

Chapter 5 • Commission process

■ The Commission

On November 6, 2009, the Governor General in Council issued Order in Council 2009-1860 establishing this Commission of Inquiry and appointing me as sole Commissioner under Part 1 of the *Inquiries Act* to inquire into the decline of sockeye salmon in the Fraser River. The same Order in Council set the Commission's Terms of Reference, which are included as Appendix A. As Commissioner, I was mandated to investigate and report on the reasons for the decline of sockeye salmon in the Fraser River and to make recommendations for improving the future sustainability of this fishery – including, as required, changes to the policies, practices, and procedures of the Department of Fisheries and Oceans (DFO) in relation to the management of the Fraser River sockeye salmon fishery.

Immediately following my appointment, I began the process for engaging Commission staff

and setting up the office for the Commission. I was fortunate to retain Brian Wallace, QC, as senior Commission counsel; Keith Hamilton, QC, as policy counsel; Dr. Leo Perra as executive director; and Cathy Stooshnov as director of finance and administration. I benefited from their substantial background in the conduct and operation of public inquiries. I was also able to hire a talented team of Commission lawyers, a fisheries research consultant, a director of communications, and office staff, and to establish the office of the Commission in a timely fashion. Because of the complexity of the topic, a difficult and time-consuming document disclosure process, the large number of participants* in the Inquiry, and a comprehensive evidentiary hearings schedule, I requested an extension to the original deadline for submitting my Final Report, in order to ensure that the Commission's mandate would be properly fulfilled. The Governor General in Council amended the

* Participants, throughout this Report, refers to groups and individuals who were approved by me to participate in the Inquiry within their areas of interest.

Commission's Terms of Reference and stipulated that I submit the Final Report on or before June 30, 2012. The Governor in Council further amended the Terms of Reference to extend that deadline to October 29, 2012.

The purpose of this chapter is to set out the process we followed for the Inquiry, including establishing the Commission's infrastructure, inviting individuals and organizations to apply for standing and funding, gathering public input through public forums and the Commission's website, compelling document production, conducting evidentiary hearings, and completing the Commission's Interim Report as well as this Final Report. At the end of this chapter, I include a chart that illustrates our journey (Figure 3.5.3). I hope that this chapter will be useful not only to those who are engaged in future commissions of inquiry – commissioners, lawyers, administrators, government representatives, and participants – but also to members of the public, providing a window into some of the complexities of the work of a public inquiry.

On matters of substance, the Commission is independent. Functionally, however, it operates and is funded as a government department falling within the general purview of the prime minister, and it receives administrative and technical support from the Privy Council Office (PCO).

■ Privy Council Office

PCO has developed extensive policies and procedures to provide checks and balances for the operations of the federal government. These policies and procedures also apply to agencies such as commissions of inquiry. PCO provided policy documents to guide my staff in areas such as contracts, employment of staff, procurement of goods and services, information services, document management, and security. Although PCO staff assisted my staff substantially in applying these policies and procedures, we found it a challenge to obtain the necessary approvals for timely procurement of goods and services. The requirement that “all advertising” be processed through Public Works and Government Services Canada (PWGSC), for example, added weeks to the time required to purchase a simple advertisement notifying the Canadian public of our existence.

As a result of the costs involved and our initial experience in placing an ad, we delivered subsequent public communications through media releases and via the Commission's website.

Another major activity for us was to issue contracts for the many individuals providing services to the Commission. Each contract had to be reviewed initially and then approved by PCO before being executed by me. This review process also applied to any amendments to a contract, such as additional tasks to be performed, adjustments in completion dates, and similar changes that occur in contractual relationships. In some instances, PCO approvals were provided within two or three days, but occasionally they required two or three weeks. In addition, contracts of more than \$100,000 annually had to be approved by the Treasury Board.

Administration Division

The Privy Council Office is a large organization, and responsibilities related to commissions of inquiry are parcelled out among different departments. Our concerns, issues, and needs were initially raised with the manager, Commissions of Inquiry, who solved our problems or referred us to the appropriate officers.

Manager, Commissions of Inquiry

The manager for commissions greatly assisted my staff during the start-up phase of the Inquiry in complying with the many policies, procedures, and regulations of the Privy Council Office. The Commission's director of finance and administration and PCO's manager, Commissions of Inquiry, held conference calls at least once a week to make sure that the Commission's interaction with the government flowed smoothly. The manager was also a source of help in setting up contacts with the other administrators and managers within PCO.

Informatics and Technical Services Division

The Informatics and Technical Services Division played a key role in the initial set-up of the

Commission's information systems. This work included the procurement of desktop computers, laptops, servers, printers, and BlackBerry devices and their installation in the Commission's facilities. The division also provided initial help-desk and troubleshooting support during the start-up phase of the Commission. PCO staff members who were deployed to Vancouver during this time went beyond the call of duty in getting the office operational by February 1, 2010.

The storage capacity of the initial server set-up included 50 gigabytes (GBs) of memory, but this capacity soon proved inadequate for the needs of the Commission. Several factors contributed to the need for significantly more memory:

- the requirement to use Ringtail Legal, a complex document management system;
- the disclosure of documents, which eventually exceeded 570,000, with more than 3 million image files – the primary format for Ringtail;
- the decision to provide participants with access to all disclosed documents, thereby requiring a second complete database; and
- the Commission's need for three databases of 315 GBs each for Ringtail, plus additional storage for its administrative needs.

Despite some initial start-up difficulties and the need for significantly more data storage capacity, the information systems for the Commission functioned well and met our needs.

Accommodation and Building Services

The procurement of facilities for the Commission involved several government departments. PCO staff members were involved in the broad planning activities for space and served as a liaison between my staff and Public Works and Government Services Canada. PWGSC provided assistance with the location and leasing of the office facility and the fit-up requirements to prepare it to meet federal government standards and the Commission's needs. It also handled the negotiations for the facility, preparation of detailed construction plans, selection of a contractor, and supervision of the site work, all subject to our approval.

The early planning activities indicated the need for a facility to accommodate approximately 30 people, with a reception area, boardroom, meeting room, interview room, staff lunchroom, offices, common work areas, print room, LAN / server room, library space, and secure file storage room. The total estimated area to accommodate all these functions was 6,000 to 7,000 square feet. I wanted the Commission to be located in Vancouver's downtown area, with easy access to transportation corridors and close to suitable hearing-room facilities.

Based on these initial concepts, the PWGSC procurement division looked for facilities that met these requirements. Eventually they located three sites, which were assessed by the Commission team. We recommended a location at 650 West Georgia Street, across the street from the Federal Court and close to the new Canada Line rapid transit system and other public transportation services. The Federal Court has the large courtroom and support facilities that I had requested for our evidentiary hearings, and we were able to use it for almost all of them.

The number of individuals and groups involved in different aspects of the facility procurement process presented challenges to my staff. Different people were responsible for overall planning, security, leasing, budgeting, construction planning, and renovations, along with a cadre of individuals representing the landlord. My staff members were ultimately responsible for approving all relevant decisions. Those decisions, however, had to be consistent with federal requirements and procedures.

Security

Security of facilities and information was an important consideration, so the security of the perimeter walls for the facility was a key renovation requirement for us. Wire mesh was installed between the top of all the perimeter walls and the concrete ceiling. The reception entry was also secured, with the receptionist controlling access both to the reception area and, from there, into the office area. Staff used electronic access cards to enter. An electronic security surveillance system was installed and was activated by the last staff member to leave each evening.

A secure LAN / server room and file room area were created, with access limited to those with a direct need to go there. Once a week, backup tapes for the servers were taken off site to a nearby bank vault.

Remote access to the Commission's server was through a virtual private network (VPN) protocol. This same protocol was used by the participants to connect to the Ringtail database. Information system requirements needed ongoing maintenance support throughout the life of the Commission – particularly for participants, who were using a wide variety of equipment and operating system software with various levels of firewalls and security systems.

■ Selecting and appointing staff

The senior Commission counsel, policy counsel, executive director, and director of finance and administration served as my executive and planning officers during our start-up phase. They prepared plans for the direction of the Inquiry; outlined the activities the Commission would pursue; and estimated its personnel, facility, and financial requirements.

Our initial set of planned activities included a learning phase, a review of previous reports, community forums, site visits, evidentiary hearings, an interactive website, and the preparation of Interim and Final reports. We required personnel in the following areas to complete these tasks: counsel and legal staff; a director of research; research and analysis coordinators; a director of communications (bilingual); a document manager; Ringtail administrators; information technology support staff; a webmaster; receptionists (bilingual); a hearings coordinator; and paralegal support staff. A list of the Commission's personnel is given in Appendix B.

My executive team had experience with other commissions of inquiry, and they recruited counsel and staff with inquiry or related experience. We initiated a search to fill the key research and communications positions using both print media and the website, and with some assistance from placement agencies, professional associations, university placement offices, and other agencies.

Suitable candidates were interviewed and references checked before appointments were made.

Many people with expertise in west coast salmon fisheries have worked for DFO in the past and may wish to do so in the future. My counsel and staff were aware of this potential for a real or perceived conflict of interest in selecting staff members and contractors, and they considered carefully the nature and currency of such relationships.

All staff members and contractors who worked within the Commission's facility or who had access to our network were required to obtain level 2 (secret) security clearance.

■ Learning phase

Each commission of inquiry is unique, with its own needs and challenges. Fortunately for me, many other commissions, reviews, and examinations had looked at some of the issues mandated for our Inquiry. I contacted some of the people involved who were available to share their experiences and to provide suggestions on how the Commission might undertake its responsibilities.

I found the principles adopted by the Walkerton Inquiry led by Justice Dennis O'Connor appropriate to help us determine our needs:

- Be open.
- Present opportunities for public participation.
- Provide open and fair processes and procedures.
- Be thorough but not exhaustive, basing the process on the principle of proportionality.
- Be timely.
- Be responsible.¹

I convened briefings for Commission staff with the Honourable John Fraser, the Honourable Bryan Williams, and Dr. Peter Pearse, all of whom had conducted fisheries- and sockeye-related studies and inquiries. Commission staff and I also met with Dr. Harry Swain, who had chaired the Research Advisory Panel of the Walkerton Inquiry and the subsequent Ontario Expert Panel on Water and Wastewater. Members of my executive team participated in think-tank sessions hosted by Simon Fraser University, the Integrated Salmon Dialogue Forum, meetings and conferences of the Pacific

Salmon Commission, and an orientation session hosted by the Department of Fisheries and Oceans.

I liaised with colleagues across the country who had served recently as commissioners and sought their wisdom and advice on their experiences conducting commissions of inquiry. The Oliphant Commission had not yet completed its inquiry, and its commissioner, senior lead counsel, and director of finance and administration met with me and my executive team.² We also had the benefit of discussions with other commissioners of recent commissions of inquiry, in particular Justice Denise Bellamy, Justice Stephen Goudge, and Justice Dennis O'Connor.³ Early on, I read *The Conduct of Public Inquiries: Law, Policy, and Practice* by Ed Ratushny⁴ and *The Law of Public Inquiries in Canada* by Simon Ruel.⁵ Both texts were valuable ongoing guides to me, counsel, and staff during the life of the Commission.

■ Role of counsel

I appointed the senior Commission counsel to manage the substantive work of the Commission, and I depended on him and his legal team to handle all aspects of the Inquiry. This work included identifying the issues and themes to be investigated; requesting the disclosure of documents; determining the witnesses, including expert witnesses; planning and revising the hearing schedule; overseeing the hearing-room procedures; collaborating with the participants' counsel in the conduct of the Inquiry; and calling all the witnesses and leading their evidence.

The Rules for Procedure and Practice that I set provide: "Commission counsel have the primary responsibility for representing the public interest, including the responsibility to ensure that all matters that bear upon the public interest are brought to [my] attention."^{*} This rule placed significant responsibility on Commission counsel to manage all aspects of the Inquiry and to ensure that the Inquiry fulfilled the mandate I had been assigned. Throughout the Inquiry I depended on the advice and diligence of my legal team, and I was pleased with the manner in which Commission counsel engaged participants' counsel and worked collaboratively to ensure that the Inquiry was achieving

its intended purposes. I discuss the hearing process more fully later in this chapter.

■ Budgeting

An early requirement of the Commission was to prepare a budget that was consistent with the dates specified in the Terms of Reference, although it was unclear in the early stages if the time frame given to the Commission would be adequate. PCO staff members were very helpful in drafting the budget, and they worked with Commission staff to prepare an interim budget for the balance of the first fiscal year and a budget for the second and third years of the Commission. The first budget was covered by PCO resources because it was too late in the fiscal period to forward a submission to the Treasury Board.

Many standard budget items are common to most commissions of inquiry, including administrative and support personnel, legal counsel, media, production of reports, information technology and websites, hearings-related rentals and support, transcription services, travel and accommodation, office and commission supplies, facilities, and furniture and equipment. Federal commissions include a requirement for simultaneous interpretation during hearings and provision of all documents and reports produced by the Commission in both official languages. The Commission administered a federally funded Contribution Program to assist participants who lacked the resources to hire legal counsel to represent them. In addition, the budget included estimates for public forums in Fraser River and coastal communities as well as visits to particular sites there.

Because none of the Commission administrative staff had previous experience in managing a federal commission, we depended on assistance from PCO staff and the director of finance and administration for the Oliphant Commission. At the time we were getting under way, the Contribution Program was being revised by PCO in response to the experiences of previous commissions. Developing a budget without a firm policy in place presented some challenges. A list of the budget categories we used appears as Table 3.5.1.

* See www.cohencommission.ca/en/rules, a copy of which is on the DVD accompanying this Report.

Table 3.5.1 Categories included in Commission budget

Category	Items included
Legal	
Commission counsel	Fees and expenses
Legal advice (external)	Independent legal advice, when required
Document reviewers	Fees and expenses
Miscellaneous disbursements	Minor expenses for legal team
Research	
Research director	Fees and expenses
Research assistants	Salary and benefits
Advisory panel	Fees and expenses for expert panel members
Researchers / peer reviewers	Fees and expenses
Library materials and searches	Books, reports, Internet searches, etc.
Miscellaneous research	Fees and expenses for other experts (learning sessions)
Staff	
Commission staff	Salary and benefits for executive director, director of finance and administration, director of communications, Contribution Program manager, document manager, coordinators, administrative / legal assistants, receptionists, finance clerk, hearings coordinator, etc.
Government support staff	Share in cost of PCO employees assisting Commission in various capacities (procurement, human resources, financial, administrative, contracting)
Miscellaneous	Training courses, minor staff expenses
Meeting expenses	
Hospitality	Catering for in-house meetings, lunches for visitors
Miscellaneous	Kitchen supplies, minor petty cash purchases, etc.
Hearings	
Contribution Program	Legal fees and expenses for groups or individuals granted participant status
Hearings support	Court registrar, commissioners, sheriffs, audio / visual needs
Transcripts and interpretation	Daily transcripts, fees / expenses for court interpreters (for federal commissions), translation services
Witnesses	Fees and expenses for witnesses who received summonses
Public forums and site visits	Travel, rental of venues, staff expenses, catering, audio / visual
Communications	
Advertising	Commission notices / call for submissions, press releases, advertisements for hiring senior staff members
Communications staff	Communications director; communications assistant(s)
Media monitoring and wire services	Canada Newswire, media monitoring services, newspaper subscriptions
Reports and publications	Design / layout, editing / proofreading, translation, printing, mailing
Translation services	Documents for website (required to be in both official languages for federal commissions)
Website	Webmaster, website registration, search engines
Miscellaneous	Media training, photography, map production, etc.
Office operations	
Furniture and equipment	Office furnishings, computer equipment, software (Ringtail, translation)
IT support (including Ringtail)	Technical / help-desk support, database support, maintenance agreements
Lease of premises	Cost of lease, installation of security system, renovations / alterations
Office supplies	Stationery, kitchen supplies
Miscellaneous	Postage / courier, cable, telephones, shredding services, water, building charges (security cards), government procurement fees

As the Inquiry progressed, I was granted extensions to submit my Final Report, first to June 30, 2012, and ultimately to October 29, 2012. These extensions necessitated revised budgets for the 2011/12 fiscal period and a partial budget from April 1 to December 31, 2012. The budgets were conservatively estimated and a challenge to administer, given that we held more hearings than initially planned. The additional hearing days and an unanticipated requirement to address the 35 applications for interlocutory rulings required additional resources for both Commission and participants' counsel.

Ultimately, however, the Commission carried out its mandate within its approved budgets.

■ Fisheries Research Program

My mandate included an assessment of environmental changes, marine environmental conditions, aquaculture, predators, diseases, water temperature, and other factors that may have affected Fraser River sockeye salmon. To address these issues, the Commission retained a senior fisheries research consultant to coordinate, review, and interpret relevant and current research; manage the Commission's research projects; and provide briefings for me and Commission counsel.

Science Advisory Panel

Consistent with the approach used by the Walkerton Inquiry, I established a Science Advisory Panel to provide guidance to the Commission on its fisheries-related research activities. The Commission appointed six prominent fisheries experts – four academics drawn from Simon Fraser University, the University of British Columbia, and the University of Washington, and two practitioners with extensive experience in fisheries-related and science research. However, because of concerns expressed by some participants that the panel would advise the Commissioner “behind closed doors,” we discontinued it in favour of a peer-review process for each research project. The Science Advisory Panel

was of great assistance in the establishment of the science research projects described below.

Selection of research themes: discussion paper

One of the first tasks of the research program and the Science Advisory Panel was to identify the Commission's research needs. In June 2010, a summary of a dozen proposed research projects and a list of proposed contractors were circulated to the participants as part of a discussion paper. The participants were invited to make suggestions for changes as well as to identify additional research topics for consideration. The discussion paper is available on our website and is included on the DVD accompanying this volume.

Research projects

Following input from the participants, the Commission approved 15 research projects and selected contractors from organizations and firms involved in fisheries research and from provincial universities. Contractors were provided with a scope-of-work statement defining in broad terms the deliverables required by the Commission. These researchers were not asked to engage in primary research but rather to report on the best available existing research. The one exception was a statistical analysis of data relating to salmon farms. The contractors were required to prepare a work plan within two weeks of signing the contract and to review it with the Commission's research consultant.

Peer reviews

Toward the end of each project, the draft technical report was reviewed by three experts in the field of investigation. These peer reviews, which were provided to the contractors for consideration, are appended to the final technical reports. A few months into the research projects, following the submission of the draft technical reports, all the contractors participated in a roundtable discussion on their findings up to that point.

Publication of reports

As the final technical reports became available, they were circulated to the participants. Once entered as exhibits at the hearings, the reports were posted to our website. They were also added to Ringtail, as discussed below, where they formed part of the searchable database.

Commission counsel decided not to present Project 11, Fraser River Sockeye Salmon – Status of DFO Science and Management, into evidence. The financial information requested by the Commission’s researcher for this project could not be obtained in the time frame needed to complete the intended analyses. I did, however, hear direct evidence on the issues covered in this report, in particular from DFO witnesses during the final hearing theme, DFO Priorities and Summary. The Commission also reviewed an analysis of DFO’s accounting records prepared by an external contractor.

Documents

Understandably, the Inquiry was document intensive. On November 25, 2009, soon after I was appointed, I required DFO to produce all records relating to Fraser River sockeye. In January 2010, Commission counsel accepted the proposal of the Department of Justice to concentrate on documents from the previous five years, but to produce clearly relevant documents going back further. Commission counsel accepted five years because it was sufficient to cover the four-year life cycle of a generation of sockeye. I felt that the most recent documents would be the most useful and would give Commission counsel the information on which to base demands for specific earlier documents. A blanket requirement going back further would have made the difficult document production process virtually impossible.

DFO, the Department of Justice, and the other government departments from which we required document production put immense efforts into the process, but, inevitably there were challenges arising from the sheer scale of the undertaking, considerations of what types of documents would be likely to be helpful to me, and assertions of privilege. Some of these issues were the subject of

rulings, which are included on the DVD accompanying this Report.

The Terms of Reference required us to “use the automated documents management program specified by the Attorney General of Canada” – Ringtail Legal (Ringtail), a comprehensive, complex, and sophisticated application that assists users in searching millions of documents on many fields. Users can label, sort, tag, annotate, redact, and create electronic “binders.” These binders can be shared across all users or limited to a specified group.

Ringtail is an Australian product that is handled by FTI Technology, with offices worldwide. A Canadian firm, Commonwealth Legal (CWL), with an office in Vancouver, provides a variety of services, including help-desk support, for Ringtail. The Commission contracted CWL to provide training for users, technical help-desk support, and document management services (e.g., preparing documents to be imported and creating content files from documents that contained redacted information).

A key feature of Ringtail is its Internet interface. Anyone with an Internet connection is able to access the application, subject to security provisions. This feature meant that Commission staff, Commission counsel, and the participants could, through the Internet, access the documents housed within Ringtail at any time, including in the hearing room.

Once the application had been installed, a one-week full-time training program was provided for the staff members selected to serve as Ringtail administrators, with core support coming from the Commission’s document manager, a research assistant, and, to a lesser extent, the executive director. Following the training of key staff members, CWL provided training for the users of the document management system, including Commission and participants’ counsel and document reviewers, the hearings coordinator, the webmaster, and Commission research staff. Training initially took place in an off-site classroom and involved several sessions; subsequently, CWL gave additional training through the Internet and by telephone conferencing.

The Commission acquired 64 Ringtail licences, allowing us to allocate more than one licence to most participants. Additional licences were issued on a priority basis; participant coalitions received first priority for multiple licences. Some participants requested additional licences, and in a few cases,

three licences were issued with the understanding that one or more would be withdrawn if another participant group asked for a second licence. Only one user for each licence could access the Ringtail program at a time. If a second user from that participant attempted to use the licensed account, the first user would be bumped.

Participants were also provided with a secure VPN account on the Commission's server for each Ringtail licence issued. This account allowed access to Ringtail through the user's desktop Internet browser. For a participant group with two or more licences, all users (with one exception) shared the group account – meaning that electronic notes, tags, comments, redactions, and binders were shared electronically within the group. One participant coalition group used a separate account to allow internal privacy.

In addition to the electronic binders prepared by participants for their own use, the Commission's reviewers and counsel prepared binders of documents on particular themes and issues. These binders were made available electronically to all participants through their Ringtail accounts.

Before being given access to the Ringtail database, participants and their counsel were required to sign a confidentiality undertaking that they would use the documents or information from the database solely for the purposes of the Inquiry and not disclose them except for those purposes. Because licences could be shared among users, the senior counsel for each participant was responsible for ensuring that every user from that participant had signed an undertaking.

Late in the evidentiary hearings in 2011, a concern arose that documents from Ringtail were being leaked to the media and to non-participants. Some participants complained to me about this situation, and at that point, Commission counsel and I agreed to tighten access: only counsel for the participants would be able to access documents in Ringtail. Counsel could discuss documents with participants who had signed the undertaking but not give them copies.

We received the first set of disclosure documents (a "production") from Canada in early February 2010. Subsequent productions from the Department of Justice were received every second week, and the final and 67th production arrived on January 10, 2012, a few days after the conclusion

of the infectious salmon anemia virus (ISAv) evidentiary hearings. When documents could not be disclosed in sufficient time before the hearings to be entered into the Ringtail database, electronic copies were distributed to participants. The total number of documents disclosed by Canada exceeded 525,000.

Participants other than Canada also disclosed about 7,800 documents. Although the Commission had prepared guidelines for the participants to follow in preparing disclosure documents, materials arrived in various formats. Some participants without significant resources simply provided boxes of materials, which were sent to CWL to be prepared for importing into Ringtail. The electronic files provided by other participants were also forwarded to CWL.

The cost of the Ringtail program was more than \$100,000 and included the purchase of the application, the initial and upgrade installations, individual licences for 64 users, annual maintenance agreements, and training for the system administrators and users. The vast majority of documents imported into the program were provided in Ringtail format by the Department of Justice. About 1.5 percent of the documents were provided by other participants, and the conversion to a Ringtail format added approximately \$30,000 to the cost.

Three staff members were responsible for providing administrative support for the Ringtail application, and during the first few months, their combined time easily exceeded that of a full-time position. Their tasks included managing two separate databases, assigning licences to users, providing help-desk support for internal users and reviewers of participants' documents, troubleshooting problems, importing documents into the two databases, and managing the production of Ringtail documents for the participants.

The help-desk support provided by FTI Consulting was very good to excellent and, for the most part, was delivered in a timely manner. A log record of all the help-desk issues was shared among the administrators. As users became comfortable with the program, the demands on its administrators dropped off appreciably.

In addition to the management of the Ringtail disclosure document system, the Commission set up an internal system to manage all the non-disclosure documents it received. These documents

consisted of correspondence, facsimiles, emails, reports, CD-ROMs, DVDs, and electronic files. The document manager received and kept all the documents and circulated copies as appropriate. A record of the documents was entered in a database, with hard copies stored in the secure file room. A record of all outgoing Commission correspondence was kept by the document manager and included in the database.

Public forums

I held public forums in 10 communities throughout the Fraser River drainage basin and in coastal centres involved in the sockeye fishery (see Appendix C). Their purpose was to receive public input on the issues identified in the Commission’s mandate. Summaries of the presentations from each public forum were made available on the Commission’s website.



Public Forum, Lillooet, BC, 2010

More than 600 people attended the forums, and 109 people made oral presentations. As noted in the Commission’s Interim Report, all the presenters spoke passionately about the importance of the Fraser River sockeye fishery. Commission staff reviewed the presentations, which helped to inform the Commission’s work and which I considered in writing this Report.

Table 3.5.2 sets out the date and location for each of these forums.

Table 3.5.2 The Commission’s public forums

Date	Location
August 18, 2010	Lillooet
August 25, 2010	Campbell River
September 1, 2010	Prince Rupert
September 13, 2010	Steveston
September 14, 2010	Nanaimo
September 16, 2010	Victoria
September 20, 2010	New Westminster
September 23, 2010	Prince George
September 29, 2010	Chilliwack
October 21, 2010	Kamloops

The forums were informal sessions that provided an opportunity for community members to share their views on the Commission’s mandate. The seating for each forum was arranged in a circle, and attendees were given the opportunity to speak from their seats or from the podium. I chaired the forums from a small table next to the podium, both set inside the circle. Most of the presenters (see Appendix C) spoke from the podium, and many used PowerPoint to support their presentations.

A pre-registration application, available on the website, was used by most presenters. Time permitting, any attendee was given the opportunity to make a presentation. Presenters were usually given 10 minutes and, for the most part, finished within this time limit. Subject to the time available and the number of speakers, some extensive presentations were allowed more time. Written material provided by presenters was posted on our website as a public submission. A short summary of the key points of each presentation was also placed on our website.

Each forum began with a welcome from an elder from the local First Nations community. This welcome was followed by a short video produced by the Commission which explained our purpose and our mandate.* I invited presenters to appear in the order in which their materials had been received by the Commission. Consistent with the requirement to conduct our affairs according to the *Official Languages Act*, simultaneous French translation services were provided at all forums.

* The video is available on the DVD accompanying this Report.

■ Site visits

I visited 14 sites in the Fraser River watershed and on the migration routes of Fraser River sockeye in the same general areas as the public forums. Locations included First Nations fishing sites; a land-based aquaculture facility; net-pen fish farms, hatcheries, and spawning grounds; counting stations on the Fraser River; a cannery; fishing museums; and a pulp mill. Many of the site visits had limited capacity and were typically restricted to one or two Commission staff, one media representative, and two video-recording personnel. A video of each site visit was prepared and made available to any participant who wanted a copy. The site visits provided a context for information I would receive over the coming months. Table 3.5.3 sets out the date, location, and description of each of these site visits.

Commission staff are grateful to the many people who assisted with the site visits, along with various organizations. Together with the public forums, these events deepened my understanding of different aspects of the Fraser River sockeye fishery.

■ Written public submissions

To enable members of the public to participate in the Inquiry, the Commission accepted written



Dip net fishing on the Fraser River, BC, 2010

public submissions through our website from March 2010 to October 3, 2011 (the end of the evidentiary hearings). When the Commission added additional hearing days on the infectious salmon anemia virus (ISAv), the public submission process was reopened in November 2011 and lasted until December 20, 2011. Written submissions also came from the public forums held in 2010. In total, the Commission received 892 relevant and appropriate written submissions from members of the public. All these public submissions are summarized and posted in full on our website. A list of the submitters can be found in Appendix D.

A concerned and engaged public embraced the opportunity to express opinions to me through

Table 3.5.3 The Commission's site visits

Date	Location	Description
August 12	Mission / Agassiz	<ul style="list-style-type: none"> • Traditional native fishery at Cheam Beach • Mission hydroacoustic station • Inch Creek hatchery • Swift Aquaculture (land-based aquaculture facility)
August 19	Lillooet	<ul style="list-style-type: none"> • First Nations fishery on the Bridge River
August 19	Yale	<ul style="list-style-type: none"> • Qualark hydroacoustic monitoring site
August 26	Campbell River	<ul style="list-style-type: none"> • Marine Harvest salmon fish farm
September 1	Prince Rupert	<ul style="list-style-type: none"> • North Pacific Cannery Heritage Museum
September 2	Prince Rupert	<ul style="list-style-type: none"> • Canadian Fishing Company Cannery
September 13	Steveston	<ul style="list-style-type: none"> • Gulf of Georgia Cannery National Historic Site
September 23	Prince George	<ul style="list-style-type: none"> • Northwood Pulp Mill
September 29	Maple Ridge	<ul style="list-style-type: none"> • Alouette sockeye reanadromization project
October 21	Harrison Mills	<ul style="list-style-type: none"> • Weaver Creek spawning channel
October 22	Kamloops	<ul style="list-style-type: none"> • Adams River salmon run

these processes. Many submissions were lengthy documents presenting scientific, political, or historical information about salmon habitat, research, cultural significance, or other related issues. Many more submissions were brief expressions of opinion, which offered me a useful snapshot of public thought on several issues.

Although submissions came in continually, we received submissions in larger numbers when the Commission undertook public activities or when it was receiving a good deal of media coverage. At the time of the initial hearings in June 2010, we observed a spike in the number of submissions, as we did again when the Commission held public forums from August through mid-October 2010. Another spike occurred when evidentiary hearings began in late October 2010. The Commission received less media coverage during the winter and spring months of 2011, and public submissions declined during that time.

When the Commission resumed hearings in August 2011 after a summer recess, we began hearings on disease and aquaculture, both of which garnered much media and public interest. During the final two months of public hearings, the numbers of public submissions spiked, with most submitters commenting on those topics. When the public submission process was reopened for several weeks for the December 2011 hearings, I received an abundance of submissions, primarily on salmon farming and with comments on the process undertaken by the Commission for those hearings (see Figure 3.5.1).

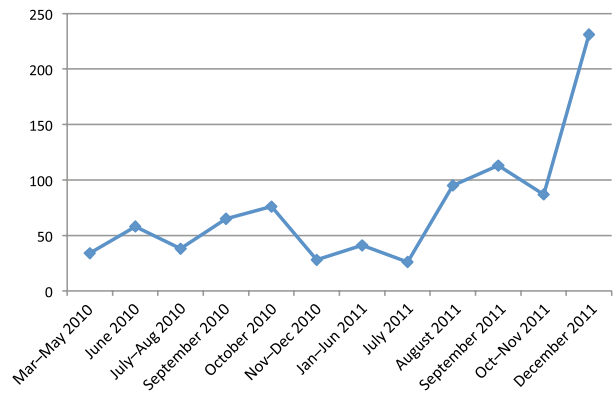


Figure 3.5.1 Number of public submissions by date

Public submissions covered most of the topics discussed in this Final Report, though some topics generated more submissions than others (see Figure 3.5.2). The largest number of submissions was on the topic of salmon farms. I also received a great number of submissions discussing my mandate and the manner in which I would be conducting the Inquiry. Many submitters had comments or information about specific habitat issues; others made comments about the roles and responsibilities of DFO; and some had much to say about management of the sockeye fishery. Although a large number of oral presentations at the public forums focused on Aboriginal history and rights, the Commission received fewer written presentations on these topics. Similarly, we heard more about commercial fishing at public forums, and less in written submissions.

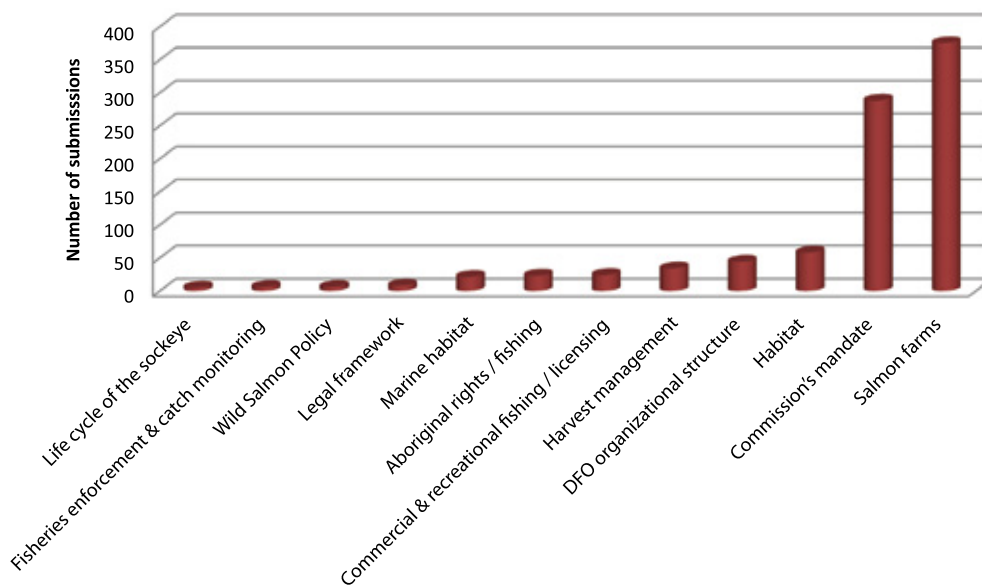


Figure 3.5.2 Public submissions by theme

I appreciated all the submissions we received, both at the public forums and in written form through our website. They were reviewed by Commission staff and form part of the body of evidence I used to make findings of fact and recommendations, as evidenced in this Report. I respect the passion of British Columbians and the depth of their experience and knowledge. Their participation helped me to understand the situation facing Fraser River sockeye and the impact of this important resource on the entire province.

■ Hearing process

Hearings were carried out over a 15-month period. The testimony of witnesses and the exhibits filed during the hearings were the primary source of evidence I considered for this Report. The following information provides a brief glimpse into how the hearings were conducted.

Hearing-room facilities

The Federal Court operates a number of courtrooms at 701 West Georgia Street, across from our offices. One of these rooms is large enough to accommodate 20 or more counsel, an interpretation booth, and an audience capacity of at least 120 people. We were fortunate to be able to use it for virtually all our hearings. On the same floor as the courtroom are rooms that we used for office services and for me, Commission counsel, participants' counsel, witnesses, and a media centre.

The courtroom was equipped with telephone and Internet ports. A wireless router, connected to the Internet port, provided direct cable connections for the Commission's support staff and for transcription staff, and wireless connections for me, counsel, and, eventually, members of the audience. This approach enabled staff to access Ringtail documents from the Commission's server and to send images to monitors and two data projectors. Monitors were strategically placed for me, counsel, Commission staff, witnesses, media, transcribers, and interpreters. Two data projectors provided the audience with a view of the displayed information.

Exhibits were posted on our website as soon as possible after being entered. In some cases, the sheer volume of exhibits made it impossible for staff to keep pace, and it took a few days for them to catch up. All exhibits were eventually posted to the website and were available to the public on an ongoing basis.

Occasionally, witnesses from distant locations were called to testify at the hearings. These witnesses were linked to the courtroom via Skype and a telephone conference unit in the courtroom. This approach saved travel time and expense and provided an effective mechanism for introducing evidence from these witnesses.

Commissionaires, and occasionally members from the BC Sheriff Services, provided security services. During periods of high interest, the Commission set aside and monitored reserved seating for participants.

Identification of issues

The Terms of Reference required the Commission to assess previous examinations, investigations, and reports relevant to the Inquiry; to consider the responses of the DFO and the government; and to file an Interim Report by August 1, 2010, later extended to October 29, 2010. On that date, I submitted my Interim Report, *Fraser River Sockeye Salmon: Past Declines. Future Sustainability?*, to the Governor in Council. that report includes my preliminary views on and assessment of previous examinations, investigations, and reports that I considered relevant to the Inquiry, along with the government's responses.

The Terms of Reference and this review identified many issues the Inquiry needed to consider. Commission counsel and staff, with input from the Science Advisory Panel, developed a draft discussion paper that included a list of issues to be considered. The Commission circulated that draft to participants for their comments. The final discussion paper, which was made public, provided an outline for the Commission for the conduct of the Inquiry.

Commission counsel prepared a list of themes and developed a hearing schedule for examining them. Detailed hearing schedules listing planned witnesses and outlining topics

Table 3.5.4 Themes covered in Commission hearings, in alphabetical order

Theme	Days of Hearings
Aboriginal fishing	7
Aboriginal world view, cultural context, and traditional knowledge	3
Advice to the minister regarding sockeye returns in 2009	1
Aquaculture	9
Commercial fishing	7
Conservation, sustainability, and stewardship	2
Cultus Lake - SARA listing decision	3
Cultus Lake - recovery efforts from 2005 onward	2
Cumulative impact assessment	2
DFO priorities and summary	5
DFO's organizational structure	4
Diseases	4
Effects on habitat in the marine environment	5
Effects on the Fraser River watershed - gravel removal	2
Effects on the Fraser River watershed - logging	1
Effects on the Fraser River watershed - municipal wastewater	2
Effects on the Fraser River watershed - pulp and paper effluent, mining effluent	1
Effects on the Fraser River watershed - urbanization	3
Examination on scientific reports: Project 10, Fraser River Sockeye Production Dynamics	2
Examination on scientific reports: Project 12, Fraser River Sockeye Habitat Use in the Lower Fraser and Strait of Georgia	2
Examination on scientific reports: Project 2, Potential Effects of Contaminants on Fraser River Sockeye Salmon	2
Examination on scientific reports: Project 3, Evaluating the Status of Fraser River Sockeye Salmon and the Role of Freshwater Ecology in Their Decline	2
Examination on scientific reports: Project 7, Fraser River Sockeye Fisheries and Fisheries Management and Comparison with Bristol Bay Sockeye Fisheries	2
Examination on scientific reports: Project 9, A Review of Potential Climate Change Effects on Survival of Fraser River Sockeye Salmon and an Analysis of Interannual Trends in En Route Loss and Pre-spawn Mortality	2
Fisheries monitoring and enforcement	4
Fraser River sockeye life cycle	1
Habitat enhancement and restoration	1
Habitat management and enforcement	5
Harvest management	19
Hydroelectric power, water flow, and temperature	2
Pacific Salmon Commission and the Pacific Salmon Treaty	2
Perspectives on the Aboriginal and treaty rights framework underlying the Fraser River sockeye salmon fishery	1
Predation	3
Recreational fishing	3
Wild Salmon Policy	14

were circulated two or three weeks in advance of each block of hearing and revised as needed. The hearings coordinator provided daily updates throughout the hearings process, including a summary of the current day's activities and the proposed activities for the next day.

Commission counsel met with participants' counsel regularly throughout the life of the Commission to discuss procedural issues and concerns. I did not participate in these meetings.

Between October 2010 and September 2011, I heard 125 days of evidence, including testimony from 172 witnesses (see Appendix E) and information provided in 1,993 exhibits. The themes covered by the evidentiary hearings are listed alphabetically in Table 3.5.4, along with the number of days (or partial days) on each theme.

From November 4 to 10, 2011, I heard five days of final oral submissions from participants. Because the Federal Court facility was not available, I heard these submissions in the 12th-floor hearing room of the BC Securities Commission, in the same building as the Federal Court. This room cannot accommodate many observers, so the Commission arranged for audio broadcast of the hearings in both English and French through a link on the Commission's website.

In October 2011, new information came to light regarding testing for the infectious salmon anemia virus (ISAV) in wild sockeye salmon. To deal with this additional information, I added three days of evidentiary hearings from December 15 to 19, 2011, at the Asia Pacific Hall at the Morris J. Wosk Centre for Dialogue, 580 West Hastings Street, in Vancouver. These hearings included testimony from eight witnesses and an additional 152 exhibits.

In total, the Commission held 128 days of evidentiary hearings over 15 months. We heard from 179 witnesses and entered 2,145 exhibits. Exhibits and transcripts of the oral testimony were posted on the Commission's website. All transcripts, along with exhibits referred to in this Report, are on the DVD accompanying this Report.

The calendar on the Commission's website listed each hearing day, showing the witness(es) who appeared (see Appendix F) and the exhibits that were entered. Transcripts were also posted for each hearing day once they were translated, which generally took about two weeks.

Rules of procedure

Under the authority of the *Inquiries Act* and the Commission's Terms of Reference, the Commission developed rules for the conduct of the Inquiry.

I adopted two sets of rules: one covering applications for standing, and the other to guide the Inquiry process. Commission counsel circulated the Rules for Procedure and Practice to participants for review and comment before I formally adopted them. The rules allowed for revisions, of which there were two during the Inquiry: one to clarify the process for bringing applications, and one to clarify the process whereby participants could bring forward expert reports. The Rules of Procedure and Practice are included on the DVD accompanying this Report.

Preparing and calling evidence

As discussed above, Commission counsel were responsible for presenting all material evidence at the Inquiry, without advancing any particular interest. Therefore, the Rules did not restrict Commission counsel in the introduction of evidence, and Commission counsel both led direct evidence and cross-examined witnesses.

Commission counsel determined who would be called as witnesses for all hearings and invited participants to suggest potential witnesses. Under the Commission's Rules of Procedure and Practice, participants were entitled to apply to the Commissioner to call any witness whom Commission counsel declined to call, although such applications were rare.

Before being selected, prospective witnesses were interviewed by a Commission counsel team consisting of the senior counsel or an associate counsel, a junior counsel, and perhaps a document reviewer / legal researcher who provided support to the team. (Document reviewers / legal researchers were law students, recent graduates of law programs or lawyers who had recently been called to the bar.) In many cases, witnesses were accompanied by legal counsel, typically a participant's counsel. For the most part, interviews were conducted in face-to-face meetings in the Commission's offices, though, occasionally, the Commission team met the interviewees

in their home community. In a few instances, interviews were conducted through conferencing facilities, including video-conferencing facilities arranged by the Department of Justice for federal witnesses.

Commission counsel conducted 380 interviews of prospective witnesses in preparation for the evidentiary hearings. Many of the interviewees were current or former employees and managers from DFO, while others were commercial and recreational fishers, environmentalists, members of First Nations, scientists and academics, and consultants.

Before the start of a new topic at the hearings, Commission counsel circulated to all participants a summary of the anticipated evidence of each witness, an electronic “binder” of the documents that Commission counsel considered to be potentially useful to the topic, and a list of documents that Commission counsel intended to ask the witness to identify.

Given our time constraints, Commission counsel used several time-saving methods for entering evidence. They entered the evidence of a number of witnesses by way of affidavit: on some occasions, the affidavits represented a witness’s entire evidence; on others, the affiant attended the hearing to provide additional testimony and for cross-examination. Generally, the questions and the answers were set out in exhibits to the affidavit. For some witnesses, time ran out before all counsel had completed their examination. In such cases, Commission and participants’ counsel (see Appendix G) posed the remaining questions in writing. Where questions were completed in writing, the questions and answers were entered as exhibits.

Panels of witnesses were used for most of the oral testimony. The panels consisted of two, three, or four witnesses who could speak to the issue under discussion, with the witnesses often representing divergent perspectives. Panels at times included witnesses participating by video link. The panel members gave evidence and were cross-examined. This approach allowed me to hear from many more witnesses than would have been possible if they had all been called individually, and it allowed for an exchange among the witnesses – often permitting them to discuss one another’s comments and reconcile their views in

a way that was helpful to my mandate to encourage broad co-operation among participants.

Technical reports

As discussed above, commission counsel entered 15 technical reports into evidence at the hearings and called their authors as witnesses. Summaries of these reports are found in Volume 2, Appendix B. The full reports are available on the Commission’s website and are also included on the DVD accompanying this Report. The technical reports were not advanced by Commission counsel to support a particular interest but, rather, to provide me with the authors’ technical expertise. The authors were subject to cross-examination by Commission counsel as well as by participants’ counsel. Before testifying, a number of the authors corrected, clarified, or expanded their reports on errata sheets, which were marked as exhibits along with the reports.

Policy and practice reports

To provide background on uncontroversial matters for me and the participants, Commission counsel prepared policy and practice reports (PPRs). These reports were developed through Commission counsel’s review of documents and interviews of witnesses on the policies and practices of DFO. A list of the PPRs is included in Volume 1, Appendix E, and the full PPRs are available on the website and included on the DVD accompanying this Report.

The PPRs were circulated to all participants in advance of the hearing on the topic covered. They were marked and entered into the record as PPRs rather than as exhibits, and I considered them and the documents referenced in them in the preparation of my Report. Participants were able to challenge information contained in the PPRs through witness examination. In addition, participants were invited to make submissions on the content of the PPRs. Initially, these submissions were received at the beginning of the hearing topic and appended to the PPRs. However, this process quickly became unwieldy, and participants were asked instead to include any submissions on the PPRs as part of their final submissions.

Expert witnesses

Many witnesses were experts in a field of study or work and were qualified as such in the hearings. The authors of the technical reports were called as expert witnesses to address their findings. The preparation process for expert witnesses followed the same process used for all witnesses.

In addition to the technical reports prepared at the request of the Commission, some participants had their own expert reports prepared. Notice of such reports had to be given to Commission counsel for consideration 45 days before the start of the relevant hearing topic. Several such expert reports prepared on behalf of participants were entered as exhibits, and their authors were called as witnesses. If Commission counsel was not persuaded to enter the report, the participant could apply to me for a ruling on the admission of the report.

Limits on examinations by participants

This Inquiry covered a vast number of complex issues, many of which could be the subject of their own inquiries. Completing the hearings in a timely way was very important and required discipline on the part of counsel. In order to try to manage the available time for each hearing topic, Commission counsel canvassed participants' counsel in advance to understand which witnesses they were interested in examining and how much time they felt they would need. Commission counsel then attempted to allocate the available time fairly among the parties. In many instances the requested time exceeded the available time, and participants' counsel were asked to adjust their requests. Ultimately, a schedule of estimated time allocations was prepared for each day, and as the day progressed, Commission counsel refined allocations in an attempt to be fair to all participants.

Hearings logistics

The hearings coordinator was generally responsible for the day-to-day operations of the hearings. One of his key responsibilities was to manage the exhibit process, which was entirely electronic. A registrar

assisted in the swearing in of witnesses and in keeping records of daily activities. The registrar, a former employee of the Federal Court Administration Services, also served as the Commission's liaison to that group. His knowledge of the personnel, the policies and practices, and the facilities was a significant factor in the smooth functioning of the hearings.

Daily transcripts were prepared and delivered to the Commission the morning following the hearing. They were circulated to participants' counsel electronically on a confidential basis until they were translated and posted on the Commission's website. The transcripts were also imported into Ringtail, where they were searchable along with all the other disclosed documents.

All 2,145 exhibits were made available to the public through the Commission's website. Those referred to in this Report are on the DVD accompanying this Report.

The Canadian Broadcasting Corporation (CBC) installed cabling from the courtroom to a separate media room and supplied a video media box that permitted other members of the media to access the video feed. A monitor set up in the media room allowed individuals there to see the documents as they were presented in the courtroom. Commission staff also installed audio-feed boxes for both English and French to allow the media to make audio recordings. Although media networks video recorded only a limited number of sessions, a documentary video producer recorded all the hearings and made his signal available to the media through the CBC's cabling and equipment.

Media interest in the hearings varied greatly, with some hearing days having a few reporters and others having a large number. An online media site attempted to provide an audio webcast of the August 2011 aquaculture hearings. Although the webcasts were successful for a few days, technical issues prevented the site from continuing the service.

The only camera that I permitted in the courtroom was the one video camera described above. On several occasions, I permitted a brief photo opportunity during a break in the proceedings for still and video news cameras.

The Commission's director of communications or her assistant was in the courtroom facility on most

hearing days to monitor the use of the media room and respond to reporters' requests for information.

The new media presented challenges for our communications team, as bloggers and other non-accredited media requested access to services normally provided only to accredited media. Ultimately, because non-accredited media were able to attend hearings, view exhibits, and have complimentary Internet access, Commission staff decided that media facilities would be limited to accredited media.

The Federal Court requires that access to its facility be controlled. When the hearings were in session, therefore, a commissionaire provided basic security for the facility, helped give directions, and took care of items that were prohibited in the courtroom. During some hearing days, when large crowds were anticipated, the Commission arranged for the BC Sheriff Services to have one or two sheriffs in attendance, or for the BC Corps of Commissionaires to provide additional commissionaires to monitor activities in the courtroom.

■ Participants

Shortly after selecting most of my counsel team, we addressed the matter of selecting individuals and organizations with an interest in the mandate of the Commission. The counsel team prepared Rules, a Notice, and Guidelines for Standing and Funding. The Commission invited participation by the following media release:

The Cohen Commission invites interested persons (individuals, groups, governments, agencies, institutions, or other entities) to apply for standing in the inquiry. Detailed information is available on the "Standing and Funding" page at the Cohen Commission's website.

The Commission received 50 applications for standing from individuals, organizations, and coalitions. We were concerned that the hearings process could become unwieldy with such a large number of participants, so to make our work more manageable and efficient, Commission counsel asked those seeking standing to explore whether they could share a grant of standing

with others. Commission counsel also contacted several applicants directly to explore the possibility of participant coalitions. I appreciate the substantial level of co-operation among participants in their willingness to share grants of standing. As a result of these discussions and after identifying common and shared interests, I granted standing to 20 participants, or participant groups comprising associations, organizations, Aboriginal bands and organizations, and governments. The Government of Canada was granted standing without application. Shortly after the start of the hearings, one of the groups within a coalition requested separate status as a participant because of a difference in interests. Following a review of its submission, I granted this group separate participant status, bringing the total number of participants to 21. A list of the participants is included in Appendix H. During the course of the Inquiry, one or two participants withdrew from their participant groups owing to financial burdens.

Funding for participants

The Terms of Reference authorized me to recommend to the clerk of the privy council that participants be funded – to ensure the appropriate participation of any person granted standing at the Commission to the extent of the person's interest and in accordance with the terms and conditions approved by the Treasury Board – if I was of the view that the person would not otherwise have been able to participate in the Commission. The terms and conditions of the Contribution Program provide for the following participant funding:

Eligible expenditures are restricted solely to legal costs, including disbursements and inter-city travel expenses incurred by counsel, subject to the maximum aggregate number of hours recommended by the Commissioner and approved by the Clerk of the Privy Council, and the limits set out herein. Any other types of costs incurred by a Recipient are excluded.

Participants requesting funding applied to me for a recommendation. They were required to support

their applications with affidavits setting out facts demonstrating that they did not have sufficient financial resources to participate in the work of the Commission without financial assistance for legal counsel.

Commission counsel reviewed the applications for assistance under the Contribution Program, and I accepted some participants for the Contribution Program on the basis of their initial submissions. After I asked others to provide additional information and justification, a few more groups were accepted. Finally, I held hearings where participants whose applications I had not yet accepted had the opportunity to present evidence and arguments to support their need for funding assistance. Initially, I recommended that 14 participants receive assistance under the Contribution Program.

In preparing funding recommendations, I bore several considerations in mind. For example, the Commission's approach was to look to junior counsel for much of the preparation work, but to increase the proportion of funding for attendance at hearings by senior counsel. The funding recommendations reflected that Commission counsel have the primary responsibility for representing the public interest, including being responsible for document review and for organizing and leading all the evidence at evidentiary hearings. Participants' counsel were expected to attend hearing days and examine witnesses when their client's interests, as set out in the Standing Ruling, were directly engaged.

The process for being approved for funding under the Contribution Program included the following steps. Once a participant was accepted for consideration, a small team of the Commission counsel reviewed each applicant to determine its areas of interest in the Inquiry and how many days of hearings were anticipated for each area of interest. They established some basic hours for attendance at hearings, preparation for hearings, meetings, and other typical activities, which were distributed by formula to the senior and junior counsel. The counsel team then proposed a recommendation for my approval, based on this formula for each participant. I reviewed these suggestions and, following adjustments, provided a recommendation to the clerk of the privy council for approval.

Commission counsel informed participants of the approved funding under the Contribution Program. The approved funding and the formula are found in the Rulings section on the DVD accompanying this Report.

Once my recommendation had been approved and communicated to the participants, Commission staff prepared a retainer agreement which was executed by the participant and the Government of Canada. That agreement set out the terms and conditions of the Contribution Program agreement and the funding requirements for the participant. In the case of coalitions, the retainer agreement required each group to designate an individual recipient who would represent the participant group. Following the signing of the retainer agreement, the recipient signed the contribution agreement, which identified the counsel and provided a breakdown of approved hours for the activities detailed in my recommendation.

Throughout the Inquiry, conditions changed, interests expanded, and participants sought amendments to their Contribution Program agreements. Counsel for participants submitted applications, which I reviewed with staff and counsel. I prepared recommendations and forwarded them for approval by the clerk of the privy council. All approved changes required amendments to the retainer agreement.

The Contribution Program is a positive feature of federal inquiries because it allows for the full participation of those who have been granted standing but lack the financial means. Following the completion of the hearings, the Commission and PCO undertook a detailed evaluation of the program, with the intent that it will be considered when the terms and conditions of the Contribution Program are established for future inquiries by the Treasury Board.

Participants' roundtable

Near the end of the evidentiary hearings schedule, Commission counsel invited participants to attend two days of discussions to determine if there was any common ground among them that might be reflected in joint final submissions to me on possible recommendations. I did not participate in these discussions.

Final submissions and replies

Following the close of evidentiary hearings, the participants provided their final written submissions. Written replies by the participants were sent a few days before the presentation of final oral submissions. Owing to the number of participants, Commission counsel set the order of presentations and time limits for the oral submissions; however, consistent with their neutral role, Commission counsel did not make submissions on substantive issues.

As a result of information relating to ISAv, which came to light only at the very end of the evidentiary hearings, I convened a further few days of hearings to address that issue after final oral submissions. Participants were invited to provide further written submissions following those hearings.

Rulings

During the Inquiry, I made 44 rulings or recommendations for funding. They included the initial Ruling on Standing and several amendments to it. All told, there were nine Contribution Program recommendations. The List of Rulings appears as Appendix I, and the rulings are also found on our website and included on the DVD accompanying this Report.

Status reports

The Commission produced five status reports, which provided general information about its main activities during a specific time frame. Status reports were released in March 2010, July 2010, January 2011, April 2011, and October 2011. These reports are included on the DVD accompanying this Report.

Media / public relations

The mandate of my Inquiry was of interest to many groups and individuals, especially on the West Coast, and I wanted to ensure that the public was kept well informed of our activities. I appointed a director of communications and gave her responsibility for many media-related tasks, among them

preparing and monitoring media releases, preparing status reports for government and the public, managing the website, and providing general support and advice on all communications issues. Our website became our primary vehicle for keeping the public informed of and involved in the challenges facing our Inquiry.

I agreed with Commissioner Bellamy that it was not wise for the commissioner to serve as the spokesperson for a commission. I therefore appointed the senior Commission counsel to be our primary spokesperson, especially for dealing with sensitive issues. The director of communications served as the spokesperson for addressing specific information needs and routine process issues, and the fisheries research consultant for matters of a scientific or research nature.

Website

As noted, our website was the primary tool for communicating with the public. The requirement to have a bilingual website meant that the information placed on it was not always “breaking news,” given that the need to translate all Commission-generated documents delayed their posting for a day or two, and for up to one or two months for large technical documents. We hosted both English and French websites, which were cross-linked. The home page of our websites featured the introductory video, originally produced for the public forums, which explained my mandate and the role of the Commission.

The Calendar and Transcripts section provided a rolling two-month, colour-coded calendar identifying activities such as the public forums and the hearings schedule, which is available in Appendix F. For each hearing day, the location, time, theme, and list of witnesses were provided. Links were included for transcripts and exhibits. Exhibits were posted in the language in which they were received; however, the transcripts required translation, delaying their posting by one or two weeks.

The Hearings section included links to the 2,145 exhibits, 21 policy and practice reports, submissions from the participants, witness lists, list of participants and their counsel, and Rules for Procedure and Practice. Information on the Standing and Funding procedures for

participants was also found in the Hearings section. Links to the Rules, Notice and Guidelines for Applications for Standing and Funding, Terms of Reference, and Contribution Program were also included.

In the Reports and Publications section, we posted reports prepared by the Commission, including the

- discussion paper that outlined the themes to be investigated by the Commission;
- Interim Report, *Fraser River Sockeye Salmon: Past Declines. Future Sustainability?*
- 21 policy and practice reports;
- 15 technical reports; and
- five status reports on the progress of our Commission.

The website will continue to be available through Library and Archives Canada.

All my recommendations for the Contribution Program and my formal decisions or rulings were accessible on the Rulings page. Communications from the clerk of the privy council in response to my recommendations and rulings were also included on this page.

The Media section provided links to news releases, backgrounders, and the Commission's media contact. High-quality photos of me, senior Commission counsel, and the research director, as well as a map of the Fraser River basin, were made available for media use.

The Public Forums section included a schedule for the public forums and an online interactive registration form for anyone interested in making a presentation to me.

The Public Submissions section allowed individuals to enter their submission directly online or to attach it in a common electronic format. Submissions were searchable by submission number, date, author, and content.

■ Translation services

Throughout the initial two years of the Commission, the primary provider of translation services for print material was the Translation Bureau in Ottawa. In addition, the Commission contracted with local translators familiar with

reports for federal commissions of inquiry to handle brief items and items requiring a fast turnaround.

The Translation Bureau provided most translations, but turnaround time was an issue. In addition, the cost of using this service was about twice as much as employing local translators, although there were benefits in that the bureau could handle the high volume of work that came up during our hearings, with reports, transcripts, and other documents all needing translation at the same time. I suggest that future federal commissions clarify any contracts with the Translation Bureau to ensure that the commission retains ownership of intellectual property, including any databases or lexicons developed by the bureau in doing the commission's work.

The turnaround time for translating the Final Report into French was a concern since the Report was anticipated to be a voluminous document. Owing to time pressures, I decided to appoint a team of local translators, including translators from the Translation Bureau, to translate my Final Report. This in-house arrangement shortened the period for translation. The translators worked closely with the writing and editing teams to make the needed changes to the French version, because changes were being suggested and included in the English version of the Final Report.

■ Report production

The Commission's policy counsel drafted the Commission's Interim Report under my direction. He developed an outline for the Final Report and, collegially with the other members of the Inquiry team, drafted the Final Report. I reviewed these drafts with members of the legal team, the research team, and senior members of the staff. An editorial team provided editorial support for the two major reports of the Commission. The editors did two rounds of editing and completed a full review of the final document before it was approved for printing. I reviewed their edits and suggestions with Commission counsel. A proofreader was retained to complete two rounds of proofreading following the editing process, and Commission counsel, staff, and I reviewed and considered her suggestions.

Our translation team translated, edited, and proofread the two reports. A number of reviewers also reviewed and proofread the translations before layout.

We appointed a local firm to design and handle the layout of the reports. This work was reviewed by me and the Commission's writing team. Once all reviews had been completed and final corrections made, the documents were forwarded to an Ottawa-based printer. Printing the reports in the area where most of the copies would be distributed seemed the most cost-effective option, given the weight of the documents.

The distribution of printed reports of federal commissions is limited to members of Parliament, relevant departments, members of the press gallery, and people directly involved in the inquiry. The primary access for the public is through our website. Printed copies of the Interim Report and Final Report are also sold by Publishing and Depository Services, Public Works and Government Services Canada, and local booksellers.

To supplement the written reports, the Commission prepared a DVD of resource materials for the reader. This DVD contains the Terms of Reference, the Final Report, the Interim Report, relevant statutes, the transcripts, the exhibits cited in the Report, the 15 technical reports, the 21 policy and practice reports, and the recommendations summary of previous reports and responses. A CD-ROM version was prepared for the Interim Report.

■ Archives

Following the submission of my Final Report, the Commission staff will prepare all records for archiving. This task was initiated in the early days of the Commission, and before the Commission office closes, all materials will be ready for submission to PCO for transmittal to Library and Archives Canada.

The manager of documents and records was responsible for the collection and custody of these records in both electronic and hard-copy formats. Most of the Commission's records were in an electronic format, which was also acceptable for archival purposes. All electronic material was kept within a Microsoft Access database that made

retrieval reasonably easy both during the existence of the Commission and after it completed its work.

A major undertaking was the archiving of the Ringtail databases. Because each participant's Ringtail database was treated as confidential to that participant, the Commission contracted with CWL to prepare two copies of the database. One copy was stripped of any notes or comments that participants made during the Inquiry. This database was forwarded for archiving, subject to the normal tests for confidentiality and access to information rules. The second database, a complete database of the participants' records, was delivered to Library and Archives Canada with the proviso that it may contain client-solicitor privileged information and is to be accessed only by me or my senior Commission counsel. The Commission's database was also saved in the same formats with the same proviso.

One of the participants had been provided a copy of the Ringtail database for installation on its in-house litigation software. This database was transferred to the Commission on a password-protected hard drive and then forwarded to Library and Archives Canada with the same proviso that it was to be accessed only by me or senior Commission counsel.

■ Dismantling of the Inquiry

PCO provided my staff with a copy of the directive to wrap up the Commission. As noted above, the records for the Commission were forwarded to PCO for transmittal to Library and Archives Canada. All the information technology equipment and software are to be dismantled, packed, and shipped to PCO. Before computers are dismantled, all desktop and laptop hard drives will be erased. Hard drives from copiers are to be removed, erased, and forwarded to PCO.

The furniture and other surplus equipment are to be transferred to Crown Assets Disposal as surplus furnishings and equipment.

In concluding its operations, the Commission requested all participants, contractors, and staff to destroy all Inquiry-related confidential information in their possession and to confirm in writing that they had complied with this request.

Cohen Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River

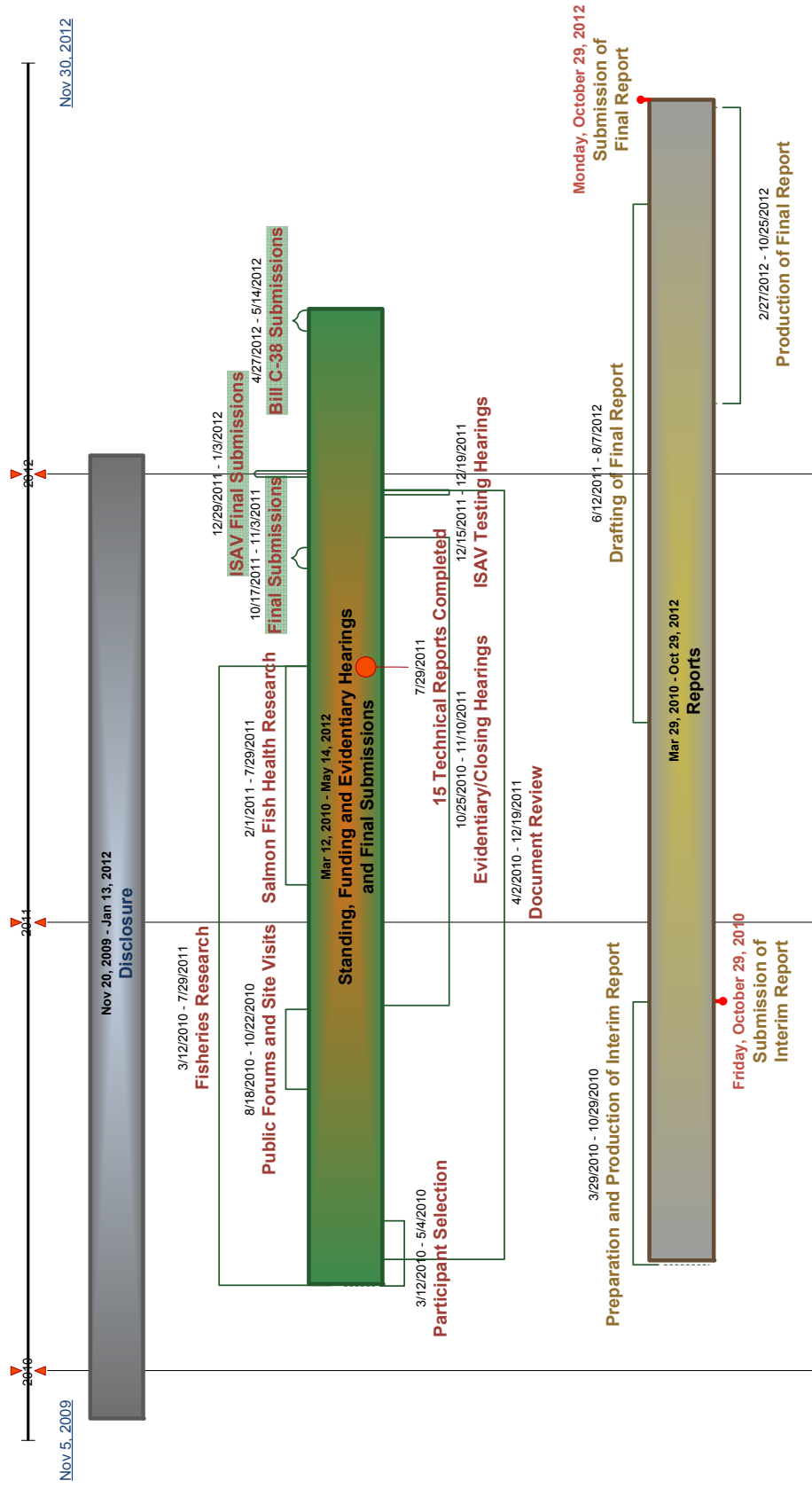


Figure 3.5.3 Cohen Commission timeline

Notes

- 1 Ontario, *Report of the Walkerton Inquiry: Part One, The Events of May 2000 and Related Issues* (Toronto: Ministry of the Attorney General, 2002) (Commissioner Dennis R. O'Connor), 472.
- 2 Canada, Commission of Inquiry into Certain Allegations Regarding Business and Financial Dealings Between Karlheinz Schreiber and the Right Honourable Brian Mulroney, Report (3 vols., Ottawa: Ministry of Public Works and Government Services Canada, 2010) (Commissioner Jeffrey J. Oliphant).
- 3 Toronto Computer Leasing Inquiry / Toronto External Contracts Inquiry Report (4 vols., Toronto, 2005) (Commissioner Denise Bellamy). Ontario, Inquiry into Pediatric Forensic Pathology in Ontario, Report (4 vols., Toronto: Ministry of the Attorney General, 2008) (Commissioner Stephen T. Goudge). Ontario, Report of the Walkerton Inquiry (2 vols. and summary, Toronto: Minister of the Attorney General, 2002) (Commissioner Dennis R. O'Connor).
- 4 Ed Ratushny, *The Conduct of Public Inquiries: Law, Policy, and Practice* (Toronto: Irwin Law, 2009), 215.
- 5 Simon Ruel, *The Law of Public Inquiries in Canada* (Toronto: Carswell, 2010).