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**THIS NOTICE AFFECTS YOUR LEGAL RIGHTS**

**PLEASE READ CAREFULLY**

**VIA MAIL**

Address

**Attention:** ◆

Dear Sirs/Mesdames:

**Re: *Burnell v Canada (Attorney General)*  
Vancouver Supreme Court Action No. S077807**

A class action has been certified by the Honourable Madam Justice Griffin in *Burnell v. Canada (Attorney General)* (British Columbia Supreme Court, Action No. S077807) (the “Class Action”). The action was certified on February 18, 2014 (amended on June 13, 2014).

The Class Action has been certified on behalf of a **Class** consisting of:

All owners of fishing vessels with a Category L Commercial Halibut License to fish for halibut issued by the Minister of Fisheries and Oceans (“Licensed Vessels”) at any time between 2001 and 2006 inclusive who purchased quota from the Pacific Halibut Management Association (“PHMA”), except for the following:

- (i) the holder of license L-437;
- (ii) First Nations fishers holding Category FL Commercial Halibut Fishing licenses; and,
- (iii) members of the subclass.

In addition, on June 13, 2014, the action was certified on behalf of a **Subclass** consisting of:

All owners of fishing vessels with a Category L Commercial Halibut License to fish for halibut issued by the Minister of Fisheries and Oceans (“Licensed Vessels”) between 2001 and 2006 inclusive (the “Material Time”) for which quota was purchased from PHMA and:

(a) who at any time during the Material Time:

- i. were directors of PHMA; or,
- ii. were corporations in which a PHMA director owned more than 50% of the shares; or

(b) who claim that they were in a partnership with a PHMA director in relation to a Licensed Vessel and the purchase of quota from PHMA at any time during the Material Time.

You are being contacted because the records indicate that you were an owner of a vessel that was issued a Category L Commercial Halibut Fishing License between 2001 and 2006.

***The Parties***

The representative plaintiff approved by the Court to represent the Class is Barry Jim Burnell. The representative plaintiff approved by the Court to represent the Subclass is Lorne Nels David Iverson.

The defendant in the action is the Attorney General of Canada, representative of the Minister of Fisheries and Oceans.

The representative plaintiffs seek financial compensation on behalf of the Class and Subclass for the alleged losses suffered in an allegedly unlawful fisheries management program developed by the federal government and implemented through the PHMA.

The Class is represented by the law firms of

Camp Fiorante Matthews Mogergerman  
4th Floor, 856 Homer St.  
Vancouver, B.C. V6B 2W5

T: 604-689-7555 or 1-800-689-2322  
E: [lcarmichael@cfmlawyers.ca](mailto:lcarmichael@cfmlawyers.ca)  
[www.cfmlawyers.ca](http://www.cfmlawyers.ca)

and

Ellis Business Lawyers  
400-1681 Chestnut St.  
Vancouver, B.C. V6J 4M6

T: 604-688-7374  
E: [info@ellislawyers.com](mailto:info@ellislawyers.com)  
[www.ellislawyers.com](http://www.ellislawyers.com)

("Class Counsel"). Class members should contact Class Counsel with any requests for further information.

The Subclass is represented by the firm of:

Underhill, Boies Parker  
1710-401 W. Georgia St.  
Vancouver, B.C. V6B 5A1

T: 604-696-9828  
E: ubp-assistant@ubplaw.ca  
www.ubplaw.ca

("Subclass Counsel"). Subclass members should contact Subclass Counsel with any requests for further information

### ***The Lawsuit***

The action essentially alleges that the conduct of the Minister of Fisheries and Oceans (the "Minister") with respect to the fisheries management program it implemented through PHMA was unlawful and enriched the federal government unlawfully at the expense of the Class and Subclass.

Factually the action alleges that between the years of 2001 and 2006 the Minister assigned 10% of the Total Allowable Catch (the "TAC") for halibut in British Columbia to PHMA under a Joint Project Agreement ("JPA"). The JPA allowed PHMA to sell individual license holders a proportionate share of the TAC that had been assigned to PHMA. PHMA remitted a portion of the funds collected for the TAC to the Minister, and used another portion to pay for fisheries management activities that it undertook on behalf of the Minister.

The action further alleges that the fees paid by licensees to access TAC through PHMA unjustly enriched the Minister at the expense of the licensees, that the Minister appropriated a public resource to finance fisheries management activities, and the monies collected in the scheme amount to an unlawful tax and were collected without legislative authority.

Based on these allegations the action requests that the Court declare that the scheme was unlawful and that the Class and Subclass be repaid the monies unlawfully collected through the fisheries management scheme.

For a more detailed understanding of the allegations of these class actions, please see the Notice of Civil claim at [www.cfmlawyers.ca](http://www.cfmlawyers.ca), [www.ellislawyers.com](http://www.ellislawyers.com) or [www.ubplaw.ca](http://www.ubplaw.ca). Class members may also contact Class Counsel for further information, and Subclass Members may also contact Subclass Counsel for further information. If you are uncertain about whether you are a Class or Subclass member, you may contact any of the firms above and they will advise you accordingly.

### ***Consequences of Certification as a Class Action***

Now that the action has been certified, the claims of the representative plaintiffs will be used to determine the legal responsibility of the Defendant to compensate the Class and Subclass for the alleged losses suffered.

Judgment on the common issues whether favourable or not will bind all Class and Subclass members. You will be bound by the result of the Class Action – whether the lawsuit is successful or unsuccessful – and will not be able to start or pursue your own legal claim against the Defendant. A list of the common issues is enclosed with this letter.

#### **Residents of British Columbia**

If you wish to participate in the Class Action, you do not have to do anything. You will automatically be included in Class Action as a member of the Class or Subclass.

If you remain in the Class Action and it is successful in obtaining recovery from the Defendant, then you will be entitled to share in the recovery. If you opt out of the class action, you do not have this right.

Persons who opt out of the Class Action may start their own lawsuits, but will not be able to claim in any recovery in the Class Action. Persons who opt out of the Class Action will not be able to share in any recovery in the Class Action whether through judgment or settlement.

If you do not wish to participate in the Class Action you must opt-out by completing and mailing the attached opt-out form to: Camp Fiorante Matthews Mogerman, 4th Floor, 856 Homer St., Vancouver, B.C., V6B 2W5 **postmarked by no later than May 4, 2015**. If you do not opt out by the deadline you will automatically be included in the class action.

#### **Non-Residents of British Columbia**

If you are resident outside British Columbia and wish to participate in the Class Action, then you must opt-in by completing and mailing the attached opt-in form to: Camp Fiorante Matthews Mogerman, 4th Floor, 856 Homer St., Vancouver, B.C., V6B 2W5 **postmarked by no later than May 4, 2015**.

If you join the Class Action and it is successful in obtaining recovery from the Defendants, then you will be entitled to share in the recovery.

If you do not want to participate in the Class Action, you do not have to do anything- you will not be automatically included.

### ***The Lawyers and their Fees***

Class Counsel (the lawyers for the Class Action who represent the Class) are Camp Fiorante Matthews Mogerman ([www.cfmlawyers.ca](http://www.cfmlawyers.ca)) and Ellis Business Lawyers ([www.ellislawyers.com](http://www.ellislawyers.com)).

Subclass Counsel (the lawyers for the Class Action who represent the Subclass) are Underhill Boies Parker ([www.ubplaw.ca](http://www.ubplaw.ca)).

Class Counsel and Subclass Counsel will together be seeking fees up to a maximum of one third of the value of any settlement or judgment plus disbursements and applicable taxes as a first charge on any recovery, to be approved by the British Columbia court. The fee arrangement is subject to court approval and the approved fee may be less than the maximum.

***Questions?***

Class Members can obtain more information by contacting Class Counsel directly at the addresses and numbers set out above.

Subclass Members can obtain more information by contacting Subclass Counsel directly at the address and number set out above.

This notice has been approved by the B.C. Supreme Court.

## Schedule "A"

### Amended Common Issues

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")?

During the Class Period, did the Minister assign the Withheld IVQ to the PHMA?

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")

Did PHMA direct funds collected from the class members for accessing the Withheld IVQ to the Minister as part of the Scheme?

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?

Did the Minister use the funds received in connection with the Scheme to directly or indirectly fund fisheries management?

By implementing the Scheme, did the Minister appropriate a public resource that did not belong to him to finance fisheries management activities?

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?

Did the collection of funds by or on behalf of the Minister under the Scheme constitute an unlawful or unconstitutional tax?

Is the Minister liable to account for and repay funds to the class members? If yes, in what amount?

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?

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?

Have the class members suffered a corresponding deprivation in the amount of the Additional Fees?

Is there a juridical reason why the Minister should be entitled to retain the enrichment?

Is the Minister liable to make restitution to the members of the class? If restitution is payable, in what amount?

What is the liability, if any, of the Minister for court order interest?

What is the appropriate distribution of monetary relief and interest to class members, and who should pay for the cost of that distribution?

Did PHMA act as agent or partner of the Minister and/or assist the Minister to conduct the unlawful activities?

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?

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?