

Court File No:
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LORNE NELS DAVID IVERSON

PLAINTIFF

A N D:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS
REPRESENTED BY THE MINISTER OF FISHERIES AND
OCEANS, and
PACIFIC HALIBUT MANAGEMENT ASSOCIATION OF
B.C.

DEFENDANTS

WRIT OF SUMMONS

Name and address of each plaintiff

LORNE NELS DAVID IVERSON: c/o Ellis Business Lawyers, #440-319 West Pender,
Vancouver, B.C., V6B 1T3

Name and address of each defendant

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AS REPRESENTED BY THE
MINISTER OF FISHERIES AND OCEANS: Box 10065, 3rd Floor – 701 West Georgia Street
Vancouver, B.C. V7Y 1B6

PACIFIC HALIBUT MANAGEMENT ASSOCIATION OF B.C.: Suite 118, 1 -
5765 Turner Road Nanaimo BC V9T 6M4

ELIZABETH THE SECOND, by the Grace of God, of the United Kingdom, Canada and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith.

To the defendant(s): HER MAJESTY THE QUEEN IN RIGHT OF CANADA,
AS REPRESENTED BY THE MINISTER OF FISHERIES AND OCEANS, and
PACIFIC HALIBUT MANAGEMENT ASSOCIATION OF B.C.

TAKE NOTICE that this action has been commenced against you by the plaintiff(s) for the claim(s) set out in this writ.

IF YOU INTEND TO DEFEND this action, or if you have a set off or counterclaim that you wish to have taken into account at the trial, YOU MUST

(a) GIVE NOTICE of your intention by filing a form entitled "Appearance" in the above registry of this court, at the address shown below, within the Time for Appearance provided for below and YOU MUST ALSO DELIVER a copy of the Appearance to the plaintiff's address for delivery, which is set out in this writ, and

(b) if a statement of claim is provided with this writ of summons or is later served on or delivered to you, FILE a Statement of Defence in the above registry of this court within the Time for Defence provided for below and DELIVER a copy of the Statement of Defence to the plaintiff's address for delivery.

YOU OR YOUR SOLICITOR may file the Appearance and the Statement of Defence. You may obtain a form of Appearance at the registry.

JUDGMENT MAY BE TAKEN AGAINST YOU IF

(a) YOU FAIL to file the Appearance within the Time for Appearance provided for below, or

(b) YOU FAIL to file the Statement of Defence within the Time for Defence provided for below.

TIME FOR APPEARANCE

If this writ is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service).

If this writ is served on a person outside British Columbia, the time for appearance by that person after service, is 21 days in the case of a person residing anywhere within Canada, 28

days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

[or, if the time for appearance has been set by order of the court, within that time.]

TIME FOR DEFENCE

A Statement of Defence must be filed and delivered to the plaintiff within 14 days after the later of

(a) the time that the Statement of Claim is served on you (whether with this writ of summons or otherwise) or is delivered to you in accordance with the Rules of Court, and

(b) the end of the Time for Appearance provided for above.

[or, if the time for defence has been set by order of the court, within that time.]

(1) The address of the registry is:

800 Smithe Street, Vancouver, B.C.

(2) The plaintiff's ADDRESS FOR DELIVERY is:

#440-319 West Pender Street, Vancouver, B.C. V6B 1T3

Fax number for delivery: 604-688-0201

(3) The name and office address of the plaintiff's solicitor is:

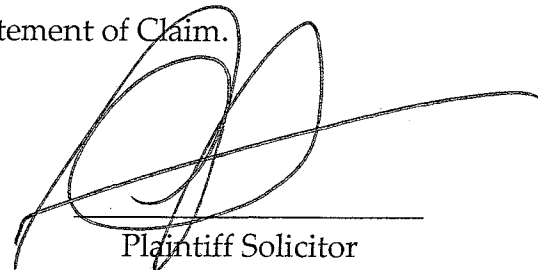
ELLIS BUSINESS LAWYERS

#440-319 West Pender Street, Vancouver, B.C., V6B 1T3

Attention: Meldon Ellis

The plaintiff's claim is set out in the attached Statement of Claim.

Dated November 20th, 2007



Plaintiff Solicitor

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DEFENDANTS

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c.50

STATEMENT OF CLAIM

THE PARTIES

1. The plaintiff is a fisherman and resides at 7950 Hunter Street, Burnaby, British Columbia V5A 2B9.
2. The defendant Her Majesty the Queen in Right of Canada, as represented by the Minister of Fisheries and Oceans (hereinafter the "Minister"), is the government of

Canada.

3. The defendant Pacific Halibut Management Association of B.C. (hereinafter "PHMA") is a society incorporated pursuant to the *Society Act* of British Columbia and has an office and place of business at Suite 118, 1-5765 Turner Road Nanaimo BC V9T 6M4.
4. PHMA was incorporated on October 29, 1997 by representatives of BC coastal halibut fishers at the instigation of the Minister.
5. The plaintiff says that at all material times PHMA acted as agent for the Minister.
6. In the alternative, the plaintiff says at all material times PHMA acted as the partner of the Minister.
7. In bringing this action on behalf of a class of halibut fisherman in British Columbia who held halibut fishing licenses in the years between 2001 and 2006 inclusive, such class to be further defined in the motion for certification the plaintiff pleads and relies upon the provisions of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and amendments thereto.

NATURE OF MATTERS AT ISSUE

8. At all material times the plaintiff was the owner of Motor Vessel (M/V) "Autumn Venture" VRN 26859 and holder of licence #L0087 issued to him by the Minister (hereinafter the "Licence") permitting him to fish for halibut in the waters of British Columbia. The licence was issued to him under the *Fisheries Act* R.S.C. 1985, c. F-14 and associated regulations.

9. The Licence entitled the plaintiff to receive each year from the Minister an individual vessel quota (hereinafter the "quota") that was assigned to him from the Total Allowable Catch for halibut for Canada, as determined by the Minister. The quota represented the amount of halibut that the plaintiff could catch and sell in that year. The plaintiff had to pay a fee to the Minister for the quota.

10% Quota Holdback Transferred by the Minister to PHMA:

10. During the year 2001 the Minister instituted the practice of withholding 10% of the entire quota to be granted to the holders of halibut licences in British Columbia and assigning it to the PHMA.
11. During the year 2001, the Minister issued a halibut licence, No. 437, in the name of PHMA representing the 10% of the entire withheld halibut quota.
12. The plaintiff, if he wished to avail himself of his portion of the 10% of his quota, was required to purchase it from the PHMA by paying an additional levy.
13. The said practice continued in each year from 2001 through to 2006. In each year the plaintiff paid the Minister for his quota and then paid the PHMA an additional levy to access the 10% of his quota assigned to the PHMA.
14. On February 6, 2001 the Minister and the PHMA entered into a "Joint Project Agreement" the purposes of which were expressed to be (*inter alia*):
 - a. Ensure the proper management of the commercial halibut fishery;
 - b. Provide adequate funding and resources; and,
 - c. Carry out all other activities necessary in support of the fishery ...

Transfer of Funds and Payments in Kind by PHMA to the Minister:

15. Under the agreement the obligations of the PHMA included both paying funds to the Minister and performing various activities (“representing payments in kind”) under the heading "FISHERIES MANAGEMENT" including (*inter alia*):
 - a. Fund Fisheries and Oceans Canada activities as identified in the agreement;
 - b. Fund and ensure the operation of an independent dockside monitoring program; and,
 - c. Fund and ensure independent data entry ... of validated landings and other data as requested by DFO ...
16. During the period March 31, 2001 to March 31, 2002, the PHMA agreed to pay the sum of \$836,635 directly to the Minister and to expend \$400,000 to third parties on the independent dockside monitoring program.
17. In each year between 2002 and 2006 the PHMA agreed to pay further sums directly to the Minister and it agreed to expend funds to third parties for programs directed and requested by the Minister.
18. In other words, part of the funds paid to the PHMA by halibut licence holders was remitted by PHMA directly to the Minister and used to fund government fisheries management activities.
19. A further part of the funds paid by the plaintiff was used by the PHMA to pay for fisheries management activities that it conducted as agent for (or partner of) the Minister.
20. The plaintiff says that in assigning 10% of the quota to the PHMA for resale to the

plaintiff, and contracting with PHMA to either remit the funds or use them for fisheries management, the Minister:

- a. Appropriated a public resource that did not belong to him to finance fisheries management activities;
- b. Violated the provisions of the *Financial Administration Act* R.S.C. 1985, c. F-11, in particular sections 19 and 32;
- c. Levied a tax unauthorized by parliament;
- d. Collected monies from the plaintiff without legislative or constitutional authority;
- e. Converted to his ministry's use monies and/or halibut quota belonging to the plaintiff; and,
- f. Illegitimately used his power, either tortiously or contractually or both, to coerce the plaintiff into paying excessive and unlawful fees.

21. The plaintiff says that the PHMA was the agent or partner of the Minister in the aforesaid activities and is therefore jointly liable for those activities.

THE CLASS

22. It is known by the plaintiff that there are 436 holders of halibut licences like that of the plaintiff in British Columbia.

23. This action is brought as a proposed class action by the named plaintiff pursuant to the *Class Proceedings Act*, 1996, c. 50, as amended, S.B.C. 1998, s.96, on behalf of all 436 halibut licence holders who:

- a. Were deprived of 10% of their quota as result of the Minister's actions; and,
 - b. Were required to pay extra fees to the PHMA in order to access this 10% of his or her quota as described above in each year between 2001 and 2006 inclusive.
24. It is unknown to the plaintiff how many licence holders paid the extra fees, but those who did not were deprived of 10% of their quota.
25. There are questions of law and fact common to the class. The claims of the plaintiff are typical of the claims of the class and the plaintiff herein will adequately represent and protect the interests of the class.
26. Separate actions by individual members of the class would create a risk of inconsistent adjudications with respect to individual members of the class which could establish incomplete standards of conduct for the defendants.
27. Questions of law and fact common to the members of the class with respect to the relief claimed predominate over questions affecting individual members. A class action is superior to other available methods for a fair and efficient adjudication of this controversy.
28. The plaintiff, who is a member of the proposed class, has sustained financial loss as a result of the unlawful conduct of the defendants as alleged in this Statement of Claim and has no conflict with other members of the proposed class.
29. In the absence of a Class Proceeding, the defendants will retain the benefits of their wrongful conduct because class members are unlikely to bring, and have not brought, separate individual lawsuits due to the size of individual class members' claims and

their limited resources as compared with the cost of litigation and the resources of the defendants.

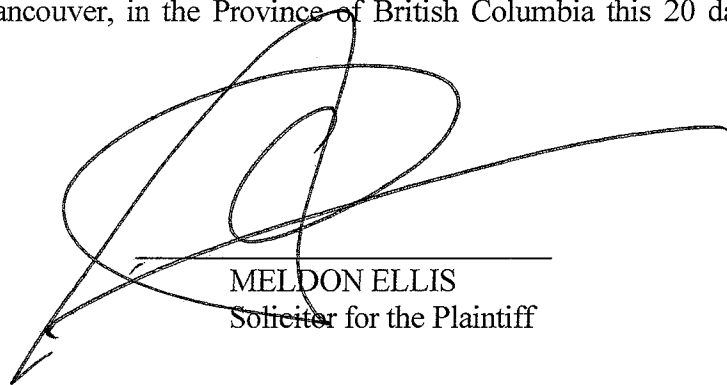
WHEREFORE, the plaintiff seeks and claims on his own behalf and on behalf of all Class Members:

- a. A declaration that the Minister's practice of withholding 10% of the entire quota to be granted to the holders of halibut licences in British Columbia and assigning it to the PHMA and in turn receiving funds or payments in kind from PHMA's sale of that quota is unlawful;
- b. A declaration that all funds and payments-in-kind received by the Minister from the PHMA from sale of quota constitute either: (i) an unlawful conversion of property not owned by the Minister; (ii) unjust enrichment by the Minister; or (iii) funds collected without legislative or constitutional authority by the Minister.
- c. An accounting and restitution to plaintiff of all monies collected from the plaintiff by the Minister and the Pacific Halibut Management Association of B.C. ("PHMA") on behalf of the Minister from the plaintiff for the period January 1, 2001 to date;
- d. Return of funds unlawfully converted by the defendants;
- e. Restitution of monies collected from the plaintiff by the defendants without legislative or constitutional authority and retained by the defendants without a juristic reason;

- f. Damages for misfeasance in public office;
- g. Damages for unlawful administrative action;
- h. Interest pursuant to the *Court Order Interest Act*;
- i. Costs of this action on a solicitor and client basis; and
- j. Such further and other relief that this court deems appropriate.

PLACE OF TRIAL: Vancouver, B.C.

DATED at the City of Vancouver, in the Province of British Columbia this 20 day of November, 2007.



MELDON ELLIS
Solicitor for the Plaintiff

THIS STATEMENT OF CLAIM is given by MELDON ELLIS, of the firm of ELLIS BUSINESS LAWYERS, Suite 440 – 319 West Pender Street, Vancouver, B.C. V6B 1T5 – Telephone: (604) 688-7374 – Fax: (604) 688-0201

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WRIT OF SUMMONS and STATEMENT OF CLAIM

ELLIS BUSINESS LAWYERS
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