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Salmon inquiry A judge wades in

An inquiry by a superior court judge is an unusual process for formulating a policy to restore the Fraser River sockeye salmon stock, but the apparent failure of the existing authorities justifies such an approach.

Mr. Justice Bruce Cohen of the Supreme Court of British Columbia is interested in the environment, having, for example, co-chaired a conference on sustainable development and the law, but his 22 years as a judge and 20 years as a lawyer before that make him an outsider to the world of fisheries and oceanography. He is bound to bring a fresh perspective.

The inquiry's terms of reference say it is to be conducted without "seeking to find fault on the part of any individual, community or organization," but its very existence is an implicit criticism of the Department of Fisheries and Oceans. The mandate specifically calls for a consideration of the department's scientific advice.

The DFO had predicted a new height this year for the sockeye salmon run, of more than 10 million; fewer than one million have turned up.

Scientific knowledge about the lives of salmon when they are out in the Pacific Ocean is very far from complete. The Cohen inquiry will not be able to turn the known unknowns into knowledge, but by hearing from a range of scientists, it may be able to discover what the consensus is on some questions. Judge Cohen is doubtless experienced in listening to expert witnesses, but the processes of dealing with evidence that judges are accustomed to are different from the way scientists gather and interpret their data.

The calls for a judicial inquiry into B.C. salmon go back at least five years. In 2004, there was a comparable collapse in the sockeye salmon run, though the current crisis is even worse. At the time, Conservative MPs, then in opposition, including Stephen Harper, James Lunney and John Duncan called for such an inquiry, but the Liberals did not appoint one.

The present government had thus in a sense committed itself to such a measure in advance. But the strongest reason for a judicial inquiry seems to be the contentiousness of the issue. The shortage of salmon has heightened tensions among competing interests. Some have welcomed a forum in which witnesses will have to testify under oath, as if to pin them down, and raise the stakes.

The inquiry's court-like process will deal with a highly antagonistic issue, which there has been much finger pointing. In all the circumstances, the appointment of Judge Cohen offers hope for the Fraser River sockeye salmon fishery.