

**THE COHEN COMMISSION OF INQUIRY INTO  
THE DECLINE OF SOCKEYE SALMON IN THE FRASER RIVER**

**RULING RE: APPLICATION PURSUANT TO RULE 65 TO HAVE THE  
CONSERVATION COALITION'S PARTICIPANT STATUS REVOKED**

The Honourable Bruce I. Cohen, Commissioner

**I. The Application**

1. This is an application by the participant the British Columbia Salmon Farmers' Association (the "BCSFA"), pursuant to Rule 65 of the Rules for Procedure and Practice, seeking a finding that a participant member of the Conservation Coalition was responsible for a breach of the commission's undertaking of confidentiality, and seeking a remedy for that breach including the revocation of the Conservation Coalition's participant status.

**II. History of this application and Submissions by Participants**

2. As a condition of access to information collected by this commission, participants were required to sign undertakings of confidentiality (the "undertakings"). The undertakings required participants to maintain confidentiality over all the information disclosed by the commission to them (the "compelled information"), unless and until the information was made public, either through an evidentiary hearing or through another means.

3. In October and November, 2011, it was brought to commission counsel's attention that in two or three instances it appeared that compelled information had been disclosed to the media by a participant in violation of the undertakings (the "leaked information"). As a result of these instances of leaked information, commission counsel restricted access to the compelled information to counsel only and not to the participants. This restriction caused inconvenience to some

participants and was the subject of an application and my ruling of December 12, 2011.

4. The BCSFA says that in one instance the leaked information was disclosed by a member of the Conservation Coalition. It says that I should consider an appropriate sanction against the Conservation Coalition, including revocation of its participant status.

5. I received submissions from the government of Canada ("Canada"), taking no position on this application, and from the province of British Columbia ("British Columbia"), advocating that I pursue an investigation of the leaked information and take remedial action, including the removal of participant status.

6. The Conservation Coalition submits that the evidence put forward by the BCSFA in support of its position does not establish that the Conservation Coalition is the participant responsible for the leaked information.

7. In reply, the BCSFA says that the Conservation Coalition's response to the application does not answer in any substantive way the evidence that one of its members breached the undertaking.

### **III. Decision**

8. In support of its application, the BCSFA filed the affidavit of Ms. Miriam Bird, a legal administrative assistant to counsel for the BCSFA, sworn December 13, 2011. Ms. Bird's affidavit attached, as an exhibit, a copy of a web page which is headed "Super Heroes 4 Salmon" with a contact address naming Mr. Don Staniford (the "web page"). The web page contained excerpts and a discussion of a draft document from 2004 (the "2004 document"). The draft document had been disclosed by commission counsel to participants' counsel on November 23, 2011, for distribution to participants, subject to their undertakings of confidentiality. The web page also included a quote that it attributed to one John Werring, a member of the Conservation Coalition. It included as a footnote reference for the quote an email that appears to have been circulated by John

Werring to his fellow members of the Conservation Coalition, as well as its counsel (the "November 23rd leaked email").

9. Ms. Bird also attached to her affidavit two letters from senior commission counsel to all participants, dated March 18, 2011 (the "March 18<sup>th</sup> letter") and November 30, 2011 (the "November 30<sup>th</sup> letter"). In the March 18<sup>th</sup> letter, commission counsel stated, *inter alia*, that there had been a breach of undertaking. In the November 30<sup>th</sup> letter, commission counsel stated, *inter alia*, that going forward, access to the Ringtail database would be available only to participants' counsel, and that compelled documents would be circulated only to participants' counsel.

10. The BCSFA submits that taken together, the web page and the November 23<sup>rd</sup> leaked email are evidence that the Conservation Coalition is responsible for the breach of undertaking. It further submits that I should consider remedies against the Conservation Coalition, including revocation of its status as a participant in this inquiry.

11. The Conservation Coalition argues that the November 23<sup>rd</sup> leaked email is insufficient on its own to establish that it is responsible for the breach of the undertaking that occurred. This assertion is based upon the advice of Mr. Werring to counsel for the Conservation Coalition that he did not voluntarily disclose the November 23<sup>rd</sup> leaked email to any person who has not signed the undertaking of confidentiality, and that he has not shared any compelled documents with persons who have not signed the undertaking of confidentiality. Neither counsel nor Mr. Werring filed affidavits regarding this advice.

12. While I accept that an argument can be made that a member of the Conservation Coalition breached the undertaking of confidentiality based on the content of the web page and the November 23<sup>rd</sup> leaked email, I am not prepared to make such a finding for the reasons that follow.

13. A finding by me that a participant breached her or his undertaking is a serious matter, and would draw an appropriate sanction. Therefore, such a finding should

not be made in the instant case unless I am satisfied that it is the only inference that can reasonably be drawn on the material in evidence.

14. While one possible inference that could be drawn from the material in evidence is that a member of the Conservation Coalition forwarded the November 23<sup>rd</sup> leaked email, and by separate email the 2004 document to the author of the web page, I find that it is not the only plausible inference. For example, it is also plausible to infer that one of the Conservation Coalition recipients of the November 23<sup>rd</sup> leaked email forwarded it to a member of a different participant group, who would also have received it under the terms of the undertaking of confidentiality. This form of disclosure by a member of the Conservation Coalition would not have amounted to a breach of the sender's undertaking. The recipient of this forwarded email might then have forwarded the November 23<sup>rd</sup> leaked email and the 2004 document to the author of the web page. If this had occurred, it would be the latter disclosure that would constitute the breach of undertaking.

15. For the foregoing reasons, I cannot make the findings sought by the BCSFA and find that its application must be dismissed.

Dated JANUARY 24, 2012



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The Honourable Bruce I. Cohen  
Commissioner