

### **Amended Common Issues**

- (1) During January 1, 2001 to December 31, 2006 (the "Class Period), did the Minister withhold a portion of the individual vessel quota for halibut ("IVQ") from each class member (hereinafter the "Withheld IVQ")?
- (2) During the Class Period, did the Minister assign the Withheld IVQ to the PHMA?
- (3) During the Class Period, did the Minister and PHMA agree to collect fees from the class members to access the Withheld IVQ?  
  
(The scheme described at common issues 1, 2 and 3 is hereinafter described as the "Scheme")
- (4) Did PHMA direct funds collected from the class members for accessing the Withheld IVQ to the Minister as part of the Scheme?
- (5) Did PHMA perform services for the Minister that would have been performed by the Minister but for the Scheme thus saving an inevitable expense for the Minister?
- (6) Did the Minister use the funds received in connection with the Scheme to directly or indirectly fund fisheries management?
- (7) By implementing the Scheme, did the Minister appropriate a public resource that did not belong to him to finance fisheries management activities?
- (8) By implementing the Scheme, did the Minister violate the provisions of the *Financial Administration Act*, R.S.C. 1985, c. F-11, and in particular sections 19 and 32?
- (9) Did the collection of funds by or on behalf of the Minister under the Scheme constitute an unlawful or unconstitutional tax?
- (10) Is the Minister liable to account for and repay funds to the class members? If yes, in what amount?
- (11) Did the class members pay more to access the Withheld IVQ under the Scheme than they would have paid prior to the imposition of the Scheme for the equivalent IVQ? (any positive difference hereinafter described as the "Additional Fees") If yes, in what amount?
- (12) Has the Minister been unjustly enriched by:
  - a. the receipt of all or part of the Additional Fees under the Scheme; and/or,

- b. the performance of services by the PHMA for the Minister, thereby saving inevitable fisheries management expenses that would have been incurred but for the Scheme?
- (13) Have the class members suffered a corresponding deprivation in the amount of the Additional Fees?
  - (14) Is there a juridical reason why the Minister should be entitled to retain the enrichment?
  - (15) Is the Minister liable to make restitution to the members of the class? If restitution is payable, in what amount?
  - (16) What is the liability, if any, of the Minister for court order interest?
  - (17) What is the appropriate distribution of monetary relief and interest to class members, and who should pay for the cost of that distribution?
  - (18) Did PHMA act as agent or partner of the Minister and/or assist the Minister to conduct the unlawful activities?
  - (19) Does a class member's membership in PHMA preclude the class member from claiming against the Minister for restitution of any unlawful tax and/or unjust enrichment?
  - (20) Does a subclass member's position as director of PHMA, a corporation in which a PHMA director owned more than 50% of the shares, or as someone who claims they were in a partnership with a PHMA director in relation to a Licensed Vessel and the purchase of quota from PHMA, preclude the subclass member from claiming against the Minister for restitution of an unlawful tax and/or unjust enrichment? If not, are the answers to the other common issues the same or different for members of the subclass?