



STATUS REPORT

March 24, 2010

This Status Report provides general information about the main work and activities undertaken by the Cohen Commission to date. It serves as a summary to be provided to the House of Commons Standing Committee on Fisheries and Oceans.

It should be noted that, beyond the reports required under the Terms of Reference for this inquiry, the Commission is not under an obligation to report to Government or to other entities. That being said, the Commission is pleased to provide this update to Parliamentarians and to Canadians, in the interest of transparency and inclusiveness.

The Commissioner welcomes and accepts the invitation of the Standing Committee to make a presentation, through Senior Commission Counsel Brian Wallace, Q.C. Mr. Wallace looks forward to assisting parliamentarians in understanding the Commission's work and to answering questions to the extent possible, within necessary constraints.

This Status Report also provides some preliminary information about the Commission's future activities. However, in this regard, the Commissioner's Rules and Procedures for the conduct of the inquiry have not yet been published. A draft of the Rules and Procedures will be released after the Commissioner has determined which persons and organizations will be granted Participant standing. The Participants will then be invited to provide input on the draft Rules and Procedures. This input will be considered by the Commissioner before finalizing the Rules and Procedures or commencing hearings.

It is not possible for this brief Status Report to canvass every issue currently under consideration by the Commissioner. However, it must be emphasized that commission counsel and other commission staff are available to respond to requests for information from any member of the public, and from the media.

In addition, the Commissioner intends to provide future regular status reports, directly to the public, through the Commission's website at www.cohencommission.ca.

The following four topics are canvassed in turn:

- A. Administrative milestones and activities
- B. Applications for Participant standing, formal hearings and other public involvement processes
- C. Document disclosure by Fisheries and Oceans Canada (DFO) and other Government departments
- D. Current and ongoing research and analysis

A. Administrative milestones and activities

On November 6, 2009, Justice Bruce Cohen was appointed as the Commissioner of the Commission of Inquiry into Decline of Sockeye Salmon in the Fraser River.

A.1 Building the Commissioner's team

In November and December 2009, the Commissioner appointed an Executive Director, a Director of Finance and Administration, a Policy Counsel and a Senior Commission Counsel. By February 2010, the Commissioner assembled the rest of his legal team which comprises three Associate Commission Counsel and four Junior Commission Counsel.

Between January and March 2010, the rest of the Commission team was put in place, including a Communications Director, a Research Counsel, a Fisheries Research Consultant and a Manager of Documents and Records to maintain a large volume of evidence. In addition, the Commission has hired a Research Assistant, two Administrative Assistants, a Webmaster and a Receptionist.

Following interviews and offers, each Commission member went through a security check, received security clearance and had contracts approved by the Treasury Board.

A.2 Commencing the Commission's operations

On February 1, 2010, the Commission moved into an office space in Vancouver, B.C.

Through the Privy Council Office (PCO), computers and other equipment was procured and installed by early February 2010.

From March 24, 2010 onwards, new furniture will be arriving and minor office renovations will be made. In particular, security features will be added to the office to ensure the protection of classified government documents.

Throughout the last three months, PCO officials have been of great assistance in dealing with governmental procurement requirements.

A.3 Installing the Ringtail database software

The Department of Justice uses the Ringtail database software to manage complex cases and inquiries. Consequently federal commissions of inquiry also are required to use Ringtail, which is a useful case management tool.

However, due to procurement challenges, Ringtail was not installed on Commission counsel's computers until early March, 2010. At that time, document management staff

were trained in how to administer the database. In late March, commission counsel received training in how to use the database.

Ringtail requires the use of particular files that have searchable content. Upon installation of the Ringtail database, the Commission requested and the Government then began to produce its documents as searchable content files. Department of Justice counsel and paralegals have been responsive and helpful on this issue.

As a result of these challenges, the Commission did not begin receiving government documents in a utilizable format until March 22, 2010. Review of these documents by commission counsel began that same week.

B. Applications for Participant standing, formal hearings and other public involvement processes

B.1 Adjudicating applications for Participant standing

In January and February 2010, the Commission planned how to engage the public, including reviewing activities and procedures of past commissions

On February 15, 2010 the Commissioner's Rules on Standing and Funding were released. The Rules were supported by guidance materials, public notices, a news release and other content on the Commission website.

The Rules on Standing and Funding allow persons, governments and organizations to apply for standing to participate in the inquiry's hearings. Those granted standing are called Participants. Also on the Commission's website are the Terms and Conditions for the Contribution Program, under which the Commissioner may recommend to the PCO that Participants receive contributions towards the cost of legal counsel.

March 10, 2010 was the deadline for applications for Participant standing. By this deadline, the Commission received 49 applications for standing, along with many applications for funding recommendations. It appears that this is the highest number of standing applications received by any federal or provincial commission of inquiry in Canadian history.

20 of the 49 applications for Participant standing were from First Nations organizations and bands. Moreover of these 20 applications, several were from larger coalitions of First Nations and First Nations organizations. Some First Nations applicants indicated that the Government's recent decision to suspend the treaty negotiation process in British Columbia gave them a substantial and direct interest in the commission proceedings, and was a factor meriting a grant of standing.

Over March 16-20, 2010, commission counsel provided initial written responses to these 49 standing applicants, indicating the Commission's process for making

determinations on the applications. Commission counsel are also canvassing with applicants the option and desirability of participating jointly or in coalitions, where their interests overlap with respect to the Commission's terms of reference, so as to improve the effectiveness and efficiency of formal hearings.

On March 23 and 26, 2010, the Commissioner held public hearings of the 49 applications for standing. The March 23 hearing was devoted to applications where commission counsel had assessed that the case for a substantial and direct interest was not strong and the applicants' concerns could be addressed outside the hearing process, through public submissions or interviews with counsel. The March 26 hearing is devoted to exploring joint applications for standing among various First Nations, commercial fishers, recreational fishers and environmental groups.

At the time of this Status Report, all standing applications remain under the Commissioner's consideration.

Hearings on applications for funding recommendations have been deferred until the Commissioner has resolved standing applications, including decisions on joint standing.

B.2 Planning processes and opportunities for general public involvement

In addition to the Commission's formal hearings, the Commission will seek input from the public. Members of the public may contribute to the inquiry by making written submissions on the subject matter of the inquiry. Such submissions may become Public Submissions and posted on the Commission's website with the consent of the authors.

The Commission started receiving Public Submissions in March 2010. We are finalizing the technical process for receiving Public Submissions directly through the Commission's website, which should begin in early April.

Public Submissions are reviewed by commission staff. Information found in Public Submissions will inform Commission counsel's work, may be considered by the Commissioner and may ultimately be included in the Commission's reports.

As the Commission's work progresses, there will be additional opportunities for public input. Notice of these opportunities will be given through our website and in the media.

B.3 Preparing the Commission's Rules and Procedures

The Commissioner has prepared his Draft Rules and Procedures governing the inquiry. Once Participant standing applications are resolved, the Commission will release and publish on the website the Draft Rules and Procedures, and Participants will have the opportunity to provide input. The Commissioner will consider the Participants' input before finalizing the Rules and Procedures or commencing any hearings.

B.4 Planning for the commencement of formal hearings

As contemplated in the Terms of Reference, the Commission will be conducted in two phases. In Phase One, the Commissioner will undertake a review of previous examinations, investigations or reports that he deems relevant, and the Government's responses to those examinations, investigations or reports. In his Interim Report, the Commissioner will summarize those reports and responses, and will set out his preliminary views on and assessment of them.

It is anticipated that a few days of hearings to contribute to Phase One of the inquiry will take place in June 2010. Among other considerations, this will depend on the timeliness of the production of Government documents to the Commission.

Phase Two of the Inquiry will commence later this year. During Phase Two, the Commission will investigate and make independent findings of fact regarding the causes for declines of Fraser River sockeye salmon and the current state of and long term projections for these stocks; and make recommendations to improve the future sustainability of the Fraser River sockeye salmon fishery.

C. Document Disclosure by DFO and other Government departments

C.1 Seeking and reviewing Government documents

Commission counsel are working with the Department of Justice on disclosure of relevant documents by DFO and by other Government departments, including through correspondence and regular bi-weekly meetings.

The Commission's initial request for document disclosure was provided to the Government on November 25, 2009.

In February and March, the Government provided four initial subsets of DFO documents on a bi-weekly basis. As mentioned, the Commission received these documents in the requisite electronic Ringtail format on March 22, 2010.

The Government has provided a document production plan. This document production plan envisions that the Department of Justice will produce all relevant documents to the Commission, on a bi-weekly basis, with the final production of documents to be made on May 24, 2010. Some 80,000 pages of documents have been produced so far.

DFO Pacific Region officials are working to create a comprehensive document outlining all previous recommendations and responses for the Commission's use in Phase One of the inquiry. DFO has committed to finishing this document by mid-May 2010.

Commission counsel have started reviewing the Government's documents disclosed to date, and will continue this review intensively through to the Fall of 2010.

C.2 Interviewing persons with relevant information

Commission counsel have commenced interviewing persons with relevant information and perspectives. The interview process will be a greater focus of the Commission's work in the summer, after Government documents have been produced and reviewed.

D. Current and ongoing research and analysis

As applications for Participant standing are being resolved and while awaiting full document disclosure from the Government, the Commission is advancing three primary sets of activities.

D.1 Commencing Phase One of the inquiry

As explained above in the update on formal hearings, Phase One of the inquiry requires the Commissioner to review and preliminarily assess previous examinations, investigations or reports regarding declines of Fraser River sockeye salmon, as well as the Government's previous responses to those examinations, investigations or reports.

Commission counsel are currently collecting, reviewing, summarizing and providing preliminary assessments of previous recommendations and previous responses thereto. DFO officials are engaged in a similar process, and are providing valued assistance to the Commission in gathering and producing this information.

Under the Terms of Reference, Phase One of the inquiry is to conclude with the Commissioner submitting a report by August 1, 2010. To inform this report, in June 2010, there may be hearings specifically related to Phase One of the inquiry.

D.2 Ongoing legal research and analysis

In preparation for both Phase One and Phase Two of the inquiry, commission counsel are conducting legal research into the legislation, regulations, agreements, treaties, policies, guidelines and other instruments that govern or relate to the sustainability and management of Fraser River sockeye salmon.

Commission counsel are also engaged in providing confidential legal advice to the Commissioner. This includes ongoing research and analysis of a wide variety of operational matters related to the conduct of the Commission and its hearings.

D.3 Ongoing scientific analysis

Scientific review commenced in March 2010. Under the supervision of our Fisheries Research Consultant, the Commission has been determining the scope of its future review, analysis, synthesis and ultimately reporting of scientific information.

For example, through the Commission, analysis will be conducted to examine the scientific causes and factors leading to declines in Fraser River sockeye in 2009, and more broadly, to examine the long-term trends in Fraser River sockeye production.

An important focus of scientific work to date has been the creation of a Science Advisory Panel that will advise the Commission. Specific terms of reference are currently being finalized. It is anticipated that the Science Advisory Panel will comprise six prominent salmon fisheries and conservation experts, though the exact composition is not yet determined. The Panel will be convened several times over the course of the inquiry.

In addition, the Commission intends to enter into approximately twelve contracts for the preparation of technical reports and assistance with the substantive fisheries research work of the Commission. Two Fisheries Research Assistants will be recruited to assist with preparation of reports.

The Commission trusts that this Status Report provides relevant, useful information about its current work and activities to parliamentarians and to the public.

The Commissioner appreciates the invitation to present further information, through his Senior Commission Counsel, to the Standing Committee on Fisheries and Oceans on March 29, 2010.