

Insider Trading of Licences: Buyer (or Seller) Beware

Are you considering buying or transferring a fishing licence? If so, you should beware he who comes, hat in hand, eager to take you up on your offer. Whether you're buying or selling, the background of the person with whom you're dealing may reveal something about the hidden value of the licence.

If that other person is a member of a Department of Fisheries and Oceans advisory board, or knows such a member, he may have information you don't about the licence.

Once elected or appointed, members of these boards have the privilege of advance notice of critical industry changes such as licence issuance and allocation decisions. They may even be the ones to suggest such changes. This 'inside knowledge' is kept from fishermen on the water. When dealing with a licence it may be kept from you.

In a corporate setting people are sued for using their inside knowledge of corporate affairs for personal gain. Some even go to prison. In the fishing industry, however people doing the same thing may be untouchable.

There are currently no guidelines restraining members of DFO advisory boards from exploiting their positions for their own gain.

It does not have to be this way. It is not this way, for example, for members of the DFO's Pacific Region Licence Appeal Board (LAB) which makes recommendations to the Minister on licensing decisions and on changes to licensing practices. LAB members are required to follow a comprehensive set of ethical principles and practices.

The LAB guidelines include the following:

- *Members shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced.*
- *Members have an obligation to act in a manner that will bear the closest public scrutiny; an obligation that is not fully discharged by simply acting within the law.*
- *Board members shall not have private interests ... that would be affected particularly or significantly by government actions in which they participate.*
- *On appointment, and thereafter, members shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a member and the official duties and responsibilities of that member, the conflict shall be resolved in favour of the public interest.*

- *Members shall not step out of their official roles to assist private entities or persons in their dealings with the government where this would result in preferential treatment to any person.*
- *Members shall not knowingly take advantage of, or benefit from, information that is obtained in the course of their official duties and responsibilities as that is not generally available to the public.*
- *Members shall not act, after they leave, in such a manner as to take improper advantage of their previous membership.*

LAB members are required to disclose to the LAB Chair and Liaison Officer all their personal interests and relationships which might be perceived as in conflict with their official duty, and they must not participate in or even attend a meeting during any aspect of the meeting in which a conflict arises.

These requirements have their roots in several legal concepts, including the company law rule that directors of companies owe a duty to the company to act honestly, in good faith and in its best interests. Insider trading rules prohibit those with knowledge of material facts or changes to public companies that have not been generally disclosed from purchasing or selling securities in those companies.

While we would like to presume that members of DFO advisory boards would never feather their own nest with the inside knowledge gained from their positions, the possibility of them doing so is too serious to ignore.

Without guidelines or written ethical standards imposed on DFO advisory board members, what protections are there for fishermen who elect or appoint one of their own from that person self-benefiting? What duties do members of DFO's advisory boards owe those who elect or appoint them? The answer is unclear. The law does not easily reach members of political bodies, particularly members of government advisory boards. The licence transfer system currently operates on the buyer-beware principle. The remedies available to force buyers or sellers of fishing licences to disgorge profits made from using inside information are largely unexplored. The traditional legal tools that restrain people in a corporate setting remain to be tested on government advisors such as DFO advisory board members.

There is a solution. The ethical requirements LAB members must follow could be extended to all government advisors, including DFO advisory board members. It is inexcusable that advisory board members are permitted to use their inside knowledge for their own personal benefit. The Minister could easily require all board members to agree to and sign a comprehensive code of conduct. Until that is done, however, it is best to be wary of the party with whom you are dealing. The person interested in selling you his licence, or in buying yours, may know something you don't.