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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

