

Summary of the Reasons for Judgment of The Honourable Madam Justice S. Griffen dated November 29, 2011:

Madame Justice Griffen granted the plaintiff's application substitute Mr. Barry Burnell for Lorne Iverson as representative plaintiff; and Justice Griffen dismissed the Crown's application to cross examine Mr. Iverson and Mr. Burnell on their affidavits.

Justice Griffen noted the procedural history of this case, in particular the Crown's application in January 2009 to dismiss or stay the proceeding on the basis that the Federal Court has exclusive jurisdiction. Justice Griffen confirmed that the Supreme Court of Canada ruling in *Canada (Attorney General) v. Telezone Inc.* of December 23, 2010 strongly weighed in favour of the conclusion that this court did have jurisdiction in the present case; and the Crown therefore has not proceeded with its application for a stay or dismissal of the action.

Justice Griffen acknowledged the reason for the Plaintiff's application to substitute is that the Plaintiff perceives there may be a possible conflict between Mr. Iverson and class members relating to the fact that Mr. Iverson was a PHMA director at material times.

Justice Griffen did not accept the Crown's argument that no PHMA member (i.e., 80 to 90% of 436 halibut license holders) could stand as representative plaintiff because any PHMA member would be in a conflict with non-PHMA members. Justice Griffin ruled that the non-PHMA members could be certified under sub-class in accordance with section 6 of the CPA.

On a related note, we recently assisted East Coast fisherman in a leave to appeal application to Supreme Court of Canada from a negative judgment by the Newfoundland Court of Appeal. The NCA decision held (2/1) that the Minister had unfettered discretion to deal with fishing licenses and quota and could not be held accountable for any claims of breach of contract or negligence. The East Coast fisherman asked Fishing For Freedom to support its application for leave to appeal to the Supreme Court of Canada and we provided an affidavit of support as a prospective intervenor in that case.