

Clerk of the Privy Council and
Secretary to the Cabinet



Greffier du Conseil privé et
Secrétaire du Cabinet

Ottawa, Canada
K1A 0A3

December 16, 2010

The Honourable Bruce Cohen
Commissioner
Commission of Inquiry into the Decline
of Sockeye Salmon in the Fraser River
Suite 2800, PO Box 11530
650 West Georgia Street
Vancouver, British Columbia
V6B 4N7

Dear Commissioner Cohen:

I write in response to your letter of December 2, 2010, in which you recommend changes to the participant funding arrangements under the Contribution Program in respect of the Western Central Coast Salish First Nations.

In considering your recommendation, I note that you have come to the reasoned view that the "exceptional circumstances" required under the terms of the Contribution Program have been met, and that the proposal would not increase the total amount of funding to be provided to this participant. Accordingly, I am pleased to inform you that your request for changes to the participant funding arrangements is granted.

I trust that this is satisfactory and I wish you well in your continuing work.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "W. G. Wouters".

Wayne G. Wouters



December 2, 2010

Via Courier

Mr. Wayne G. Wouters
Clerk of the Privy Council and Secretary to the Cabinet
Privy Council Office
Office of the Clerk of the Privy Council and Secretary to the Cabinet
Langevin Block, 80 Wellington Street
Ottawa, Ontario K1A 0A3

Dear Mr. Wouters:

Re: Further Changes to Participant Funding Arrangements under Contribution Program for Cohen Commission

The history of my previous funding recommendations to you can be summarized as follows:

- On 12 May 2010 (as amended 19 May 2010), I recommended that certain standing groups be granted funding for legal fees in order to participate in the Inquiry. On 9 June 2010, you advised that the Government of Canada had granted funding as I had recommended, in accordance with the terms and conditions of the Treasury Board Contribution Program, to a maximum limit of \$3,423,200. At the time I made these funding recommendations to you, in most cases I recommended funding, as has occurred generally in other federal commissions of inquiry, on the basis that each group would employ the services of one senior and one junior lawyer. I then allocated hours between the senior and junior counsel.
- On 17 August 2010, I wrote to you recommending changes in my funding recommendations in respect of two groups: the Laich-kwil-tach Treaty Society,

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Aboriginal Aquaculture Association, Chief Harold Sewid and Heiltsuk Tribal Council (in that same letter I noted that I granted the Heiltsuk Tribal Council's application for separate standing from that group); and the Musgagmagw Tsawataineuk Tribal Council. On 27 August 2010 you approved those changes.

- On 28 September 2010, I wrote to you recommending changes in my funding recommendations in respect of two recipient groups: the Laich-kwil-tach Treaty Society, Aboriginal Aquaculture Association and Chief Harold Sewid; and the First Nations Coalition. On 6 October 2010 you approved those changes.

In my letter of 28 September 2010, I also noted that I had received one application for a finding of "extraordinary circumstances" under cl. 10(b)(ii) of the Terms and Conditions of the Contribution Program, for which I determined that I did not have sufficient information to find extraordinary circumstances to permit payment of legal fees to more than one senior and one junior counsel. That applicant/recipient group was the Western Central Coast Salish First Nations ("WCCSFN"). On 28 September 2010, I released a ruling denying the WCCSFN's application for a finding of extraordinary circumstances, but granting them leave to reapply to me on this issue.

On 22 November 2010, the WCCSFN wrote to provide further information justifying their request for a finding of extraordinary circumstances. For the reasons described below, I am now prepared to find that extraordinary circumstances do exist for this group. Accordingly, I recommend that funding for the WCCSFN be reallocated to two junior and two senior counsel as described below.

I emphasize that the funding reallocation recommended below does not increase the total amount of funding to be provided to the WCCSFN. This applicant has not asked for additional funds, only a different distribution of the existing funds over a larger number of lawyers.

The Application for Additional Legal Counsel

On 10 May 2010, I granted standing to the WCCSFN on the basis that this group has a substantial and direct interest in "marine environmental conditions, other factors that may have affected the ability of sockeye salmon to reach traditional spawning grounds or reach the ocean, and the policies and practices of the DFO with respect to Fraser River sockeye."

In my original Funding Recommendation of 12 May 2010 (as amended 19 May 2010), I recommended, and the PCO approved, 375 hours for one senior counsel, and 637 hours for one junior counsel.

The WCCSFN now seeks a determination that extraordinary circumstances exist to apportion the funding granted over a total of four counsel (two senior and two junior).

In support of a finding of extraordinary circumstances, the First Nations Coalition makes the following points. First, it says the quality of the hearings and the ability of the

WCCSFN to effectively participate in the hearings will be enhanced by representation of the group through two senior counsel, each having particular expertise and knowledge in different parts of the group's grant of standing. Mr. Robbins has particular knowledge and expertise in "the marine environmental conditions, [and] other factors that may have affected the ability of the sockeye salmon to reach traditional spawning grounds or reach the ocean"; and Mr. Gailus has particular knowledge and expertise in "the policies and practices of the DFO with respect to Fraser River sockeye." The WCCSFN describe Mr. Robbin's work for First Nations in relation to processes affecting the marine environment (environmental assessment of Vancouver Airport Fuel Delivery Project, the Fraser River riverbed head lease renewal process, and the development of a proposed construction materials marine terminal on Port Metro Vancouver managed federal lands). It also describes Mr. Gailus's work related to the on-river aboriginal sockeye fishery from an aboriginal rights perspective.

Second, the group says that by splitting the work along these lines and having "pertinently qualified junior counsel" supporting Mr. Gailus and Mr. Robbins, the inquiry would benefit from efficient and cost-effective presentation and examination of issues. It says there should be no duplication of efforts within the WCCSFN; the group is committed to coordinating billing in a way that will reduce the administrative burden on the commission; and counsel amongst the WCCSFN will coordinate to ensure that the group speaks with one voice at commission hearings.

Analysis and Recommendations

In determining that the WCCSFN has established extraordinary circumstances under cl. 10(b)(ii) of the Contribution Program, I have relied on my interpretation of this clause as set out in my letter to you dated 28 September 2010.

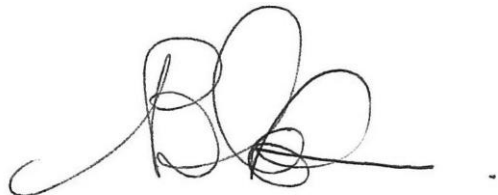
I agree there are efficiencies in the WCCSFN's proposal to use counsel with the most expertise to deal with different subject matter. These participants propose to divide labour between two senior counsel who are most suited to the subject matters they will tackle on behalf of the whole participant group. I appreciate the group's offer to coordinate billing in a way that will reduce the administrative burden on the commission arising from having two different law firms representing this recipient. I also appreciate the group's commitment to speak with one voice. In this context, I am prepared to find extraordinary circumstances and recommend that the funding for both senior counsel and junior counsel previously granted to the WCCSFN be equally divided among two senior counsel and two junior counsel.

For clarity, my finding of extraordinary circumstances for this group does not impact on any rules of the Contribution Program other than cl. 10(b)(ii). In particular, I wish to emphasize that this group is still bound by cl. 10(b)(iii) which provides in part that "Recipients may claim legal costs for only one legal counsel to attend any particular day of hearings unless otherwise authorized by the Commissioner."

Please advise whether the PCO will approve payments based on these modifications to the funding allocations for the WCCSFN. I have attached revised "Recipient Funding Checklists" for this group.

I look forward to hearing from you as soon as possible on this modification to my funding recommendation, so that I may communicate any change in funding status to the participants involved.

Sincerely,

A handwritten signature in black ink, appearing to be "B. Cohen", with a long horizontal flourish extending to the left.

The Honourable Bruce I. Cohen
Commissioner

Enclosure