intent of alleged violators?

Are individual landowners or the Ontario government responsible for all costs of habitat protection?

Will SARA regulations allow negotiated payment of landowner capital and production losses?

What is the name and mandate of professional lobby groups partnered with Queen's Park in species protection?

Are species/habitat designations listed in local property tax records and/or registered on title of affected land?

Will Queen's Park reveal total acreage of private land in Ontario designated as species at risk habitat at Dec.31/07?

As suggested in Minister Cansfield's letter to OPERA, these further SARA comments are forwarded for review to Karen Bellamy, Manager, Species at Risk Section. For the record and In the absence of a published Ministerial e-mail address, a copy of same will be faxed to the Minister's office.

R.A. (Bob) Fowler, Secretary  
Ontario Property and Environmental Rights Alliance