Federal Court  Cour fédérale

Date: 20170612

Docket: T-1944-08

Citation: 2017 FC 574

Toronto, Ontario, June 12, 2017

PRESENT: The Honourable Mr. Justice Southcott

BETWEEN:

RICHARD GILLETT

Plaintiff

and

HER MAJESTY IN RIGHT OF CANADA
AND
KEVIN HURLEY

Defendants

JUDGMENT AND REASONS

I. Overview

[1] The Plaintiff in this action, Mr. Richard Gillett, is a commercial fisher who resides in the Town of Twillingate, in the Province of Newfoundland and Labrador. He holds a suite of fishing licenses, applying to various species including capelin, and operates a fishing vessel named the "Midnight Shadow". Following decisions by Mr. Gillett to lease his vessel to another

commercial fisher operating in the Province of Québec, the Canadian Department of Fisheries and Oceans [DFO] did not permit Mr. Gillett to fish his capelin license in 2007 and 2008. He has brought this action against DFO and Mr. Kevin Hurley, a DFO official who communicated this decision to him, claiming lost revenues and other damages.

[2] For the reasons that follow, I am dismissing Mr. Gillett's action. Mr. Gillett argues that his capelin license constitutes property which was taken by the Defendants without compensation, that the Defendants have committed the tort of misfeasance in public office, that the Defendants' actions represent a breach of contract, and that Mr. Hurley's actions represent a tortious interference with Mr. Gillett's economic relationship with DFO. As explained in more detail below, my conclusion is that the evidence and applicable authorities do not establish any of the causes of action that Mr. Gillett asserts.

II. Background

[3] Mr. Gillett is a 45-year-old resident of Twillingate, Newfoundland and Labrador, and has been fishing for the last 32 years. While he holds a variety of commercial fishing licenses and fishes whichever species are available to him in a given year, this action relates to the 2007 and 2008 capelin fisheries. Mr. Gillett operates the 44 foot fishing vessel "Midnight Shadow", which is equipped with purse seine fishing gear and fishes in the mobile gear fleet in capelin fishing areas 1 to 11 on the northeastern coast of Newfoundland.

[4] In 2007, DFO implemented fisheries management measures applicable to the Newfoundland and Labrador [NL] region, which restricted the use of the vessels in the mobile

gear fleet in the capelin fishery. Pursuant to these management measures, a vessel in the mobile gear fleet was permitted to fish in only one management area, and a capelin license holder in the NL region who leased a vessel to another license holder, including a license holder in another region, was not permitted to use the same vessel to also fish the license holder's own capelin license. These measures were continued in 2008, the second fishing season to which Mr. Gillett's claim relates.

[5] Although aware of these measures from communications with DFO officials, Mr. Gillett made the decision in June 2007 to lease the "Midnight Shadow" to Mr. Roy Griffin, a capelin license holder in the Québec region. As a result, DFO did not issue license conditions to Mr. Gillet for the 2007 capelin season and "banked" his capelin license. Mr Gillet was therefore unable to fish for capelin under that license in the 2007 season. Mr. Kevin Hurley, who was then DFO's Area Chief, Resource Management, for Central Newfoundland, communicated this to Mr. Gillett by letter dated July 5, 2007. In 2008, Mr. Gillett again leased the "Midnight Shadow" to Mr. Griffin, with the same result.

[6] Mr. Gillett commenced this action in 2008, asserting a claim for lost income that he says he would have earned had he been permitted to fish capelin allocated to his license in 2007 and 2008, as well as lost employment insurance and Canada Pension Plan benefits. He also claims exemplary, aggravated and punitive damages, arguing that the Defendants' conduct in this matter has been high-handed, improper and reprehensible so as to justify damages of this nature.

III. Witnesses

[7] As encouraged through the Court's case management process, the parties prepared a Joint Book of Documents and agreed to the admission of these documents at trial, without the need for proof through witness testimony. As a result, the trial in this matter proceeded with a limited number of witnesses, whose testimony was in turn relatively brief.

[8] Mr. Gillett was the Plaintiff's sole witness, explaining his participation and that of his vessel in the capelin fishery, the events (including communications with DFO officials) leading to his lease of the vessel to Mr. Griffin and the banking of his license, and the calculation of his claim. Mr. Gillett was cross-examined by the Defendants' counsel and, as acknowledged by counsel in closing argument, Mr. Gillett presented as a forthright and credible witness.

[9] The Defendants' evidence was presented through three witnesses, all of whom were cross-examined by the Plaintiff's counsel and also presented their evidence professionally and credibly. The Defendant, Kevin Hurley, testified as to his role in the development of the management measures that applied to the capelin fishery in 2007 and 2008, as well as his communications with Mr. Gillett on the effect of Mr. Gillett's decision to lease his vessel to Mr. Griffin.

[10] The Defendants also adduced evidence from two Resource Managers working in DFO's regional office in St. John's. Ms. Annette Rumbolt, the Resource Manager for licensing services for the NL region between 2005 and 2010, explained DFO's licensing process and testified as to

her role in the development of the 2007 and 2008 management measures and how those measures affected the application of the licensing process to Mr. Gillett. Mr. Ray Walsh, the Resource Manager for pelagic species for the NL region between 2005 and 2008, was the DFO witness who most contributed to the substantive content of the 2007 and 2008 capelin management measures. Mr. Walsh explained the history behind these measures, their intent, and his communication with Mr. Gillett about these measures in June 2007 before he leased his vessel to Mr. Griffin.

[11] To the extent significant to the outcome of this action, the evidence of the parties and other witnesses is addressed in more detail in the Analysis portion of this decision. As noted above, all witnesses presented as credible, and my decision does not turn on preferring the evidence of any witness over that of another.

IV. Issues

[12] In an Order dated January 15, 2016, issued by Prothonotary Morneau following the pre-trial conference in this matter, the following were identified as the issues and sub-issues to be determined at trial:

A. Whether the Plaintiff held a capelin license for the 2007 season;

   i. Whether the licence, once granted, constitutes property;

   ii. Whether the refusal by the Defendants, or either one of them, to permit the Plaintiff to exercise the right to harvest capelin was a taking without compensation;

B. Whether the Plaintiff has established the elements of misfeasance in public office;

C. Whether the Plaintiff has established a breach of contract;

D. Whether the Plaintiff has established interference with economic relations;

E. In the event that any liability is found on the part of the Defendants, what is the appropriate measure of damages?

[13] Having heard the evidence and argument in this matter, it is my view that these issues remain an appropriate framework for adjudication of this action.

V. Analysis

A. *Whether the Plaintiff held a capelin license for the 2007 season*

i. Whether the licence, once granted, constitutes property

[14] The first cause of action advanced by Mr. Gillett asserts that the Defendants' refusal to permit him to harvest capelin under his license in 2007 and 2008 represents a taking of a property right without compensation. As such, this cause of action is premised on Mr. Gillett's position that he held a capelin license for the 2007 and 2008 seasons and that such license, once issued, conferred a property right upon him. As explained more fully below, I believe the question whether Mr. Gillett held this license is best answered in combination with the question whether such license constitutes property, as the answers to both questions turn on the particular rights that Mr. Gillet argues the license conferred upon him.

[15] In support of his position, Mr. Gillett relies on a license document that was adduced in evidence. This document, prepared by DFO and bearing the title "Licenses/Conditions and

Vessel Registration(s)" [the License Document], shows that it was printed on June 28, 2007, refers to Mr. Gillett and his enterprise identification number, refers to the vessel registration of the "Midnight Shadow", and lists licenses for several species including capelin. In relation to capelin, the License Document describes the gear type as purse seine, identifies capelin fishing areas 1 to 11, and refers to a license fee of $30. Mr. Gillett's argument is that, once he paid the applicable fee and DFO provided the License Document to him, he had been issued with a license which in turn created a property right.

[16] The Defendants' position is that Mr. Gillett did not hold a valid license to harvest capelin in 2007 or 2008 and that the Court therefore does not have to determine whether such a license would constitute property. Nevertheless, the Defendants also take the position that such a license would not confer a property interest upon Mr. Gillett and that there was therefore no property right that could be subject to a taking without compensation.

[17] The Defendants' arguments are based principally upon Ms. Rumbolt's explanation of DFO's licensing process. Ms. Rumbolt explained that her duties at DFO's regional headquarters in St. John's included responsibility for the licensing office which issued licenses and license conditions to fishers and collected applicable fees. These documents are issued on an annual cycle, which begins around the end of a calendar year when DFO mails license renewal documentation to license holders. Any time before fishing the licence, a license holder can pay the applicable fee, and DFO then issues a license document. However, before the license holder is entitled to fish, he or she must also have been issued license conditions. Ms. Rumbolt

described the license document as the "front page" and referred to the conditions as "rules of the road", setting out measures applicable to specific fisheries.

[18] Ms. Rumbolt explained that often license conditions are not issued at the same time as the license document, because the conditions have not yet been developed at the time the license holder pays the fee and receives the license document. The development of conditions must await the availability of scientific input applicable to the particular fishery and consultation with industry stakeholders such as harvesters, the Fish, Food and Allied Workers Union [FFAW] (which Mr. Hurley later described as representing harvesters), Aboriginal groups, processors, and the provincial government. Ms. Rumbolt testified that license conditions are sometimes not available until as little as a few days before a particular fishery opens.

[19] In relation to the License Document issued to Mr. Gillett, Ms. Rumbolt referred to the print date of June 28, 2007 as the date the document was issued, which showed that the applicable fees had been paid by that date. She also pointed out express language on the face of the document stating that "the License Holder cannot operate any license without the license conditions for that fishery been attached to this document".

[20] Ms. Rumbolt testified that either Kevin Hurley or Ray Walsh gave her direction not to issue conditions for Mr. Gillett's capelin license for the 2007 season, because of new measures introduced for the capelin fishery that year, and that either Ms. Rumbolt, Mr. Hurley or Mr. Walsh made the decision to bank the license. Ms. Rumbolt explained that this decision was made because Mr. Gillett had leased his vessel to a fisher in the Québec region, such that he was

ineligible under the 2007 policy to participate that year in the capelin fishery in the NL region. As a result, the conditions applicable to the License Document were not printed until November 14, 2007, when DFO was preparing to issue license renewal documents for the following year. Ms. Rumbolt described this as a process of cleaning up licensing documentation in preparation for the upcoming renewal cycle. Mr. Hurley testified that he was consulted and confirmed that it was acceptable for the conditions to be printed as part of that cleanup process, because the capelin fishery was by then closed.

[21] Against this evidentiary backdrop, Mr. Gillett argues that he held a capelin license as soon as the License Document was issued to him on June 28, 2007, while the Defendants argue that he did not hold a license, or at least not a valid one, because no license conditions had been issued to him at that time. As jurisprudential support for his position, Mr. Gillett relies on the decision of the Supreme Court of Canada in *Saulnier v Royal Bank of Canada*, 2008 SCC 58 [*Saulnier*] and the decision of the Federal Court of Appeal in *Her Majesty the Queen v Haché*, 2011 FCA 104 [*Haché*].

[22] In *Saulnier*, the Supreme Court explained, at paragraph 43, that a fishing license issued by the Minister of Fisheries and Oceans under s. 7(1) of the *Fisheries Act*, RSC 1985, c F-14 conferred upon the license holder a right to engage in an exclusive fishery under the conditions imposed by the license and a proprietary right in the fish harvested and the earnings from their sale. The Court held that the substance of what was conferred, namely a license to participate in the fishery coupled with a proprietary interest in the fish caught according to its terms and subject to the Minister's regulations, constituted a property interest for purposes of the statutory

definitions of "property" in the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 and "personal property" in the *Personal Property Security Act*, SNS 1995-96, c 13 (see *Saulnier*, paras 46 and 51).

[23] Mr. Gillett notes that, in *Haché*, the Federal Court of Appeal considered *Saulnier* and subsequently concluded that fishing licenses were property within the meaning of s. 248(1) of the *Income Tax Act*, RSC 1985, c 1 (5th Supp.) [ITA], such that the respondent's disposition of two commercial fishing licenses was taxable as a capital gain. In reaching this decision, the Federal Court of Appeal overturned the decision of the Tax Court of Canada (2010 TCC 10), which had distinguished *Saulnier* on the basis that, in relation to the respondent's groundfish license, the respondent never received the conditions attached to his license. The Tax Court had therefore concluded that the license was not valid and did not confer upon him rights that could constitute property.

[24] The Federal Court of Appeal considered the effect of the license conditions, noting that the license document itself stated that the license holder must not engage in fish harvesting before receiving and attaching valid license conditions, and referring to the regulatory authority for issuance of such conditions under s. 22 of the *Fishery (General) Regulations*, SOR/93 – 53. The Court observed that the respondent did not receive conditions attached to his groundfish license, because of the moratorium imposed on groundfish stocks since the 1990s and, at paragraphs 34 to 35, analysed the effect of the absence of conditions as follows:

> [34] I disagree. The licence authorizes its holder to engage in exclusive fishing activities in compliance with the conditions set out in the licence. The conditions attached to the licence merely provide the framework for and limitations on engaging in the

> authorized activity. The fact is that if the moratorium had been lifted, in whole or in part, between January 2000 and May 2001, once the respondent received the conditions for engaging in the activity, he could have put out to sea and fished for groundfish because he held a valid licence for that period.
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> [35] As the appellant argues, if the lack of conditions attached to the licence were to render it invalid, this licence could not have been issued on April 19, 2000, or during previous years when the moratorium was also in place. Moreover, why pay renewal fees for a licence that will in all likelihood be invalid if not because this licence gives its holder the exclusive right or authority to be part of the core and participate in commercial fishing activities? Both the legislative enactments and the evidence show that the fact that the respondent did not receive the conditions attached to the licence presented no obstacle to his holding a "bundle of rights" that he could have exercised once he received those conditions. The licence itself, not the conditions that were attached to that licence from time to time, is the source of the respondent's rights to participate in an exclusive commercial fishing activity. This distinction, which I consider determinative, seems to have escaped the judge.

[25] On the basis of this analysis in *Haché*, Mr. Gillett argues that the fact no license conditions had been issued for his capelin license in 2007 has no effect upon the property right that he received upon issuance of the License Document.

[26] In my view, the effect of the absence of license conditions must be considered in the context of the particular property right that Mr. Gillett argues was conferred upon him by the License Document. In *Haché,* the proceeds from the respondent's disposition of his license were treated as a capital gain, because the license constituted a bundle of rights falling within the definition of "property" in the ITA. These were rights that the respondent was entitled to exercise, when and if license conditions were issued. The Federal Court of Appeal therefore

rejected the contention that the license was invalid because of the absence of attached license conditions.

[27] Applying this analysis to Mr. Gillett's capelin license in 2007, he also held a bundle of rights that he could have exercised once he received license conditions. However, I interpret Ms. Rumbolt's evidence to be that DFO declined to issue conditions for Mr. Gillett's capelin license in 2007 as a means of applying its fisheries management policy, because Mr. Gillett had leased the midnight shadow to Mr. Griffin in 2007 and was therefore ineligible under that policy to participate in the capelin fishery in the NL region for that year. In defending this action, DFO takes the position that Mr. Gillett's license was "invalid", because no license conditions had been issued. I do not consider this to be a particularly apt characterization of the status of the license, given the language employed by the Federal Court of Appeal in the above quote from *Haché* and the fact that the license still represented a bundle of rights. These rights included, for instance, the right to seek renewal of the license the following year and the right to harvest capelin once license conditions were issued. However, these rights did not include the right to harvest capelin in the 2007 season, in circumstances where no conditions were issued to Mr. Gillet because he was ineligible to participate in the fishery pursuant to the applicable DFO licensing policy.

[28] Taking into account this analysis, I find no basis for a conclusion that Mr. Gillett's 2007 capelin license conferred upon him a property right of the sort he is asserting in this action. First, it is important to recognize that the findings in *Saulnier* and *Haché*, that the rights conferred by fishing licenses constituted property interests, were made only for purposes of certain statutory definitions. This point was made by the Federal Court of Appeal in its recent decision in *Canada*

v 100193 P.E.I. Inc., 2016 FCA 280 [*100193 P.E.I. Inc. - FCA*] (leave to appeal to Supreme Court of Canada denied June 1, 2017), on appeal from a decision by the Federal Court on a summary judgment motion (*100193 P.E.I. Inc. v Canada*, 2015 FC 932 [*100193 P.E.I. Inc. - FC*]). The Federal Court had declined to dismiss an expropriation claim asserted by participants in the snow crab fishery related to quota that had not been allocated to them. At paragraphs 13 to 17 of *100193 P.E.I. Inc. - FCA*, the Federal Court of Appeal noted the specific statutory context in which *Saulnier* and *Haché* had been decided, observed that the law does not recognize a proprietary interest on the part of fishers in uncaught fish or the fishery, and held that the Federal Court should have dismissed the claim for compensation arising from expropriation.

[29] Similarly, in the recent decision in *Anglehart v Canada*, 2016 FC 1159 [*Anglehart*], this Court considered claims by crab fishers which asserted that the Crown had expropriated their property rights by reducing their individual quota. Concluding that the scope of *Saulnier* and *Haché* was limited to the legislative context in which those decisions were rendered, Justice Gagné noted the comments from Justice Binnie at paragraph 48 of *Saulnier* that the finding of the Supreme Court was made for certain statutory purposes and did not fetter the Minister's discretion surrounding the management of the fishery. Justice Gagné also observed that a fishing license is not normally considered property at common law and that the bundle of rights described in *Saulnier* covered a property right in the fish harvested and the earnings from their sale, not in a quota of uncaught fish (see *Anglehart*, at paras 107 to115).

[30] *Anglehart* rejected the plaintiffs' expropriation claim, applying at paragraph 160 the reasoning of the Nova Scotia Supreme Court in *Taylor v Dairy Farmers of Nova Scotia*, 2010

NSSC 436 (affirmed 2012 NSCA 1), which concluded that the milk quotas afforded to Nova Scotia dairy farmers were not property capable of being subject to expropriation.

[31] I agree with and adopt the reasoning in *100193 P.E.I. Inc. - FCA* and *Anglehart* as applicable to Mr. Gillett's claim for expropriation. Having been issued a License Document but no license conditions applicable to the capelin fishery, because he was not eligible to participate in that fishery in the NL region in 2007, Mr. Gillett did not hold the right to participate in that fishery that year. He had no property right in uncaught fish and therefore no such right which the law would characterize as property capable of being subject to expropriation. This analysis applies equally to the 2008 capelin fishery, in which Mr. Gillett again chose to lease his vessel to Mr. Griffin, such that he was again not entitled to participate in that fishery in the NL region.

ii. Whether the refusal by the Defendants, or either one of them, to permit the Plaintiff to exercise the right to harvest capelin was a taking without compensation

[32] It therefore follows that the Defendants' refusal to permit Mr. Gillett from harvesting capelin in the NL region in 2007 and 2008 was not a taking without compensation.

B. *Whether the Plaintiff has established the elements of misfeasance in public office*

[33] Both parties rely on the decision of the Supreme Court of Canada in *Odhavji Estate v Woodhouse,* 2003 SCC 69 [*Odhavji Estate*] for an explanation of the elements of the tort of misfeasance in public office. The Defendants referred to the following summary of these elements provided in paragraph 32 of that decision:

> 32 To summarize, I am of the opinion that the tort of misfeasance in a public office is an intentional tort whose distinguishing elements are twofold: (i) deliberate unlawful conduct in the exercise of public functions; and (ii) awareness that the conduct is unlawful and likely to injure the plaintiff. Alongside deliberate unlawful conduct and the requisite knowledge, a plaintiff must also prove the other requirements common to all torts. More specifically, the plaintiff must prove that the tortious conduct was the legal cause of his or her injuries, and that the injuries suffered are compensable in tort law.

[34] Mr. Gillett's argument focuses on the two main elements of this intentional tort and the following explanation, at paragraphs 22 to 23 of *Odhavji Estate,* of how those elements can be proved in the case of a so-called Category A tort, which he submits was committed by the Defendants in the case at hand:

> 22 What then are the essential ingredients of the tort, at least insofar as it is necessary to determine the issues that arise on the pleadings in this case? In *Three Rivers*, the House of Lords held that the tort of misfeasance in a public office can arise in one of two ways, what I shall call Category A and Category B. Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. This understanding of the tort has been endorsed by a number of Canadian courts: see for example *Powder Mountain Resorts*, *supra*; *Alberta (Minister of Public Works, Supply and Services)* (C.A.), *supra*; and *Granite Power Corp. v. Ontario*, [2002] O.J. No. 2188 (QL) (S.C.J.). It is important, however, to recall that the two categories merely represent two different ways in which a public officer can commit the tort; in each instance, the plaintiff must prove each of the tort's constituent elements. It is thus necessary to consider the elements that are common to each form of the tort.
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> 23 In my view, there are two such elements. First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff. What distinguishes one form of misfeasance in a public office from the other is the manner

> in which the plaintiff proves each ingredient of the tort. In Category B, the plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff.
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> (Emphasis added)

[35] Mr. Gillett's position is that the Defendants' adoption or application of the 2007 and 2008 capelin management measures, preventing him from harvesting capelin under his license in those seasons, was conduct specifically intended to injure both him personally and, as a class of persons, license holders who wished to lease their vessels to others in the Québec region. He submits that the evidence of the Defendants' witnesses does not explain how DFO's policy objectives were advanced through these measures and therefore that there must have been other reasons for their adoption. Mr. Gillett argues that the management measures were created "on the fly" for reasons that are best known to the DFO officials involved, but he also submits that the evidence of Ms. Rumbolt provides the best insight into these reasons. Mr. Gillett submits that Ms. Rumbolt testified that the intent was to prevent him from having an economic advantage over others. He contends that these measures represent a cover or excuse intended to prevent him from fishing.

[36] An assessment of Mr. Gillett's allegations requires consideration of the evidence of all three DFO witnesses in relation to the management measures adopted for the 2007 and 2008 capelin fishery. However, the witness who appears to have provided the most substantive input

into the development of those measures was Mr. Ray Walsh, the Resource Manager for pelagic species (which include capelin) for the NL region. Mr. Walsh was responsible for developing and implementing policies for the management of pelagic species fisheries. In carrying out that mandate, he conducted consultations with fishing industry stakeholders and provided advice and recommendations to senior DFO management.

[37] Mr. Walsh testified as to the recent history of the capelin fishery which led to the policy measures adopted in 2007. Prior to 2004, markets for capelin were poor and there was little interest in the fishery, with many issued licenses being inactive. However, in 2004, markets were developing in Asia and Russia, the level of interest in the fishery increased, and the total allowable catch [TAC] prescribed by DFO was caught in full for the first time. There were cases where fleets were exceeding their quotas, because this is a fishery in which harvesting activity proceeds rapidly, usually just for a few days, and DFO struggled to get information on harvesting volumes quickly enough to stop the fishery before quotas were exceeded.

[38] In 2005, DFO anticipated continued strong interest in the capelin fishery and convened meetings with representatives of the mobile and fixed gear fleets, the FFAW, processors and the provincial government, to consider how to slow down the fishery and avoid gluts at the wharf. Mr. Walsh explained that gluts would occur when vessels were landing their catch at a rate faster than could be accommodated by processors, resulting in dumping of fish or poor quality product as fish remained dockside for too long a period before being processed. Gluts contributed to waste of the resource and fishers not getting maximum value for their catch because of the degradation in quality. The result of industry consultations was the adoption of a daily limit on

the quantity of fish that could be harvested by each mobile gear vessel, as well as certain fixed gear fleets adopting a daily limit on a trial basis.

[39] In 2006, a high level of participation in the capelin fishery was again anticipated, and DFO conducted meetings with industry stakeholders to seek input on the level at which the TAC should be set and which measures should be adopted to address the management challenges which DFO was still experiencing. The result was a reduction in the daily limit applicable to mobile gear fishers and the imposition of daily limits upon the entire fixed gear fleet. Mr. Walsh identified a News Release issued by DFO on June 20, 2016, in which the Minister referred to these management measures.

[40] Mr. Walsh then referred the Court to a document entitled "2006 Capelin Fishery Short-Term Licensing Measures", reflecting recommendations made to the Regional Director General [RDG] for the NL region on the fishery management measures reflected therein, and the RDG's approval of those measures. This document explains that concerns were being raised by fixed gear capelin license holders regarding mobile gear fishers seeking access to the 2006 fixed gear capelin fishery through the leasing and transfer of vessels. It was therefore recommended that any inshore vessel fishing capelin in 2006 could only be used in one fleet, mobile or fixed gear, and that inshore vessels in the fixed gear fleet could only be used in one capelin quota management unit for 2006.

[41] Turning to 2007, Mr. Walsh explained that DFO saw the trend of recent years continuing, with markets and prices strong and participation in the capelin fishery growing. While utilization

of the resource had improved, the mobile purse seine fleet still presented challenges with quota monitoring and concerns about capelin being used for mink food and other uses that were economically suboptimal. So further refinements to the management measures were adopted, with the benefit of input obtained through industry consultations. The daily catch limit was reduced, and a seasonal limit was imposed on the mobile fleet, i.e. a limit on the amount of capelin that could be caught by a particular harvester throughout the season.

[42] Mr. Walsh also testified that DFO received expressions of concern that members of the mobile fleet would catch their seasonal limit and then employ their vessels to fish previously inactive capelin licenses, undermining the effect of the seasonal limit. He explained that, if the number of active licenses increased beyond what was expected, this would increase the quota monitoring challenge faced by DFO and would mean that the level that had been selected for the seasonal limit imposed on each license would turn out to be too high. The result of this concern was the adoption of additional management measures for the 2007 season.

[43] The measures applicable to the 2007 capelin fishery were expressed as follows in bullet point form in documents exchanged between DFO officials on June 20, 2007:

- Any vessel fishing capelin in 2007 can only be used in one fleet, mobile or fixed gear.
- Vessels in the fixed gear fleet can only be used in one Capelin Quota Management Unit for 2007.
- Vessels in the mobile gear fleet can only be used in one Management Area for 2007.
- These provisions also apply to lease requests from other regions.
- A vessel may only be used once in the 2007 capelin fishery.

[44] The last three of these five points are the management measures that were first introduced for the 2007 season and resulted in Mr. Gillett being prevented from using the "Midnight Shadow" to fish his capelin licenses in the NL region after leasing that vessel to Mr. Griffin in the Québec region. Mr. Walsh explained that the drafting of these measures was performed by licensing officers, but that he provided the substantive content, which he developed based on industry input and communications with senior DFO officials. I also note that Mr. Walsh testified, supported by notes in his diary, that he had a telephone conversation with Mr. Gillett on June 25, 2007, in which Mr. Walsh advised Mr. Gillett of these management measures, explaining that under DFO policy Mr. Gillett would have to choose between leasing his vessel to fish in the Québec region and fishing in the NL region. He could not do both.

[45] Kevin Hurley, DFO's Area Chief, Resource Management, for Central Newfoundland, also testified as to the problems with quota monitoring and glut presented by the capelin fishery, due to the limited number of processors and the increasing number of participants. He explained that the measures adopted to address these problems included limited license entry and daily and seasonal catch limits. When referred to the policy documentation prepared by DFO in 2006 and 2007, Mr. Hurley confirmed that he was consulted on the policy measures, as were all area chiefs, and provided input on the drafts.

[46] It was also Mr. Hurley who provided Mr. Gillett with written confirmation, after Mr. Gillett had leased his vessel to Mr. Griffin, that he would not be permitted to fish his capelin license for the 2007 season and that his license would therefore be banked for the remainder of the 2007 capelin fishery. In a letter dated July 5, 2007, Mr. Hurley quoted the measures which

applied for the 2007 capelin fishery, expressed as the five bullet points quoted above. Mr. Hurley testified that the form of this letter was based on another letter that had recently been sent to a harvester on the west coast of Newfoundland in similar circumstances.

[47] Ms. Rumbolt, the Resource Manager for licensing services for the NL region, also testified as to her role in the development of the 2007 policy measures. When referred to the policy documentation prepared in 2007, she explained that she was the author of the policy but that its content came from senior managers and other resource managers based on meetings with industry participants. Ms. Rumbolt testified that she may have drafted the five bullet points which captured the 2007 capelin management measures, that task having rested with her because her licensing services staff dealt directly with harvesters, but explained that Mr. Walsh and Mr. Don Ball (described in the documentary evidence as Area Chief, Resource Management in Corner Brook, NL) assisted with the development of those measures.

[48] Returning to Mr. Gillett's allegations in support of his claim of misfeasance in public office, he argues that the Defendants' witnesses did not explain how DFO's policy objectives were advanced through the new measures that were adopted for the capelin fishery in 2007. In cross-examination of each of these witnesses, Mr. Gillett's counsel put to them the proposition that, had the "Midnight Shadow" been permitted to fish first Mr. Griffin's license in the Québec region and then Mr. Gillett's license in the NL region, this would not have contributed to the glut problem that DFO was attempting to address. I understand his point to be that, if a particular vessel fished first in one area and then another, the harvesting effort and landings from these fisheries would be consecutive and therefore would not contribute to a glut. He also points out

that the capelin fisheries in the Québec and NL regions were themselves necessarily consecutive, not concurrent, because the stock was commercially fishable at different times in the two regions, and that, as confirmed in Mr. Hurley's testimony, there was no glut problem in Québec. The problem with glut caused by fish landed in Newfoundland was not manifested in Québec because of the limited harvesting capacity in that region, there being very few fishing vessels with purse seine gear operating out of that province.

[49] In cross-examination, Mr. Walsh testified that DFO's concern was not about the efforts of individual harvesters but about collective participation in the capelin fishery. Absent the policy measures that were adopted, there would be more licenses active, because previously inactive licenses could be fished with other license holders' vessels, and the catch limits afforded to individual licenses would end up being too high. Mr. Walsh also made the point that fish caught in Québec was sometimes landed in ports on the west coast of Newfoundland, the same ports at which fish caught in the NL region was landed.

[50] In response to similar questioning, Mr. Hurley testified that the higher the level of the fishing activity, the more likelihood there was of a glut situation developing. With more licenses being active, the fact that each individual vessel could only harvest capelin in one area at a time would not necessarily mean that DFO would achieve its objective of an orderly fishery.

[51] I acknowledge that it may have been possible for Mr. Gillett's vessel to fish in the Québec region, even landing its catch in Newfoundland (as the evidence is it did), and then fish Mr. Gillett's own license in the subsequent fishery in the NL region, without contributing to the

glut problem. However, even if I were to accept that the application of DFO's policy measures in these particular circumstances was not necessary to advance DFO's policy objectives, this does not mean that the policy or its application was unlawful.

[52] As explained by the Supreme Court of Canada in *Comeau's Sea Foods Limited v Canada (Minister of Fisheries and Oceans)*, [1997] 1 SCR 12, at paragraphs 36 to 37, the Minister of Fisheries and Oceans [Minister] has a broad discretion in the use of licensing as a tool to manage, conserve and develop the fishery on behalf of Canadians in the public interest. The Minister is restricted by the requirements of natural justice and must base his or her discretionary decisions on relevant considerations, avoid arbitrariness and act in good faith. However, the evidence of the Defendants' witnesses, and in particular that of Mr. Walsh, establishes that the 2007 capelin management measures were adopted based on policy considerations surrounding the objective of achieving an orderly fishery to effectively manage and maximize utilization of the resource. These measures took into account the recent history of that fishery and the input of interested stakeholders. I find no basis to conclude that these measures or their application to Mr. Gillett were arbitrary or based on irrelevant considerations or bad faith.

[53] Mr. Gillett also impugned the 2007 policy measures on the basis that they represented DFO in the NL region improperly implementing licensing policy which adversely affected another region, by discouraging NL license holders from leasing their vessel to Québec license holders. I see no merit to this argument, given that DFO is a federal regulator. Mr. Walsh explained that the NL region was the lead region for the capelin fishery, taking the broader capelin fishery into account in the establishment of policy.

[54] Moreover, even if Mr. Gillett had succeeded in establishing that the application of the 2007 capelin management measures to his circumstances was unlawful, this in itself would not support a conclusion that the Defendants committed the tort of misfeasance in public office. As explained in the analysis of the elements of this tort earlier in these Reasons, this is an intentional tort requiring the establishment of deliberate unlawful conduct. Mr. Gillett's position is that the Defendants committed a Category A tort, in which the relevant public official acted with the express purpose of harming him.

[55] The testimony of Ms. Rumbolt, on which Mr. Gillett relies as evidence that the Defendants' conduct was intended to injure him, was that she understood that the intent of the 2007 management measures was to allow each vessel to be used in only one fleet for each season, so as not to afford an advantage to earn more money. However, Ms. Rumbolt also stated that she was not an expert on this and that an explanation of the rationale for the management measures should come from someone who managed capelin in 2007. I do not interpret Ms. Rumbolt's evidence to be that the prohibition against using a vessel in more than one area was directed at Mr. Gillett. She was speaking generically, in terms of an intention not to concentrate the economic advantage represented by the resource, which I would not find to constitute an irrelevant policy consideration. Moreover, Ms. Rumbolt specifically qualified her evidence by stating that an explanation of the policy rationale should come from someone with expertise in capelin management.

[56] Mr. Walsh was the witness best fitting this description, and he testified that the new measures introduced in 2007 were a response to expressions of concern that members of the

mobile fleet would catch their seasonal cap and then employ their vessels to fish previously inactive capelin licenses, undermining the effect of the seasonal limit. Mr. Walsh expressly stated that he did not know which vessels would be affected by these new measures, just that a general concern was being expressed that fishers were thinking about employing their vessels in this manner. He testified that these concerns were expressed in calls from individual harvesters, processors, and the FFAW and that the new 2007 measures were developed based on stakeholder input.

[57] I find no basis to conclude from the evidence at trial that the 2007 capelin measures were adopted with an intent to economically injure Mr. Gillett or persons in circumstances similar to his. I should also note that neither Mr. Gillett's evidence nor that of the Defendants' witnesses suggested any ill will between any of those witnesses and Mr. Gillett which might have represented a motive for adoption or application of policy measures with an intent to harm him. Mr. Hurley testified that he always had a cordial relationship with Mr. Gillett and that they treated each other with mutual respect. Ms. Rumbolt explained that there was a time when she worked in the Grand Falls – Windsor area office of DFO, which managed the part of the province from which Mr. Gillett fished, that she spoke with Mr. Gillett many times, and that she never had any difficulties with him. Mr. Walsh does not appear to have had the same amount of contact with Mr. Gillett as the other DFO witnesses. However, he testified that he did not recall his telephone conversation with Mr. Gillett on June 25, 2007 being at all contentious or ever having any difficult conversations with him.

[58] I also consider the suggestion that the Defendants were motivated to harm Mr. Gillett economically to be undermined by evidence that on two occasions DFO approved exceptions to its licensing policy to permit Mr. Gillett's vessel to be leased to other fishers in the NL region. In 2007, approximately 11 days after the "Midnight Shadow" had finished fishing Mr. Griffin's capelin license in Québec, DFO approved a lease of the vessel to Mr. Dyson Sacrey to fish Mr. Sacrey's license in the NL region. Mr. Hurley explained that Mr. Sacrey's own vessel had been damaged and that the only vessel available in the region was the "Midnight Shadow". Mr. Hurley therefore recommended, and ultimately received approval from DFO regional headquarters, that Mr. Sacrey be permitted to lease Mr. Gillett's vessel, so that Mr. Sacrey did not miss the opportunity to participate in that year's capelin fishery. Mr. Hurley explained that this represented a decision to depart from DFO policy because of the exigent circumstances faced by Mr. Sacrey.

[59] The documentary evidence before the Court indicated that the "Midnight Shadow" then fished for three days in July 2007 under Mr. Sacrey's license, landing 719,033 pounds of capelin. The documentary evidence also indicates that the average price for a pound of capelin in 2007 was 12.2 cents. Mr. Gillett testified that, under the agreement between him and Mr. Sacrey for the use of the "Midnight Shadow", he received a 50% share. Although the evidence did not clarify whether or not Mr. Gillett's share was calculated after deduction of expenses, it appears he would have received some tens of thousands of dollars as a result of the decision by DFO to permit his vessel to be used by Mr. Sacrey.

[60] The evidence at trial also identified another circumstance in 2009 when DFO approved a departure from its policy to permit lease of the "Midnight Shadow" to the son of a license holder who had died, to permit the family's participation in the capelin fishery in circumstances where that would not otherwise have been possible. While Mr. Hurley's evidence was that that DFO's decisions to depart from its policy were intended to address the extenuating circumstances faced by the lessees in these two cases, Mr. Gillett benefited from these decisions, which is inconsistent with the suggestion that DFO was in some way motivated to cause Mr. Gillett economic harm.

[61] I have also considered Mr. Gillett's argument, based on the content of the ministerial News Release and the timing at which the new policy measures appear in the documentary record in 2007, that the management measures were created "on the fly" by DFO officials as a cover or excuse intended to prevent him from fishing. In relation to the News Release, I find no merit to this argument. The News Release is dated June 20, 2006, a full year before the development of the particular measures that are at issue in this action. I also accept the explanation given by Mr. Walsh in cross-examination that a news release is not intended to represent a list of all applicable management measures. The fact that that this document does not capture the provisions related to leasing of vessels, particularly those that were not developed until the following year, does not support a conclusion that those measures were subsequently adopted for improper purposes.

[62] Mr. Gillett's argument based on the timing of the 2007 documentation relates to the fact that the three bullet points which subsequently impacted him were inserted in the relevant policy

document on June 20, 2007, approximately six hours after an earlier draft of that document was circulated without those points. On June 20, 2007 at 9:02 AM, Ms. Rumbolt sent an email to a list of people including Mr. Hurley and Mr. Walsh, attaching a document entitled "2007 Temporary Policy Measures for the 35-64'11'' Fleet – Draft". This document contains only the first two of the five bullet points which were ultimately adopted as the capelin management measures for 2007. Ms. Rumbolt's covering email indicates that a previous version of this document had been circulated by email on May 9, 2007 but was being recirculated because the previous version contained a typographical error in referring to 2006 rather than 2007.

[63] At 10:10 AM on June 20, 2007, Ms. Rumbolt sent an email to Mr. Walsh and Mr. Ball, setting out the expanded list of measures to apply to the 2007 capelin fishery (i.e. all five bullet points) and asking for any changes. At 10:24 AM, Mr. Ball responded that he had no problem with this. At 3:15 PM on June 20, 2007, Ms. Rumbolt sent another email to the same recipients who received her email of 9:02 AM, attaching another version of the document entitled "2007 Temporary Policy Measures for the 35-64'11'' Fleet – Draft". The covering email states that this version is updated to amend temporary measures for the 2007 capelin fishery, and the document itself contains the full list of five bullet points that had been set out in the email of 10:10 AM.

[64] I do not find this sequence of communications to suggest any undue haste or improper purpose on the part of those involved. Ms. Rumbolt testified that she may have drafted the five bullet points contained in the 10:10 AM email, with the assistance of Mr. Walsh and Mr. Ball. When confronted with the timing of these documents in cross-examination, Mr. Walsh testified that he assumed that, after receiving the previous version of the policy document early on June

20, 2007, he explained to Ms. Rumbolt the additional measures which were being added in 2007 and that she therefore updated the document. Consistent with his evidence in direct examination, Mr. Walsh also explained that there had been discussions leading up to this. I do not interpret these documents as demonstrating a last-minute change developed on an arbitrary or improperly intentioned basis on June 20, 2007. Rather, the evidence indicates that the change was the product of prior industry consultations, intended to address concerns about the potential for vessels being moved among licenses and thereby circumventing other management measures, and that the communications on June 20 simply represent this content being added to DFO's draft policy document.

[65] Finally, I note the technical arguments raised by the Defendants in response to Mr. Gillett's claims that the tort of misfeasance in public office has been committed not only by Mr. Hurley but also by Her Majesty the Queen as represented by the Minister of Fisheries and Oceans. The Defendants argue that Mr. Hurley is the only public official against whom misfeasance was alleged in Mr. Gillett's Statement of Claim and that Mr. Gillett is not entitled to broaden this allegation to include DFO as a whole. They also argue that, as a matter of law, the claim based on allegations against Her Majesty as represented by the Minister of Fisheries and Oceans cannot succeed, as misfeasance is a tort available against a public official, not a public authority.

[66] I agree with both these defence positions. The Statement of Claim alleges misfeasance committed by Mr. Hurley, not by any other representative of DFO. No motion has been made to amend the Statement of Claim. The claim based on allegations against the Crown itself must fail

for this reason and also as a matter of law as the Defendants submit. In *St. John's Port Authority v Adventure Tours Inc.*, 2011 FCA 198, the Federal Court of Appeal addressed this issue and concluded that this tort requires a claimant to establish that a particular public officer has engaged in the impugned conduct.

[67] However, little actually turns on either of these defence positions. Mr. Gillett has not established that Mr. Hurley engaged in conduct intended to cause him harm. While Mr. Hurley issued the July 5, 2007 letter communicating that Mr. Gillett would not be permitted to fish his capelin license in the 2007 season, this letter was issued in reliance on DFO policy following consultation with DFO's regional office in St. John's. The tort of misfeasance in public office as alleged in the Statement of Claim is not made out because, as canvassed in detail above, there is no evidentiary support for a conclusion that Mr. Hurley acted with the purpose of causing economic harm to Mr. Gillett. However, neither does the evidence support a conclusion that any other representative of DFO or the Crown itself has done so. Therefore, even if the law permitted a less specific allegation as to the individual who engaged in the impugned conduct, and if the Statement of Claim contained such an allegation, I would still have found no facts which would warrant a finding of liability based on this tort in the present action.

[68] In conclusion on this issue, the Plaintiff has not established the elements of the tort of misfeasance in public office.

C. *Whether the Plaintiff has established a breach of contract*

[69] Mr. Gillett argues that the Defendants are liable to him for breach of contract. He submits that his completion of the documentation seeking renewal of his license represented an offer, that the subsequent issuance of the License Document represented acceptance of this offer, and that his payment of the $30 fee was sufficient consideration. He relies on this Court's decision in *100193 P.E.I. Inc. - FC* (varied on appeal in *100193 P.E.I. - FCA* but not on this point), in which Justice Boswell addressed a summary judgment motion which included consideration of a claim that certain representations made by the Minister and other DFO officials formed a contract with participants in the snow crab fishery.

[70] I do not find this authority to support Mr. Gillett's claim. At paragraphs 46 to 47 of his decision, Justice Boswell canvasses the elements necessary to establish the formation of a contract, including the requirement that the acceptance of an offer be unequivocal. Following consideration of the evidence before the Court in that case, Justice Boswell found the evidence established neither an offer capable of acceptance, nor acceptance of such an offer, ultimately concluding that the plaintiffs' contractual cause of action was so doubtful that it did not deserve a trial.

[71] In the case at hand, the evidence is not supportive of a conclusion that the parties' communications with each other were conducted with contractual intent. Even if Mr. Gillett's submission of the license renewal documentation could be characterized as an offer for purposes of a contractual analysis, I do not see how DFO's subsequent issuance of the License Document

can be characterized as an unequivocal acceptance of this offer. For Mr. Gillett's contractual cause of action to be of any benefit to him, he must be asserting that his offer was to pay the applicable $30 fee and seek issuance of a license which entitled him to harvest capelin in the 2007 season. The evidence of the Defendants' witnesses canvassed in detail above demonstrates that the issuance of the License Document, absent attached conditions, was not intended to permit Mr. Gillett to harvest capelin. DFO deliberately did not issue the license conditions to him until after the 2007 capelin season had closed. Therefore, there was no act by DFO constituting acceptance of what Mr. Gillett characterizes as his offer.

[72] Mr. Gillett has not established a contractual relationship with either of the Defendants and therefore cannot succeed in his cause of action for breach of contract.

D. *Whether the Plaintiff has established interference with economic relations*

[73] Mr. Gillett's Statement of Claim asserts a claim based on the tort of interference with economic relations. In his submissions at trial, he argued as an alternative to the cause of action based on misfeasance in public office that, if the individual Defendant, Mr. Hurley, acted outside the scope of the authority permitted by his position, then he tortiously interfered with Mr. Gillett's economic relationship with the other Defendant, Her Majesty in Right of Canada, and is personally liable for any damages sustained as a result of this tort.

[74] The Defendants rely on the decision of the Supreme Court of Canada in *Pro-Sys Consultants Ltd. v Microsoft Corporation*, 2013 SCC 57, at paragraph 81, which describes the tort of intentional interference with economic interests as aiming to provide a remedy to victims

of intentional commercial wrongdoing. The three elements of this tort are: (1) the defendant intended to injure the plaintiff's economic interests; (2) the interference was by illegal or unlawful means; and (3) the plaintiff suffered economic loss or harm as a result.

[75] The Defendants also note the Supreme Court's subsequent decision in *A.I. Enterprises Ltd. v Bram Enterprises Ltd.*, 2014 SCC 12, in which the Court emphasized, at paragraph 96, that a requirement to establish this tort is that the defendant intended to cause loss to the plaintiff, not merely that a loss suffered by the plaintiff is a foreseeable consequence of the defendant's action.

[76] This tort has no application to the circumstances of this case. I have found no illegal or unlawful act by Mr. Hurley and find no basis to conclude that he acted outside the scope of his authority. Nor is there evidentiary support for a conclusion that Mr. Hurley acted with the intent to cause loss to Mr. Gillett. This cause of action must therefore fail.

E. *In the event that any liability is found on the part of the Defendants, what is the appropriate measure of damages?*

[77] The result of my findings is that the Plaintiff's action must be dismissed. Having found no liability on the part of the Defendants, it is not necessary to quantify damages. However, in the event liability had been established, I would have had considerable difficulty conducting such quantification because of shortcomings in the evidence.

[78] There are components of the damages claimed by Mr. Gillett on which no evidence or argument has been adduced. In addition to the lost income that Mr. Gillett says he would have

earned had he been permitted to fish capelin allocated to his license in 2007 and 2008, he has claimed lost employment insurance and Canada Pension Plan benefits, as well as exemplary, aggravated and punitive damages. I have been presented with no evidence or argument on any of these categories of damages other than the lost income claim. Therefore, even if liability had been established, I would not have awarded damages for any of the claimed categories other than lost income.

[79] In support of the lost income claim, Mr. Gillett has adduced evidence of the seasonal catch limit applicable to his capelin license for each of 2007 and 2008, being respectively 180,000 pounds and 200,000 pounds. While there is no guarantee that he would have caught these amounts had he been to permitted to fish his license in each of those seasons, the evidence of the Defendants' witnesses was that the applicable TAC was caught in each of 2007 and 2008, and there is no particular reason to think that Mr. Gillett would not have achieve the maximum catch available to him.

[80] Mr. Gillett also adduced evidence of the average price paid for capelin in each of the 2007 and 2008 seasons, being respectively 12.2 cents and 11.6 cents per pound. While he initially asserted his claim based on higher prices (18 cents and 25 cents respectively), which he said he could achieve for superior quality catch, his counsel advised at the trial that, in the absence of evidence to support these figures, he would rely on the average prices.

[81] These figures support a calculation of lost revenue of $21,960 for 2007 and $23,200 for 2008, for a total of $45,160. However, these would be gross revenue figures and, as the

Defendants point out, an award of damages for these losses should be reduced by expenses that would have been incurred in the fishing effort, such as fuel, provisions, and crew share. Unfortunately, neither of the parties adduced any evidence permitting the Court to quantify these expenses. Each party argued that the other had the burden to adduce this evidence. Mr. Gillett therefore submitted that his damages should be quantified without any deduction to take such expenses into account, while the Defendants argued that a deduction must still be applied without particularly explaining how the Court should do so without any evidence.

[82] My conclusion is that, while the Defendants could have sought discovery of evidence of the expenses to be deducted in the damages calculation, the Plaintiff nevertheless bears the burden of proving his damages. As such, had I found liability on the part of the Defendants and been required to quantify Mr. Gillett's lost income, I would have reduced the $45,160 gross revenue figure to take into account saved expenses. I would have been required to select the amount of such reduction without the benefit of either evidence or submissions from the parties and, admittedly arbitrarily, would have reduced the gross revenue figure by one-third to produce a damages quantification of $30,107. While this exercise might have represented some degree of either under-compensation or over-compensation for the Plaintiff, this is a risk borne by both parties in failing to provide evidence of the applicable expenses.

VI. Costs

[83] Each of the parties has claimed costs in the event of success in this matter. However, the parties advised at the trial that they would prefer to provide submissions on costs to the Court following receipt of this decision. My Judgment will so reflect.

JUDGMENT

THIS COURT'S JUDGMENT is that:

1. The Plaintiff's action is dismissed.

2. The parties shall confer with each other on the disposition of costs in this matter and

   a. within 30 days of the date of this Judgment, the Plaintiff shall advise the Court in writing if agreement has been reached on such disposition; or

   b. failing such agreement;

      i. within 30 days of the date of this Judgment, the Plaintiff shall serve and file with the Court his written submissions on the disposition of costs in this matter; and

      ii. within 14 days of receipt of such submissions, the Defendants shall serve and file with the Court their written submissions on such disposition.

"Richard F. Southcott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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