

No. S077807
Vancouver Registry

In the Supreme Court of British Columbia

**BARRY JIM BURNELL and
LORNE NELS DAVID IVERSON**

Plaintiffs

and:

ATTORNEY GENERAL OF CANADA

Defendant

Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c.50

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
MADAM JUSTICE GRIFFIN) 11/September/2015
)

ON THE APPLICATION of the representative plaintiffs, Barry Jim Burnell and Lorne Nels David Iverson, coming on for hearing at 800 Smithe Street, Vancouver, B.C. on September 11, 2015, and on hearing David G.A. Jones, Meldon Ellis and Naomi Kovak, counsel for the representative plaintiff Barry Jim Burnell; Mark Underhill, counsel for the representative plaintiff Lorne Nels David Iverson; Lorne Lachance and Maria Molloy, counsel for the defendant, the Attorney General of Canada;

AND ON READING the materials filed;

THIS COURT ORDERS that:

1. The definitions set out in the settlement agreement attached to this order as **Schedule "A"** (the "Agreement") apply to and are incorporated into this order.
2. The Agreement is fair, reasonable and in the best interests of the Class and Subclass.

3. The Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.
4. The Agreement is incorporated by reference to and forms part of this order and is binding upon the representative plaintiffs and all members of the Class and Subclass including those persons who are minors or mentally incapable.
5. For purposes of administration of the Agreement, this Court will retain an ongoing supervisory role.
6. The Defendant shall pay the Settlement Amount to Class Counsel as provided in section 10 of the Agreement.
7. Camp Fiorante Matthews Mogerma shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Class and Subclass in accordance with the terms of the Agreement.
8. Upon the Effective Date of Settlement, the members of the Class and Subclass will have released their claims against the Defendant in accordance with paragraph 17 of the Agreement.

APPROVED AS TO FORM:

Signature of lawyer for the plaintiff,
Barry Jim Burnell

David G.A. Jones

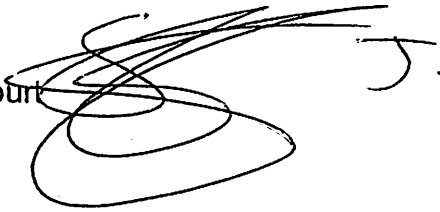
Signature of lawyer for the defendant,

Maria Molloy

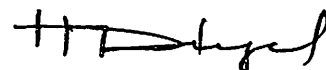
Signature of lawyer for the plaintiff,
Lorne Nels David Iverson

Mark Underhill

By the Court



Registrar



SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“**Agreement**”) is dated for reference April 23, 2015 by and between the Attorney General of Canada (“**Defendant**”), and the Plaintiffs, Barry Jim Burnell and Lorne Nels David Iverson (“**Plaintiffs**”), in *Burnell and Iverson v. Attorney General of Canada*, Supreme Court of British Columbia, Vancouver Registry No. S-077807 (“**Action**”).

WHEREAS the Plaintiffs seek restitution from the Defendant arising out of the allegedly unlawful transfer of Total Allowable Catch (“TAC”) for halibut from halibut fishing license holders to the Pacific Halibut Management Association of B.C. (“PHMA”) from January 1, 2001 to December 31, 2006 (the “Halibut Funding Scheme”)

WHEREAS the B.C. Supreme Court certified the Action as a class proceeding on February 18, 2014 and appointed the Plaintiff Barry Jim Burnell to represent “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 of B.C., 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” (the “Class”);

WHEREAS the B.C. Supreme Court certified a sub-class in the class proceeding on June 13, 2014 and appointed the Plaintiff Lorne Nels David Iverson to represent “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” (the “**Sub-Class**”);

WHEREAS the time for opting-out of the Class action expired on May 4, 2015 (“**Opt-Out Deadline**”);

WHEREAS the Action was set for trial beginning June 15, 2015;

WHEREAS the Defendant denies each and every one of the allegations made in the Action by the Plaintiffs, and, further, denies any wrongdoing of any kind in respect of the Halibut Funding Scheme;

WHEREAS the Defendant and the Plaintiffs in the Action (together, the “**Parties**”) have vigorously litigated their respective positions in connection with the Action and the Halibut Funding Scheme;

WHEREAS, as a result of the litigation, the Parties are thoroughly familiar with the factual and legal issues presented by their respective claims and defences and recognise the uncertainties as to the ultimate outcome of the Action, and the likelihood that any final result could require years of additional complex litigation and substantial expense;

WHEREAS the Plaintiffs believe that the claims asserted in the Action against the Defendant have merit; however, the Plaintiffs also recognise that (a) it would be necessary to

continue prosecuting the Action against the Defendant through a contested trial of the common issues and, even if successful there, through a series of possible appeals, all of which will further delay substantially the Class and Sub-Class members' receipt of benefits from the claims asserted against the Defendant in the Action, and (b) there are significant risks in the claims advanced against the Defendant; therefore, balancing the costs, risks and delay of continued litigation against the benefits of the settlement, the Plaintiffs have concluded that settlement as provided in this Agreement will be in the best interests of the Class and Sub-Class;

WHEREAS this Agreement was entered into after extensive arm's length negotiations between the Parties including a mediation before the Honourable Kenneth Smith;

WHEREAS the Parties desire to compromise and settle all issues and claims against the Defendant related to the acts, omissions and matters at issue in the Action;

WHEREAS the Parties agree that the settlement contemplated by this Agreement ("Settlement") is a fair, reasonable and adequate resolution of the claims advanced in the Action;

WHEREAS the total benefit to the Class and Sub-Class under the Settlement is \$3,000,000 all-inclusive subject to the opt-out credit set out in paragraphs 6, 7 and 8 below;

WHEREAS the Parties desire and intend to seek court approval of the Settlement as set forth in this Agreement;

NOW THEREFORE it is agreed that in consideration of the promises and mutual covenants set forth in this Agreement, and the entry by the court of final orders approving the terms and conditions of the Settlement as set forth in this Agreement, the claims made against the Defendant shall be compromised on the terms and conditions contained herein.

1. This Agreement is for settlement purposes only, and conditional upon the making of final orders approving the Settlement in the Action. Neither the fact of, nor any provision contained in, this Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any factual allegation that was or could have been made by the Plaintiffs, Class members, Sub-Class members or otherwise by the Defendant in the Action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Defendant, its employees, servants, agents, partners, joint venturers, assigns and solicitors.
2. This Agreement shall not be offered or be admissible in evidence by or against the Parties or cited or referred to in any other action or proceeding, except in any action involving any of the Parties for the purpose of enforcing or otherwise implementing the terms of this Agreement, and/or supporting a defense of res judicata, collateral estoppel, release, or other theory of claim preclusion, issue preclusion, or similar defense.

Approval Process

3. Following execution of this Agreement, the Plaintiffs will seek an order in the Action before the B.C. Supreme Court that approves the Settlement (“**Approval Order**”).
4. The Defendant will consent to that part of an application for the Approval Order which seeks court approval of this Agreement for the sole purpose of giving effect to the terms of the Settlement.
5. If the Approval Order is not granted, or is reversed or modified on appeal, then unless the Parties expressly agree otherwise in writing:
 - a. This Agreement and all orders made pursuant to it shall be null and void, shall have no further force and effect with respect to the Parties, and shall not be offered in evidence or used in any litigation for any purpose; and

- b. All orders in existence as of the date on which this Settlement was executed shall become operative and fully effective, as if proceedings relating to this Settlement had not occurred. In such event, the Parties reserve all rights to object to or otherwise challenge all such pre-existing orders.

Settlement Amount

6. The parties have agreed that the settlement amount payable by the Defendant (the “**Settlement Amount**”) is \$3,000,000 less a pro-rata opt-out credit for the value of the claims of “**New Opt-Outs**”. New Opt-Outs are any Class or Sub-Class members, who opted out before close of business on May 4, 2015, other than the following individuals: Ronald Malcolm, Herb Van Grootel, David Ronlund, Svend Mark, Wilfred Landry, Ken Gale, Anthony Lupis, Linda Gail, Arthur Hunt, Richard Gooldrup, Laura Neufeld, Kristen Berg, Lothar G. Mischke, Bob Baxter, David Reid, Paavo Seppanen, and Robert Kiesman (collectively, “**Original Opt-Outs**”), who Canada was advised had opted out prior to April 23, 2015.
7. The opt-out credit shall be calculated as follows:
 - a. The amount of IVQ in pounds purchased by or on behalf of New Opt-Outs from the PHMA during the Class Period (“**Amount A**”) shall be divided by the amount of IVQ in pounds purchased by or on behalf of all members of the Class and Sub-Class, Original Opt-Outs and New Opt-Outs from the PHMA during the Class Period (“**Amount B**”); and
 - b. The fraction obtained by dividing Amount A by Amount B shall be multiplied by \$3,000,000, the result of which will be the opt-out credit value.
8. For further clarity, Amounts A and B shall not include any “reserve” quota purchased by or on behalf of members of the Class, Sub-Class, Original Opt-Outs or New Opt-Outs from the PHMA as a result of agreements reached between the commercial and recreational halibut sectors in 2004 and 2005.

9. The Defendant agrees to not solicit Class members or Sub-Class members to opt-out of the Action.
10. Within 30 days after the later of (i) the day on which all appellate rights with respect to the Approval Order made in the Action have expired or have been exhausted (the “**Effective Date of Settlement**”), and (ii) the day on which the parties have agreed or the court has determined the value of the opt-out credits that are to be deducted under clauses 6, 7 and 8, above, the Defendant will pay the Settlement Amount to Camp Fiorante Matthews Mogerman in trust.
11. Upon receiving the Settlement Amount, Camp Fiorante Matthews Mogerman will deposit the funds in an interest-bearing trust account for the benefit of the Class and Sub-Class members.
12. For greater clarity, the payment of all expenses of the Settlement, including Class members’ and Sub-Class members’ claims, legal fees, administration expenses, taxes and notice costs shall be paid out of the Settlement Amount and the Defendant shall have no further liability in respect of those expenses or any other expenses that may arise out of or related to the implementation of a full and final settlement of this matter.
13. The Defendant shall have no legal or beneficial interest in the Settlement Amount nor shall it have any reversionary interest in the Settlement Amount.

Settlement Administration Plan

14. At the application for approval of this Settlement Agreement, or shortly thereafter, the Plaintiffs will apply to the court for approval of the terms for administration of the Settlement (“**Settlement Administration Plan**”). The Settlement Administration Plan will set out:
 - a. The procedure by which such Class members and Sub-Class members can claim an entitlement under the Settlement to the Settlement Fund;

- b. The quantum of legal fees payable to Class Counsel;
- c. Any honorarium to be paid to the Plaintiffs for acting as representative Plaintiffs;
and
- d. The disposition of any funds that are not claimed by Class members or Sub-Class members.

15. The Court shall have discretion to either approve or amend the Settlement Administration Plan.

The Settlement Administration Plan shall not form part of this Settlement Agreement and the approval of this Settlement shall not be contingent on the approval of the Settlement Administration Plan.

16. The Settlement Amount shall be disbursed in accordance with the Settlement Administration Plan or as otherwise directed by the court.

Release

17. Upon the Effective Date of Settlement, the Class members and Sub-Class members hereby fully and finally release and forever discharge the Defendant, its employees, servants, agents, partners, joint venturers, assigns and solicitors from any and all complaints, claims, grievances, liabilities, damages, actions, costs, compensation, expenses, causes of action and demands of any nature whatsoever whether in law or equity, which the Class members and Sub-Class members had or ever had, whether known or unknown, relating to any conduct alleged (or which was previously or could have been alleged) in the Action or otherwise relating to the Halibut Funding Scheme.

General

18. This Agreement and its attachments shall constitute the entire Agreement of the Parties and shall not be subject to any change, modification, amendment, or addition without the express

written consent of counsel on behalf of all Parties to the Agreement. This Agreement supersedes and replaces all prior negotiations and proposed agreements, written or oral.

19. This Agreement shall be binding upon and inure to the benefit of the Parties hereof and their respective representatives, heirs, successors and assigns.
20. In the event that any one or more of the provisions in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision if the Parties mutually elect to proceed as if such invalid, illegal or unenforceable provision had never been included in this Agreement.
21. The B.C. Supreme Court shall retain continuing and exclusive jurisdiction over the Parties and over the administration and enforcement of the Settlement and the benefits to the Plaintiffs and the Class and Sub-Class members hereunder.
22. Any disputes or controversies arising with respect to the interpretation, enforcement, or implementation of this Agreement must be made by application to the B.C. Supreme Court.
23. At the conclusion of the Administration of the Settlement, the Plaintiffs will file, at their own expense, an Order dismissing the action, as if tried on the merits.
24. The undersigned counsel warrant that they are fully authorised to execute and legally bind the Parties to this Agreement.
25. The Defendants and the Plaintiffs acknowledge that they have been represented and advised by independent legal counsel throughout the negotiations that have culminated in the execution of this Agreement.

26. This Agreement may be executed in counterpart by the parties hereto, and a facsimile or electronic signature shall be deemed an original signature for the purposes of this Agreement.
27. This Agreement shall be construed under and governed by the laws of the Province of British Columbia and of Canada.
28. The Parties have negotiated and fully reviewed the terms of this Agreement, and the rule that any uncertainty or ambiguity is to be construed against the drafter shall not apply to the construction of this Agreement by a court or any other adjudicator.
29. Whenever, under the terms of this Agreement, a person is required to provide service or written notice to the Defendant or to Class Counsel, such service or notice shall be directed to the individuals and addresses specified below, unless those individuals or their successor(s) give notice to the other Parties in writing:

As to Class Counsel:

David G.A. Jones
Camp Fiorante Matthews Mogerman
#400 – 856 Homer Street
Vancouver, BC V6B 2W5
Fax: 604-689-7554
Email: djones@cfmlawyers.ca

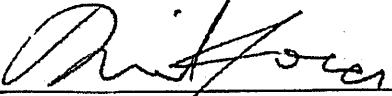
As to Sub-Class Counsel

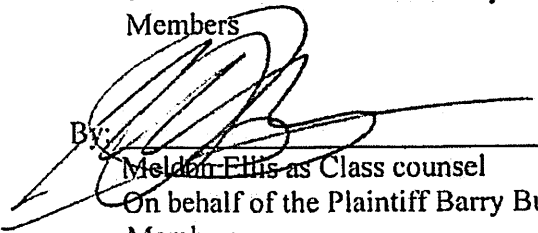
Mark Underhill
Underhill Gage Litigation
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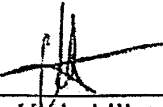
As to the Defendant

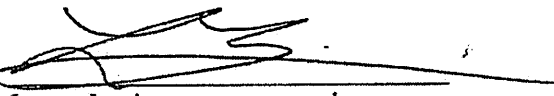
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Department of Justice Canada
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Vancouver, BC V6Z 2S9
Fax: 604-666-2061
Email: lorne.lachance@justice.gc.ca

IN WITNESS WHEREOF the Parties have executed this Agreement as follows:

Date: Aug 31, 2015 By: 
David Jones as Class counsel
On behalf of the Plaintiff Barry Burnell and Class
Members

Date: September 1, 2015 By: 
Meldon Ellis as Class counsel
On behalf of the Plaintiff Barry Burnell and Class
Members

Date: September 2, 2015 By: 
Mark Underhill as Sub-Class counsel
On behalf of the Plaintiff Lorne Iverson and Sub-
Class Members

Date: Aug. 28, 2015 By: 
Lorne Lachance as counsel
On behalf of the Attorney General of Canada