

Cohen Commission

Ruling Re: Objection to Cross-Examination of Dr. Laura Richards

1. At the hearing on November 4, 2010, Mr. McDade, counsel for the Aquaculture Coalition, sought to cross-examine Dr. Laura Richards, The DFO Regional Director of Science for the Pacific Region, about a document titled, "Potential Causes of Poor Returns of Fraser River Sockeye Salmon; with focus on disease – related factors". The document was referred to in an article by Mark Hume, a columnist with the Globe and Mail, in his column published on November 3, 2010.

2. When the document was put to her, Dr. Richards said that she did have "the main pen on this document, but I did write it in consultation with my staff, who are more expert in this area."

3. Mr. McDade then asked Dr. Richards about whether in 2009 she briefed the Minister about an emerging theory relating to disease being the cause of the decline of sockeye salmon in 2009. At this point in the proceedings Mr. Taylor, counsel for the Government of Canada objected to the question. Among the grounds for his strenuous objection was Mr. Taylor's assertion that neither counsel nor the witness had prepared to answer questions on the area that Mr. McDade sought to explore with his line of questions. He argued that the witness had not been introduced to the hearing as an expert witness on the topic of aquaculture, but rather as a DFO official to address the role of science in decision making.

4. Following counsel's argument on the basis for the objection, I sustained the objection with reasons to follow. These are my reasons.

5. On November 3, 2010, Dr. Richards testified, *inter alia*, as follows:

Q Well, the question of disease could be -- I'm just -- in terms of the various risks, diseases of major -- can't -- could have major catastrophic impacts upon salmon stocks, could it not?

DR. RICHARDS: Mr. Commissioner, I think we know that diseases are an event that can have a catastrophic effect on any natural population, including trees and humans.

Q And in fact, disease is one of the potential risks that the Department indicated for

the 2009 sockeye decline; is it not?

DR. RICHARDS: I think, Mr. Commissioner, the -- we're referring to some work that was done and which we -- in terms of exploring different possibilities of potential causes of the decline, we did identify that disease was a possible contributor.

Q Well, a major contributor; isn't that right?

DR. RICHARDS: Well, I think at this point, we are not willing to say which -- what actually was the cause of the decline. That's what this Commission is about. So it's -- I'd say it's a potential contributor. We do not know at this point.

Q Yes, and my questions aren't going to trying to answer that question, just to identify that that's a fairly high-level risk; wouldn't you agree?

DR. RICHARDS: Well, it certainly depends on the scope, you know, and whether -- certainly, we can have disease agents present in a population without leading to disease. We can have disease in a population without making things sick or without causing -- leading to mortality. So it really does depend a lot on the context.

6. In his submission, Mr. McDade referred to the evidence of Dr. Richards from the day before stating that she was not certain or did not know enough to state that there was a risk, whereas, he said, the document he sought to put before the witness establishes that there was a very significant risk of a new viral disease that caused the decline of sockeye in 2009. He said it "would be passing strange that we would have Dr. Richards present for the panel and not be able to ask about it."

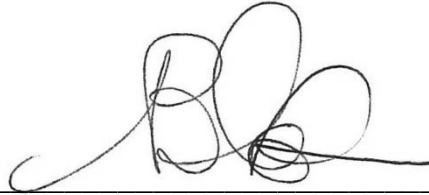
7. Following the submissions of counsel, I sustained the objection because I agree with Mr. Taylor that given the purpose for Dr. Richards' presence on the panel it would have been unfair and prejudicial to allow her to be examined on a document and a line of questioning for which neither she nor her counsel had prepared to address. As Mr. Taylor correctly pointed out in his submission, Dr. Richards was testifying as part of a panel on the role of science and decision making in the DFO. She was not presented as an expert on aquaculture, and she had not been prepared to testify specifically on this topic.

8. Moreover, the topic of aquaculture will be covered in detail later in the commission's hearing schedule at which time the area sought to be addressed in Mr. McDade's question can be properly asked of the witnesses on aquaculture.

9. Finally, commission counsel gave the following assurance:

MR. WALLACE: Sorry. It's our intention, Mr. Commissioner, that all the evidence that you should hear that would be useful to you, you will hear, and we are putting together hearings. I don't, at the moment, know whether Dr. Richards is scheduled to be with us for the aquaculture sessions, but I will certainly put this forward and I will give the assurance now that if it's required for Mr. McDade to canvass the document, we will recall Dr. Richards for that purpose.

Signed _24_November 2010

A handwritten signature in black ink, appearing to be 'B. I. Cohen', written over a horizontal line.

The Honourable Bruce I. Cohen, Commissioner