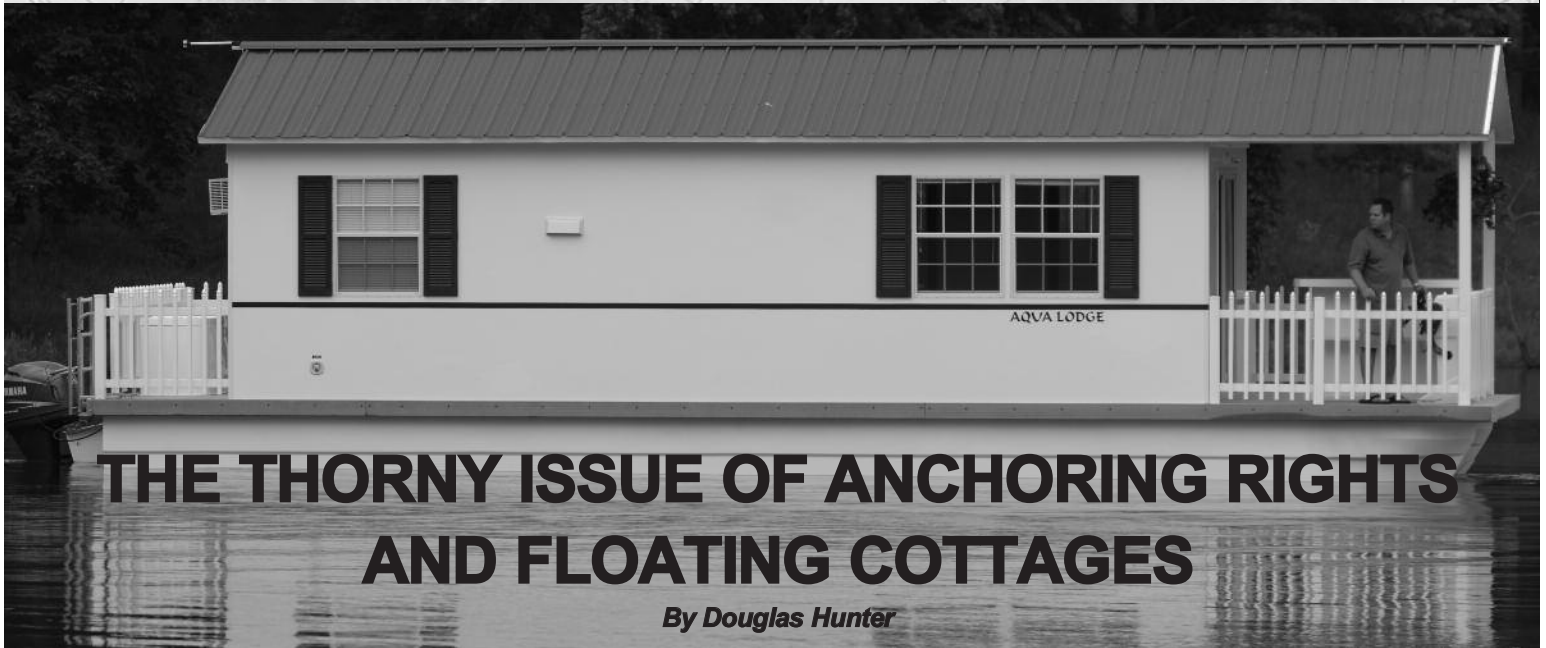




THE WATER LINE

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A Voice For Recreational Boaters In Ontario



THE THORNY ISSUE OF ANCHORING RIGHTS AND FLOATING COTTAGES

By Douglas Hunter

Now that we're officially in spring, I'm getting around to an issue that I've been puzzling over for a few months. It has to do with cottages that float like boats, and boats that behave like cottages.

Back in January, Ontario's Ministry of Natural Resources announced that the province had secured a third successive conviction of a floating cottage owner from the Midland area for illegally occupying Crown land. The conviction carried a \$4,000 fine and two years' probation from a justice of the peace at the Ontario Court of Justice in Barrie.

The man was deemed to have illegally occupied Crown land in this latest case by anchoring his floating cottage off Beckwith Island from May 9, 2006 to June 2, 2006. His previous cases also involved anchoring the floating cottage in local waters for an extended period. The news release from MNR stated, "Ontario court rulings say the public right of navigation entitles the

boating public to transient only."

As someone who has written plenty about both recreational boating and cottage ownership, this case piqued my interest. The whole idea of "transient" navigation rights is a thorny one. While I wholly support any effort not to have our waters turned into squatters heaven, I'm also wary of any measure that might restrict navigation rights to which boaters are broadly entitled under the Canadian constitution. I've dealt with this issue in much greater (ie. longwinded) detail on my cruising website, sweetwatercruising.com. But for this column's purposes, I want to address the essentials, since many of us will be heading to the cottage or back on the water fairly soon.

The MNR release on the January case included the anonymous tips telephone number for CrimeStoppers, encouraging people who witness similar anchoring activity to give it a ring. I immediately imagined legions of disgruntled cottagers phoning

CrimeStoppers this summer whenever a cruising boat anchors nearby for more than a night or two, since the MNR release didn't address the "transient" threshold. So let's quickly run through the issues.

This is not the first time MNR has moved to restrict anchoring in Ontario waters. In 1997, MNR introduced a

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“GOOD NEWS FOR INFRASTRUCTURE FUNDING” FOR THE TSW

By Bruce Stanton, Simcoe North MP



months. After careful review of the 225 formal submissions, and meetings with key stakeholder groups, the Panel painstakingly compiled a list of 26 recommendations that, in their view, were critical to the future health and viability of the Waterway.

Immediately following the release of the Report, Minister of the Environment John Baird announced a \$63 million commitment over five years for the Waterway from the federal government. This includes providing five years of regular funding totalling \$28.5 million – the first time it has received multi-year funding – in addition to a significant investment of \$34.5 million in new funding to begin the process of renewing and updating the Waterway.

Work in Simcoe North alone totals just over \$17 million, and will include replacing the 45-year-old timber lock gates at Lock 42, repairing Lock 41 and the dam at Lock 37, as well as fixing the steel trusses at bridges 57 and 54.

After decades of neglect, it will take some time and the continued attention and efforts on the part of local,

provincial and federal governments to ensure that the Report’s recommendations are realized. However, there are promising indications that this is precisely what is happening. Shortly after the funding announcement, federal and provincial MPs from along the Waterway formed a bipartisan Trent-Severn Caucus to ensure their respective governments remain focused on updating and protecting this vital asset.

As I have said from the outset, and as you well know, the Trent-Severn is the federal government’s crown jewel asset in the region. The watershed is home to over a million people, spread across 100 communities, and which generated in excess of \$1.2 billion in annual revenues. In order to preserve this tremendous asset, we need to take action now.

I am pleased with the resolute commitment the federal government has shown so far, and I look forward to continuing to work with my colleagues in government and the broad range of stakeholder groups as we focus on ensuring the Waterway has a sustainable and vibrant future.

On April 28, the Panel on the Future of the Trent-Severn Waterway released its final report, titled *It’s All About the Water*.

The six-member panel, chaired by Doug Downey, conducted thorough public consultations along the 386-kilometre waterway, holding 30 public meetings in 16 communities over eight

TRANSPORT CANADA SMALL VESSEL AND FACILITY SECURITY STRATEGY

Since the tragedy of 9/11 many things have changed, not the least of which is our safety and security. Attention is now being given to small vessels that do not come under the Marine Transportation and Security Regulations. Transport Canada (TC) is looking at security strategies that would contribute to its overall transportation and security objectives by:

- Protecting Canadians and the marine transportation system
- Preventing the use of our waterways as a conduit for terrorist activities
- Protecting privacy and rights
- Ensuring the efficient flow of people and goods

The previous comments are contained in a bulletin from TC, which requires consultations with stakeholders potentially affected by their initiatives.

The Strategic Framework requires:

- Rulemaking and Agreements
- Capacity Building and Outreach
- Technology
- Systems and Programs

Each of the above has been detailed by TC and can be read on its website (www.tc.gc.ca). Comments regarding possible security options would be appreciated by TC at svfss@tc.gc.ca.

ANCHORING RIGHTS AND FLOATING COTTAGES

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policy (after getting an opinion from the Ministry of the Attorney General) of charging for overnight anchoring in the Georgian Bay waters of The Massasauga Provincial Park. A sailor, Al Will, challenged the policy by fighting a ticket he was issued after refusing to pay the fee, arguing anchoring in navigable waters was a constitutional right protected by Ottawa through the Canada Shipping Act with which the province cannot interfere. Al won his case. The province appealed and Al won again. MNR ended its anchoring fee policy at The Massasauga as a result, and the Provincial Parks and Conservation Reserves Act (2006) also substantially reflects the outcome of that case.

That said, MNR has interpreted the act of setting an anchor in a lake or river bottom as an occupation of Crown land or, in this case, "Crown bed." (Tying to shore where land is under the purview of the MNR, such as a provincial park, has the same occupation effect.) In 2004, MNR came up with its Free Use Policy (3.03.01) to establish rules for boating and camping and other uses of Crown land, beyond parks with fee-based campsites. It decided that such unstructured usage could be free and permissible if it was "temporary." The maximum period of free occupation was set at 21 days, and for a boat this was called "reasonable moorage." That's how the floating cottager has racked up three convictions.

Nevertheless, it's still not clear how this policy would fare in a serious constitutional rights challenge. In the Crown's unsuccessful 1999 appeal of the Al Will case, the judge ruled that the Constitution Act indeed "gives parliament exclusive authority with respect to navigation and shipping." (Coincidentally, this past January,



Georgian Bay Township considered placing restrictions on docking of "live-aboard boats" in special development restrictions for the Cognashene area. Realizing they were entering tricky legal waters, council dropped the language from the final by-law.)

To try to understand the situation a little better, I rang up one of our country's top maritime lawyers, William Sharpe. He told me that while the province "can't interfere with the federal right of navigation," it can demand water lot leases and licenses where fixed structures and moorings are concerned. But Sharpe noted that there's a legal "grey area" in distinguishing between a navigating vessel (which is entitled to federally-protected rights) and a floating home. The Canada Shipping Act doesn't distinguish between vessels and barges (even ones without engines) when it comes to basic navigation rights, so even something being towed or nudged along by another craft has anchoring rights.

Another grey area, Sharpe pointed out, is "how long is 'transient,'" which is an important distinction between a vessel engaged in navigation, with protected rights that include anchoring, and a floating abode that really isn't going anywhere, no matter the nature of

the craft. Staying in one place "for more than a couple weeks is probably not transient," he told me. And in choosing the 21-day period, MNR has selected a fairly generous time slot for a legitimate cruising boat to stay in one spot. But it's also worth noting that the MNR's Free Use Policy allows campers to stay on Crown land for more than 21 days if they relocate their campsite at least 100 metres. I'm guessing that the owner of a cruising boat or floating cottage could try the same strategy.

Until someone decides to have more legal fun with this issue, based on constitutional navigation rights, it's important for boaters and cottagers alike to understand that the threshold between legitimate anchoring and unlawful occupation as things stand is 21 days. Let's not be dialing CrimeStoppers before then.

Reprinted from the author's April 4, 2008, column "Charting Huronia" in the Midland Free Press. A more detailed examination of the anchoring rights issue can be found online at Douglas Hunter's website, sweetwatercruising.com, which addresses issues of interest to recreational boaters on Georgian Bay and the North Channel.

DISASTER OR OPPORTUNITY? It all depends how you look at it



Last year, as real estate faltered in the US, the number of boats sold fell approximately eight per cent. From 2000 to 2006 (according to the *New York Times*) retail sales for the recreational boating industry rose by more than 40 per cent to \$39.5 billion, while the average loan amount more than tripled to \$141,000. With rising gas and diesel prices making a weekend trip cost hundreds of dollars, many owners decided to sell, but found they could not sell a boat for

what they owed and could not refinance either. Some just stopped paying – then in comes the “Repo Man!”

One company in the Detroit area is repossessing nearly a boat a day. Boat loans in the US give the bank permission to recover as collateral in the case of default, which explains why a Repo Man can go into a yard without it constituting as trespassing.

Then the bank is left with a boat for sale – an opportunity for some, a disaster for others.

ATTENTION ALL CBA ONTARIO MEMBERS

CBA Ontario is run by a group of voluntary advisors who meet quarterly and discuss issues and priorities affecting our members in Ontario.

Individually or as a group, we also attend special functions like the Canadian Safe Boating Council Awards and work with other groups that effect or have influence over recreational boating in Canada.

We currently have three openings for advisors and are looking for members anywhere in Ontario that would like to get involved and contribute a little bit of their time and expertise.

If you are interested, please call Ernie Williams at (905) 717-0884 or email erniewilliams@sympatico.ca.

The CBA is operated primarily by volunteers, so to ensure that your questions or concerns will be addressed please EMAIL the CBA as emails are our primary method of communication.

info@canadianboatersalliance.ca

Be sure to check out our new website at www.cbaontario.com

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