

January 19, 2010

Terms and Conditions
Contribution Program for the Commission of Inquiry
into the Decline of Sockeye Salmon in the Fraser River

Definitions

1. In this program,

“Commissioner” means the Honourable Bruce Cohen.

“Commission” means the Commission of Inquiry into the Decline of Sockeye Salmon in the Fraser River.

“Participant” means person or persons that have a substantial and direct interest in the subject matter of the Commission and to whom the Commissioner has granted standing.

“Recipient” means a Participant recommended by the Commissioner, and approved by the Clerk of the Privy Council, to receive funding.

Authorities

2. Commissions of Inquiry are established under the *Inquiries Act* to investigate issues for which the Government requires an entirely independent source of advice. Under the *Inquiries Act*, the Commissioner has the power of summoning witnesses and of requiring them to give evidence orally or in writing and on oath, and produce such documents and things as he deems requisite to the full investigation of the matters into which he has been appointed to examine. The Commissioner also has the power to enforce the attendance of witnesses and to compel them to give evidence as is vested in any court or record in civil cases.
3. The Governor in Council appointed the Honourable Bruce Cohen under to the *Inquiries Act* as Commissioner to inquire into and report on the decline of sockeye salmon in the Fraser River. The Commissioner is authorized by P.C. 2009-1860 of November 5, 2009 to make recommendations to the Clerk of the Privy Council for the provision of financial assistance to a Participant, who, in the Commissioner’s view, would not otherwise be able to participate in an appropriate manner in the Commission.

Purpose

4. One of the Privy Council Office's (PCO) program activities is to provide commissions of inquiry with financial and administrative support. In this regard, PCO has developed the present Contribution Program which terms and conditions are consistent with the requirements of Appendix E of the Directive on Transfer Payments.
5. The purpose of this Contribution Program is to ensure that Recipients, that do not have sufficient financial resources, receive necessary funding to access legal counsel and are able to participate appropriately in the work of the Commission. The purpose of this Program is not, however, to indemnify Recipients of all costs incurred.

Eligible Recipient

6. A Participant recommended by the Commissioner, and approved by the Clerk of the Privy Council, to receive funding. A Participant who has been approved to receive funding under the Treasury Board *Policy on Legal Assistance and Indemnification* is excluded.

Criteria

7. Participants seeking funding shall apply to the Commissioner in writing. The application must include information related to any other source of funds received or to be received by the Participant in regard to legal services rendered to the Participant with regard to the Commission.
8. Participants seeking funding must demonstrate, to the Commissioner's satisfaction, that they do not have sufficient financial resources to participate in the work of the Commission without financial assistance for legal counseling. This includes providing an affidavit with a description of their financial situation.
9. It is the Commissioner's prerogative to determine the extent of the person's interest and whether the person would not be able to participate in the Inquiry in an appropriate manner without financial assistance. The Commissioner may request from the applicant any additional financial information that he deems necessary in order to assess the funding application.

Eligible Expenditures

10. 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.

(a) Legal Costs

- (i) Counsel fees are paid in accordance with the fee schedule set out below for services such as the preparation for and attendance at hearings, interviews, meetings and other occasions arranged or deemed necessary by the Commissioner, as well as both the preparation of submissions and the review of materials requested by the Commissioner.

<u>Years from Call to Bar</u> (calculated in calendar year)	<u>Maximum Hourly Rate</u> (daily maximum is ten hours, except on hearing days)
Student / paralegal	Up to \$50
0-2	Up to \$100
3-4	Up to \$120
5-6	Up to \$140
7-8	Up to \$160
9-10	Up to \$180
11-12	Up to \$200
13-14	Up to \$220
15-16	Up to \$240
17-18	Up to \$260
19-20	Up to \$280
20 plus	Up to \$350

- (ii) Disbursements are reimbursed to legal counsel in accordance with guidelines prepared by the Privy Council Office; and
- (iii) Inter-city travel expenses are reimbursed to legal counsel in accordance with the Treasury Board Travel Directive.

(b) Limits

- (i) Payment of counsel fees under this Program is limited to a maximum of 10 hours per day, except on hearing days where the actual number of hours worked may be eligible for payment.
- (ii) Payment of counsel fees under this Program is, except in extraordinary circumstances identified by the Commissioner, limited to one senior counsel and one junior counsel per Recipient. For the purposes of this Program, the maximum rate allowable for junior counsel shall not exceed the authorized rate payable to a legal counsel with 8 years of experience.

- (iii) Payment of counsel fees related to attendance at hearings under this Program is limited to the hearing days involving the interest of the particular Recipient as determined by the Commissioner. Recipients may claim legal costs for only one legal counsel to attend any particular day of hearings unless otherwise authorized by the Commissioner.
- (iv) Payments made to a Recipient under this Program shall not exceed 100% of the total amount of legal costs actually incurred by the Recipient, including disbursements and inter-city travel expenses of legal counsel, when taking into account all related funding from the Government of Canada and other sources. Recipients must inform the Commissioner in writing as soon as possible of any funding obtained, or to be obtained, outside of this Program from the Government of Canada and other sources to pay for their legal costs in relation to the work of the Commission. Payments in excess are subject to recovery and will constitute a debt due to Her Majesty.

(c) Application for Standing – Maximum Counsel Fees

Legal costs related to the application for standing for an individual or individuals may be claimed only if standing is granted. Funding shall not exceed a total of 10 hours for both preparation and attendance before the Commissioner. In extraordinary circumstances, identified by the Commissioner, funding may be granted to a maximum of 20 hours for both preparation and attendance before the Commissioner. Unless funding exceeds 10 hours, the Commissioner is not required to include this element in his recommendations.

(d) Release of Commission Reports – Maximum Counsel Fees

Legal costs incurred by a Recipient related to activities organized by the Commission when the Government releases the Commission's reports may be claimed to a maximum of 5 hours for each report. The Commissioner is not required to include this element in his recommendations.

Recommendations

11. The Commissioner shall make his recommendations in writing to the Clerk of the Privy Council for review.
12. The Commissioner shall base his recommendations on the degree of participation appropriate to the individual's interest.

13. The Commissioner shall, in making his recommendations to the Clerk of the Privy Council, include the following elements to ensure that such recommendations are in compliance with the terms and conditions of this Program.
 - (a) A confirmation that the individual or individuals have standing;
 - (b) A confirmation that the Commissioner is satisfied that the individual or individuals would not be able to participate appropriately in the work of the Commission without financial assistance for legal counseling;
 - (c) The number of junior and/or senior counsel, the number of hours, and the type of activities authorized;
 - (d) Whether or not disbursement costs and inter-city travel costs will be reimbursed to the legal counsel.
14. The Commissioner shall not make his recommendations public before they have been reviewed and approved by the Clerk of the Privy Council.

Method of Payment

15. Prior to forwarding a claim for payment to the Privy Council Office, the Commissioner shall review accounts and certify in writing that the costs incurred are consistent with:
 - (a) The interests of Recipients as identified by the Commissioner;
 - (b) The eligible expenditures;
 - (c) The contribution agreement.
16. Payments are issued, on behalf of the Recipient, directly to the relevant legal counsel based on detailed statements of account for the reimbursement of eligible expenditures, as validated by the Recipient. No advance payments shall be made under this Program.
17. The final payment is subject to the Recipient having completed the questionnaire seeking feedback on this Program as described in section 22.

Official Languages

18. The Commission will take into account and comply with the requirements of the *Official Languages Act* when printing documents and communicating with the public and other government bodies.
19. The Contribution Program includes delivery of services to the public by a third party, legal counsel in this case, under a contribution agreement. Under this Program, Recipients are responsible for selecting their own legal counsel which includes retaining individuals who can provide services in the official language of their choice.

Audit Arrangements

20. Contribution agreements and related payments, in accordance with the requirements of Treasury Board Directive on Transfer Payments, are subject to audit to ensure that all conditions, both financial and non-financial have been met. Nothing in this audit provision shall require the Recipient or his legal counsel to disclose solicitor-client communications to comply with an audit. The Crown may request an assessment of all accounts related to the Recipient's representation at the Commission, pursuant to the applicable rules and/or legislation for the taxing of bills in the jurisdiction in which the legal counsel is licensed to practice law.

Performance Measurement Strategy

21. A Performance Measurement Strategy has been developed to measure the relevance, efficiency and effectiveness of the program and allow for the continuous monitoring and assessment of results of the program. Key performance indicators include:

- relevance and effectiveness of the contribution program
 - number of applications for funding received (excludes applicants who were not granted standing)
 - number of applications for funding recommended by the Commissioner and forwarded to the Clerk for approval
 - percentage of Commissioner recommendations to grant funding that are approved by the Clerk
 - number of recipients appearing before the Commission
 - feedback received from the Commissioner regarding the degree to which the contribution program supported the Commission in meeting its objectives
- efficiency of the contribution program
 - number of days (time) between the Commissioner's recommendations for funding and the Clerk's decision (average and range)
 - number of days (time) from the Clerk's approval to a contribution agreement being put in place (average and range)
 - number of days (time) from receipt of a reimbursement claim by the Commission and the issue of a cheque by the PCO.

Reporting Requirements

22. At the conclusion of the Commission's hearing phase, Recipients are required to complete a written questionnaire to provide information on the effectiveness and the efficiency of the contribution program. Key performance indicators include:

- the extent that the funding received helped Recipients participate in the work of the Commission
- how useful and complete Recipients found the information provided on the contribution program to be and feedback on what other information would have been useful to them.