

STATUTORY DECLARATION

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IN THE MATTER of the *Conflicts of Interest Act* of Alberta, R.S.A. 2000, c. C-23
AND IN THE MATTER OF the investigation by the Office of the Ethics Commissioner for the Province of Alberta, in regard to a complaint of an alleged contravention of the *Conflicts of Interest Act* by the Hon. Mike Cardinal, Member for Athabasca-Wabasca and Minister of Sustainable Resource Development.

I, DR. BOB FESSENDEN, Deputy Minister of Sustainable Resource Development, of the City of Edmonton, in the Province of Alberta, DO SOLEMNLY DECLARE THAT:

1. I have duly personally provided my answers to all of those questions annexed hereto in Schedules "A" and "B" which were submitted to me by the Ethics Commissioner for the Province of Alberta.
2. With respect to the answers provided in Schedules "A" and "B" hereto, I hereby declare that all facts and details contained in my answers are accurate and truthful and are provided to the best of my knowledge, recollection, information and belief.

AND I MAKE THIS SOLEMN DECLARATION conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath by virtue of the *Alberta and Canada Evidence Acts*.

DECLARED before me at the)
City of Edmonton, in the Province)
of Alberta, this 25th day of)
July, 2002.)
)
)


A Notary Public in and for the)
Province of Alberta)

SHANNON D. KEEHN
BARRISTER & SOLICITOR


DR. BOB FESSENDEN

SCHEDULE "A"

INFORMATION TO BE OBTAINED FROM DEPARTMENT OF SUSTAINABLE RESOURCE DEVELOPMENT

1. *Please provide a brief explanation as to how Calling Lake came to be classified as "collapsed."*

I am advised by my staff that:

Public complaints about fewer and smaller walleye were investigated in the 1980s and 1990s and data showed that many populations had been over fished. This led to the development of the department's Walleye Management and Recovery Plan which specifies that walleye populations will be classified as trophy, stable, vulnerable or collapsed. The plan was created through extensive Alberta public consultation in 1994/95 including 16 workshops with the public, one of which was held in Athabasca in the spring of 1995. The consultation process was guided through a Walleye Task Force that included representation from the Western Walleye Council, Walleye Unlimited, Alberta Fish and Game Association, commercial fishermen, an independent fisheries scientist from the University of Alberta, and several department staff. The workshops were followed by an open-house in many communities, where the new regulation strategies and planned lake classifications were shown to the public.

The management plan contains a population classification table with 5 factors used to assess walleye populations in Alberta. The plan also includes regulations that correspond to each population classification and increase protection of the fish population as the population decreases from "stable" to "vulnerable" to "collapsed". The Walleye Management and Recovery Plan was completed in 1995 and new regulations were put in place in 1996. Calling Lake and most other lakes in NE Alberta were initially classified as "vulnerable" because current status data was not available. These lakes were to be evaluated as soon as current information was available.

A creel survey was completed at Calling Lake during the summer of 1996. The data showed that there were very low numbers of young fish and only one strong age-class of adults. The 5 parameters of the classification table indicated that the population should be classified as "collapsed" and the regulations were changed to 0-bag limit for 1 April 1998.

There was no public consultation meeting for this change to "collapsed" because of the very recent and positive response to the population classification table in the development of the Walleye Management Plan. That public consultation process created a standard assessment for populations with corresponding regulations. The plan was to be used to assess populations and then apply the designated regulation without further public presentations, thus saving staff time for other work. However, at Calling Lake some people were upset that the population status of the lake had changed. A staff member presented the available

information at a public meeting in Athabasca on March 31, 1998 and most of the people who attended supported the 0-bag limit regulation to give the fish stock time to recover. People were concerned that collapsed meant no fish when they could still catch some large fish. They were advised that fish were still present but not in healthy numbers or with a good age-class distribution. This conflict also led to a procedural change so that public consultation was required before future proposed regulation changes could be forwarded to Fisheries Headquarters (HQ).

Fisheries staff did further assessment work in 1998 which confirmed the 1996 results.

2. *Explain the process followed in deciding to open a portion of Calling Lake in 2002. Provide documentation relating to any discussion and the decision with respect to the "pilot project" at Calling Lake. Provide an explanation of the "pilot project" Calling Lake (e.g. its time lines, monitoring, surveys, etc.)*

I am advised by my staff that:

Minister Cardinal was interested in the fishing issues at Calling Lake in 1998, 1999 and 2000 before he became the Minister of Sustainable Resource Development (SRD) in March of 2001. (Please refer to my response to question #5).

On becoming Minister he asked for information on Catch-and-Release Fishing Regulations as well as the status of Calling Lake and Walleye Management. In the fall of 2001 he asked for a regulation change on Calling Lake.

The following summary outlines, in more detail, the process that was followed in deciding to open a portion of Calling Lake in 2002, including references to discussions and the decision with respect to the pilot project.

- April 11, 2001, Minister/Deputy Minister meeting regarding Calling Lake walleye fishery
- April 11, 2001, e-mails among SRD staff regarding Minister's request for a Calling Lake Walleye Plan;
- April 12-19, 2001, e-mails among SRD staff regarding draft of Calling Lake briefing summary for the Minister
- April 20, 2001, material prepared for the Minister on the Walleye Management Strategy for Calling Lake, Alberta's Walleye Management Plan and status of Calling Lake walleye fishery;
- April 24, 2001, e-mail sent from SRD staff to Assistant Deputy Minister regarding Calling Lake walleye population;
- May 2, 2001, Minister/Deputy Minister meeting regarding Calling Lake
- May 9, 2001, Minister/Deputy Minister meeting regarding Calling Lake Action Plan
- Oct. 18, 2001, Action Request issued to SRD staff to provide Briefing Note/Advice to Minister regarding Pilot Project for Calling Lake;
- Oct. 30, 2001, e-mail sent to SRD staff from Minister's office requesting list of other possible lakes for partial closure like at Calling Lake;

- Nov. 2, 2001, e-mails among SRD staff regarding development of a monitoring program for Calling Lake plus an attachment outlining biological and fisheries management issues associated with the Calling Lake Pilot Project;
- Nov. 2, 2001, Draft Briefing Note prepared by SRD staff for the Minister/Deputy Minister regarding the collapsed status for walleye in Calling Lake;
- Nov. 5, 2001, e-mails among SRD staff regarding the spring closure for Calling Lake;
- Nov. 6, 2001, Briefing Note prepared by SRD staff for the Minister/Deputy Minister regarding the collapsed status for walleye in Calling Lake;
- Nov. 13, 2001, e-mails among SRD staff regarding the boundary line on Calling Lake;
- Nov. 14, 2001, Briefing Note prepared by SRD staff for the Minister/Deputy Minister regarding the collapsed status for walleye in Calling Lake;
- Nov. 15, 2001, e-mails among SRD staff regarding decision not to proceed with pilot projects on other lakes until the Calling Lake Pilot Project is evaluated;
- Dec. 5-14, 2001, e-mails among SRD staff regarding the preparation of the 2002 regulation amendment package for Calling Lake to be sent to the Minister;
- Dec. 5, 2001, Minister/Deputy Minister meeting regarding Calling Lake
- Dec. 17, 2001, e-mail among SRD staff regarding Calling Lake regulations;
- Dec. 18, 2001, Minister/Deputy Minister meeting Re: changes to Sportsfishing Regulations for Calling Lake
- Dec. 18, 2001, e-mail among SRD staff regarding Calling Lake pike harvest figures
- Jan. 18, 2002, signed copy of Minister's approval to amend Sportfishing Regulations for Calling Lake in the year 2002;
- Jan. 22, 2002, Minister/Deputy Minister meeting regarding required changes to Sportfishing Regulations for Calling Lake in 2002
- Feb. 4, 2002, e-mails among SRD staff regarding Calling Lake "round table" meeting on January 23, 2002;
- Feb. 26, 2002, e-mails from Minister's office and among SRD staff regarding spring closure dates for Calling Lake;
- March 6, 2002, Minister/Deputy Minister meeting regarding spring closure dates for Calling Lake;
- March 14, 2002, News Release – "Get your sportfishing licence & fishing regulations guide now"
- April 8, 2002, e-mails from Minister's office and among SRD staff regarding spring closure dates for Calling Lake;
- April 11, 2002, Hansard On-line – Minister's response to questions regarding Calling Lake Fishing Zones;
- April 16, 2002, Hansard On-line - Minister's comments regarding the Calling Lake Pilot Project;
- April 23, 2002, e-mails among SRD staff about public meetings regarding the Calling Lake Pilot Project being held in the Minister's riding;
- April 23, 2002, e-mails among SRD staff on fisheries science aspects of fish reserves;
- April 24, 2002, Minister/Deputy Minister meeting regarding other lakes which could implement the Calling Lake Pilot Project
- April 29, 2002, e-mails among SRD staff regarding Calling Lake walleye: target and status;

- May 1, 2002, e-mails among SRD staff regarding timelines required to collect, enter, analyze and report the Calling Lake Pilot Project data;
- May 6, 2002, e-mail among SRD staff regarding walleye population estimate at Calling Lake
- June 28, 2002, memorandum prepared by SRD staff regarding the preliminary status of fish reserve experiment at Calling Lake;
- July 2-18, 2002, e-mails among SRD staff regarding preliminary data interpretation from Calling Lake (May and June 2002)

I am advised by my staff that on April 1, 2002, a new fisheries management strategy, the Calling Lake Pilot Project, was initiated on Calling Lake for a 5 year period. The objective is the continued recovery of the walleye and pike populations while allowing a controlled harvest. The main points of this project include:

- The northwest portion of the lake will be closed to angling and commercial fishing throughout the year
- The southeast portion of the lake will be closed to all fishing for the spring spawning season.
- During the open season on the southeast portion of the lake, there will be a bag limit of two pike and one walleye of any size.
- Fish spawning grounds will be enhanced through removal of beaver dams and other methods.
- Through capture and marking of some fish, biologists will document spawning areas and fish movements, as well as make a population estimate.

Please also refer to my response to question #10 for an outline of the assessment work planned for Calling Lake in 2002.

3. *Explain the process for amending sportfishing regulations, including public consultation and timing for printing for next season. Please explain whether amendments to the sportfishing regulations require Cabinet approval and, if so, explain how the amendments are presented for Cabinet decision through to the printing of the regulations (for example, preparation and signing of an Order-in-Council and printing in Alberta Gazette or elsewhere). If they do not require Cabinet approval, do they require ministerial approval?*

It is my understanding that the process for amending Sportfishing Regulations is that outlined in a document that I have attached to Schedule "B" of my statutory declaration. The amendments to the sportfishing regulations do not require Cabinet approval. However, a regulation amendment package is submitted to the Minister for review and approval.

A brief summary of the usual process for amending regulations that fit into existing species Management and Recovery Plans, is as follows:

- Regional staff become aware of fisheries related issues through public comments or from field work.
- Regional staff collect information and decide if an amendment to the regulation is needed and what options exist.
- Regional staff hold a public meeting and discuss the issues with the public and then submit a regulation proposal to Fisheries HQ.
- if HQ staff agree with the proposals then the proposed regulation amendments are sent to the executives of the sportfishing stakeholder organizations for comments.
- in November, HQ sends a final package with recommendations to the Minister requesting his approval to implement the changes.
- if approval is received, these types of regulation changes are made by Variation Order (*Alberta Fishery Regulations*, SOR/98-246, s. 3) signed by the Director of Fisheries and printed in the Alberta Gazette, for implementation the following April 1.
- all changes must be given to the printer by mid-January at the latest so that printing of the Guide to Sportfishing Regulations can proceed in time to be distributed in late March before the new fishing year starts.

More substantial regulation changes generally take two years to approve, which allows for public notification of the proposed change to be printed in the Guide to Sportfishing Regulations in the year before the regulation would come into effect. This also helps to satisfy the Federal Government's demand for public consultation before regulation amendments are considered. Some fisheries regulation amendments cannot be made by Variation Order and these must be sent to Ottawa for review and processing through the Federal Privy Council process.

4. *What consultations have occurred with Calling Lake residents since the lake was classified as "vulnerable" and later, "collapsed"? Provide any documentation regarding annual meetings or special meetings on the subject of the status of the lake.*

I am advised by my staff that a series of public meetings have occurred since the lake was classified as "vulnerable" and later, "collapsed". The meetings have not been restricted to Calling Lake residents since the interest in this fishery extends well beyond the immediate area. The following is a list of the meetings that have taken place on the status of Calling Lake.

- March 30, 1998, Calling Lake Community Meeting
- March 31, 1998, Athabasca Sport Fisheries Public Meeting
- April 15, 1998, Natural Resources Staff/Calling Lake Domestic Fishermen/ Bigstone Band Members Meeting
- March 17, 1999, Athabasca Fisheries Management Public Meeting
- March 23, 1999, Trapper Meeting
- March 26, 1999, Calling Lake Fisheries Meeting
- March 29, 2000, Athabasca Fisheries Management Public Meeting
- December 4, 2000, Public Meeting, Calling Lake Community
- August 23, 2001, Athabasca Fisheries Meeting

- January 23, 2002, Calling Lake Round Table meeting
- April 24, 2002, Calling Lake Fisheries Meeting
- April 25, 2002, Athabasca Fisheries Meeting
- June 27-July 2, 2002, e-mails between SRD staff and an individual regarding status of Calling Lake

5. *What has been the reaction of the Calling Lake residents to the classification of the lake? Provide documentation that shows support or opposition to the classification.*

I am not aware of the reaction of the Calling Lake residents, specifically, to the classification of the lake. However, staff advise me that initial reaction to the collapsed status (0-bag limit) was generally negative because fishing had recently improved and was better than it had been in many years. Domestic fishermen could catch many walleye in nets set in the spring in spawning areas. Commercial fishermen were concerned because their walleye catch was closing the commercial fishery before the lake whitefish target species quota was taken. MLA Cardinal met with staff on February 17, 1998 and March 22, 1998, to express concerns on behalf of his constituents about the impending 0-bag limit for walleye. MLA Cardinal requested a meeting for January 20, 1999 with the Assistant Deputy Minister and met with staff again on January 17, 2000. This was still an issue in July 2000.

My staff advise me that the reason for the walleye classification of "collapsed" was given at a public meeting in Athabasca on March 31, 1998. Most but not all attendees accepted the reason for the regulation status to rebuild a healthy walleye population in Calling Lake. At the August 23, 2001 meeting, there was still good support for the 0-bag limit regulation on Calling Lake. Only one individual spoke against the regulation stating that the number of walleye should be reduced so that fewer walleye would mean less interference with the commercial fishery.

My staff advise me that most of the local people support the new pilot regulation because they can kill a fish. However, some people have expressed concern about the increase in fishing pressure and the number of fish being harvested when they expected this to remain a fishery for the locals. An informal poll conducted by an SRD staff member when he encountered fishermen at the boat launch also suggests most but not all fishermen like the regulation. That individual and one other staff member have advised that they received 4 and 1 phone calls respectively, from people opposed to the regulation change.

Although the question is about Calling Lake residents, I am advised by my staff that many more people from a much wider area are interested in or use this public resource. There have been 7 letters received in HQ that are not supportive of the Minister's actions and one letter expressing support but asking why there are no small fish. We have also seen comments from the Virtual Flyfishing web site and numerous letters in the papers that generally are not supportive of the Minister's actions.

6. *Did the Minister at any time declare his private interest at Calling Lake (i.e. his property at Calling Lake)? If so, when and how and to whom? Provide documentation if any.*

To the best of my recollection, the Minister mentioned that he owned property at Calling Lake around April 2001. I do not know who the Minister specifically advised of this but I believe it was common knowledge among the executive staff of SRD.

7. *Did any person in the Department of Sustainable Resource Development raise the issue of the Minister's private interests at Calling Lake during any discussion of fish management at Calling Lake? If so, when and how and who raised the issue? Provide documentation, if any.*

Not that I am aware of.

8. *Were any other "collapsed" lakes considered for pilot projects? If so, which lakes and why were they not chosen? If no, why were no other lakes considered? If no other lakes were recommended, which lakes would the department recommend for considering of a similar pilot project?*

I am advised by my staff that for 2002 implementation, no other lakes were considered for pilot projects. The initial instruction was to implement a 5 year pilot project at Calling Lake and to monitor the situation and look at implementing the pilot at other lakes. An initial list of possible sites for more detailed consideration included collapsed populations at Christina, Island, Rock Island, La Biche and Gregoire lakes and the vulnerable populations at Orloff Lake. This did not proceed because of a decision by the Minister/Deputy Minister to monitor the Calling Lake results before considering to expand the project.

Staff were also concerned that the proposed regulation offered less protection than the walleye populations needed. A lack of pre-test data and shortage of resources to monitor more than 1 site would also have been issues to pilot expansion.

In April of 2002, Department staff were asked to provide a list of possible lakes that could be considered for pilot project implementation in the future. Staff advised that the collapsed populations (includes stocked-developing populations) at Forty Mile Reservoir, Keho Lake, Wadlin Lake, Haig Lake and the vulnerable or stable walleye populations at Spencer Lake, Winefred Lake, and South Wabasca Lake plus the pike populations at Tilley "B" Reservoir and Cowoki Lake, could be considered but more detailed review was required. A Briefing Note was forwarded expressing concerns that the fishing reserve concept did not appear to be biologically feasible in Alberta and that small lake size and extensive development around lakes would eliminate most from consideration for this type of regulation. This was discussed with the Deputy Minister and Assistant Deputy Minister and the Deputy Minister advised he would provide further direction after talking to the Minister.

Staff were subsequently asked to compare Orloff, Fawcett, Rock Island, Sandy, North & South Wabasca, La Biche and Beaver lakes to Calling Lake. The Rock Island, Sandy and La Biche lakes walleye populations are in the collapsed category. A draft assessment was completed looking at how well the situations at those lakes matched the Calling Lake conditions. In most cases the lakes were not recommended for pilot project expansion because they were quite different from Calling Lake in size, or the walleye populations was very weak, or angling pressure was high, or there were problems trying to define zones. A meeting was set up to discuss this with the Deputy Minister and Assistant Deputy Minister but the Deputy Minister was called away to the Minister's office just as the meeting was about to start.

In late June 2002, the Minister's office requested identification of 2-3 lakes (possibly in the Slave Lake area) where the pilot project regulations could be implemented. The Assistant Deputy Minister requested that the list also include all other lakes where staff were currently looking at possible changes to the walleye regulations that would allow more harvest opportunities. The recommended list of lakes included Wadlin Lake (collapsed category because it was stocked), South Wabasca Lake (vulnerable category) and Vincent Lake (collapsed category because it was restocked) for further assessment and public consultation as pilot projects, plus 5 additional lakes staff are currently evaluating for other regulation changes.

9. *Have the residents of any other lake (in the constituency of Athabasca-Wabasca or any other constituency) requested a similar pilot project since the Calling Lake pilot project was announced?*

One request was received on 4 July 2002 from the Rich Lake Recreation and Agricultural Society (Lac La Biche-St. Paul constituency). Their request was to change the angling regulations at Fork Lake to set the pike limit at the first two fish caught per day regardless of size, and possibly to close the breeding grounds. (Note: the entire lake is already closed to angling from April 1st to the Friday of the May long-weekend each year, which includes the normal spawning season for pike, perch and walleye).

10. *What steps have been taken, are being taken, and will be taken in connection with the pilot project to measure fish populations at Calling Lake?*

I am advised by my staff that the following work has been planned for May 2002 to March 2003, between department staff and Alberta Conservation Association (ACA) staff.

- mid-May to June - capture fish with traps and nets and electrofishing; mark some document capture locations;
- May long-weekend through August - ACA to run creel survey;
- late May to late September - ACA to implant electronic tags and track walleye movements;
- mid to late September - Fall Walleye Index Netting;
- October through November - data entry and fish ageing;
- December - data analysis;

- January to mid February – report preparation.

This pilot project is scheduled to run for 5 years since populations take time to respond depending on their initial status and harvest pressure. This may change depending on the response of the walleye population. The creel survey should be repeated in 3-5 years, but future work will also be determined by staff and public reports on the health of the fishery.

SCHEDULE B

SPORTFISHING REGULATION DEVELOPMENT

- A. Legislative and Department Direction for Regulation Development**
- *Fisheries Act (Canada) and Alberta Fisheries Regulations.*
 - *Fisheries (Alberta) Act, General Fisheries (Alberta) Regulations and Fisheries (Ministerial) Regulation.*
 - Departmental Business Plans.
 - A Fish Conservation Strategy for Alberta.
 - Provincial Species Management and Recovery Plans.
 - Fish and Wildlife Policy for Alberta.
- B. Short and Long Term Planning Direction for Regulation Development**
- B Biologically sound and sociably acceptable regulations based on scientific information and public opinion.
 - Move away from province-wide regulation to water body-by-water body regulation.
 - Implementation of species management plans involving public advisory committees and public workshops (Bull Trout, Golden Trout, Lake Sturgeon, Walleye, Arctic Grayling and Northern Pike complete, but ongoing, and Yellow Perch and Lake Trout scheduled).
 - Development of regulations relating to province-wide concerns involving public advisory committees and public workshops (East Slopes Stream Review, Spring Spawning Closures, and Lower Bow River Review complete, and Sportfishing Licence Review near complete).
- C. Population Evaluation and Monitoring Pertinent to Regulation Development**
- Water body surveys (angler creels and population density inventories).
 - Surveys of Recreational Fishing in Canada (Alberta component, five-year intervals from 1975 through 2000).
 - Sportfishing Licence sales statistics provided through IBM licensing system.
- D. Regulation Development Process**
1. **Consultation with stakeholders**
 - Multi-tiered public involvement and consultation process providing Albertans opportunities to become involved in fisheries management and regulation reviews.
 - Ongoing, year round, gathering of opinions, concerns and proposals for change.
 - Meetings held in various locations for local public review and input on water body specific proposed regulation options.
 - Alberta Fish and Game clubs, Trout Unlimited Canada, Western Walleye Council, Walleye Unlimited Foundation, Alberta Sportfishing Industry Association.
 - Formal opportunities for public input through public advisory committees.

- Annual announcement in Alberta Guide to Sportfishing regulations encouraging public comments on future proposals.
2. **Detailed investigation of issues by staff (Year Round)**
 - Evaluate available survey and harvest data, and collect additional data.
 - Examine findings published in scientific journals and from adjacent jurisdictions.
 - Consider public opinions and stakeholder views.
 - Examine options as possible proposals for regulation changes.
 - Discuss findings and issues with District Enforcement staff for input and opinions.
 - Proposals reviewed with Headquarters Fisheries to ensure regulatory and administrative feasibility.
 3. **Annual spring meeting of biological staff (June)**
 - Review existing regulations and seasons.
 - Identify and discuss problems, concerns and new issues.
 - Determine information required to properly evaluate issues.
 - Review input received from stakeholders and consider potential proposals for change.
 4. **Development of water body specific proposals by Regional Fisheries (June-August)**
 - Examine options as possible proposals for regulation changes.
 - Proposals reviewed with Headquarters Fisheries to ensure regulatory and administrative feasibility.
 - Formal presentation and discussion at local, regional and provincial level with sportfishing organizations, and at publicly announced meetings.
 - Changes that may affect subsistence fishing, such as closures to all fishing, also require native consultation processes prior to approval.
 - Submission of proposals to Headquarters Fisheries for review and compilation into provincial package.
 5. **Development of detailed provincial proposals by Headquarters Fisheries (September-October)**
 - Examine regional submissions and discuss changes with regional staff.
 - Compile regional submissions into provincial package and submit to executives of major sportfishing organizations for review and comment.
 6. **Final recommendation package for Minister (November)**
 - Formal submission of regulation amendment package to the Minister for review and approval.
 - Changes to sportfishing regulations fall under the *Alberta Fishery Regulations* pursuant to the federal *Fisheries Act* (Canada) rather than provincial