



Lorraine's Copy



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VIA E-MAIL

June 10, 2011

(from the office of David W. DeMille, BELLEVILLE)

The Corporation of the Town of Cobourg
55 King Street West
Cobourg, ON K9A 2M2

PRIVATE AND CONFIDENTIAL

Attention: Lorraine Brace

Dear Ms Brace:

Re: Fishing in Harbour
Our File No. 02641

Further to our earlier telephone conversations and written correspondence, the Municipality has charged Mr. Ronald Renyk with fishing from a pier contrary to Section 8 (1) of By-law 064-2010. Mr. Renyk obviously wishes to make this a test case and he invited the Municipality to lay the charge. I understand from my discussions with the officer who laid the charge that Mr. Renyk was fishing from the east pier when he was given the ticket. Mr. Renyk has indicated to the media that it is his view that the Town cannot prohibit anyone from fishing in Lake Ontario, including the marina, because it is a navigable body of water.

As I indicated to you in our discussion of June 9th, we doubt that the prosecution under Section 8 (1) of By-law 06-2010 will be successful. This was the only provision that the officer could find that came to close to addressing the situation. It provides that no person in a park shall kill, attempt to kill, trap, hunt, pursue or in any manner disturb any animal, fish etc. It may be that fishing comes within "hunt or pursue". The difficulty is that this Section goes on to provide that it does not apply to any person fishing in provincially or federally legislated waters. The harbour or marina is part of Lake Ontario which is federally legislated. It does not say that there has to be legislation related to fishing or even boating. It simply refers to federally legislated waters. It is not exactly clear what this means but a reasonable interpretation would be that the water is under the legislative jurisdiction of the federal government. I realize that the water lots were conveyed to the Municipality but it remains part of Lake Ontario which is federally regulated.

In addition, the Municipality in which the offence occurred is missing on the ticket. This may very well be fatal to the ticket.

I did review By-law 79-91 which prohibits fishing on the pier, marina berthing slips, marina fuel dock area and the pedestrian walk-way along the north wall of the harbour. In my view these are municipal structures and consequently the Municipality has every right to regulate what people may do while on those structures. In other words, the Municipality has every right to prohibit fishing, if it sees fit, from the Municipality's piers, docks or other structures.

The difficulty here is that Mr. Renyk was apparently fishing off the east pier. The east pier is not listed in the By-law and therefore there is no prohibition against fishing off the east pier.

In our discussion, we agreed that this By-law should be updated to make it clear where fishing should be prohibited. At this point, the By-law should probably be revised to indicate that fishing will be prohibited along any pier, dock or marina slip located in Cobourg Harbour or marina.

There is an issue as to whether the Municipality can prohibit fishing in the water. Section 38 of the *Fish and Wildlife Conservation Act* provides that the ownership of a bed of a river lake or navigable body of water does not give the owner the exclusive right to fish in the water unless that right is granted by the Crown. The conveyance of the harbour to the Municipality did not contain any exclusive right to fish. The exclusive right to fish is somewhat different than regulating fishing. However, it may be difficult to get a favourable interpretation on this section that will allow the Municipality to prohibit fishing in the water within the harbour.

The Municipality has every right to regulate boats or other vessels that may be in the area. Consequently, we do not see any problem in prohibiting boats or other vessels from trolling for fish inside the marina.

Likewise, the Municipality could probably pass a By-law that would prohibit fishing within the marina with a hook or other sharp or barbed device. I understand that the concern is that people can be somewhat careless when fishing and there is an issue as to whether they will hook somebody. A provision which prohibits fishing with hooks or other barbed or sharp instruments will address this issue yet not prohibit fishing in general.

It had been my hope initially that Cobourg was still a designated port or harbour under federal legislation. Designated ports or harbours under federal legislation are given a variety of powers under the regulations including the power to regulate boating and fishing within the port or harbour. Unfortunately, it would not appear as though the Cobourg harbour is a designated boat or harbour. This simply means that it is a piece of municipal property, like any other municipal property and the Municipality is subject to provincial and federal laws in how it uses or regulates the property.

If you have any comments or questions, please do not hesitate to contact me.

Yours very truly,
TEMPLEMAN MENNINGA LLP

A handwritten signature in black ink, appearing to read "D. Demille", written over the printed name.

DAVID W. DEMILLE
DWD:ha