

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Limbo Cove and Moore v. Fraser*, 2020 NSSC 315

**Date:** 20201105

**Docket:** Halifax No. 457082

**Registry:** Halifax

**Between:**

Limbo Cove Resources and Matthew Moore

Plaintiffs

v.

John David Fraser

Defendant

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice Mona Lynch

**Heard:** September 22, 28, 29, 30, October 1, 5, 6, 7, 8, and 9, 2020 in Halifax, Nova Scotia

**Written Decision:** November 5, 2020

**Subject:** Breach of contract; Contract contrary to public policy; Unconscionable contract; Sham; Specific Performance

**Summary:** The Plaintiffs purchased fishing licences but were unable to fish the licences until obtaining the necessary sea time. The parties agreed that the licences would be placed in the Defendant's name until the sea time was obtained. At that time the Defendant would sell the licences back to the Plaintiffs. At the time set, the Defendant refused to sell back the licences claiming that the agreements were unenforceable for being contrary to public policy, unconscionable and a sham. The Plaintiffs sought specific performance which the Defendant said was impossible due to the absolute discretion of the Minister of Fisheries and Oceans to decide on licence transfers.

**Issues:**

- (1) Were the agreements contrary to the PIIFCAF policy of DFO?
- (2) Were the contracts unenforceable as being contrary to public policy, unconscionable or a sham?
- (3) Is specific performance an appropriate remedy?

**Result:**

The agreements were contrary to the letter but not the spirit of PIIFCAF. They are enforceable and not contrary to public policy, unconscionable or a sham. The Defendant is to take all steps necessary to have the licences transferred back to the Plaintiffs.

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Halifax, Nova Scotia

**Decision:** November 5, 2020

**Counsel:** Nathan Sutherland and Nicola Watson, for the plaintiffs  
Eric Atkinson and Natasha Schigas, for the defendant

**By the Court:**

**Introduction:**

[1] As Mark Twain said:

“The holy passion of Friendship is of so sweet and steady and loyal and enduring a nature that it will last through a whole lifetime, if not asked to lend money.”

[2] This is a dispute between two former friends and neighbours over the ownership of various fishing licences, including licences for lobster and snow crab in the Pleasant Bay area of Nova Scotia. The Plaintiffs seek to enforce the 2008 agreements in relation to those licences. The agreements require the Defendant to sell the licences back to the Plaintiffs. The Defendant maintains that the agreements signed in 2008 are unenforceable as they are contrary to public policy and unconscionable. The Defendant also submits that specific performance is not available as a remedy as it is impossible. For the reasons set out, I find that the agreements are enforceable, and I order the Defendant to do all in his power to ensure the transfer of the licences to the Plaintiffs. I also order that the funds held in trust which represent the net proceeds of the fishing seasons from 2015-2020 be released to the Plaintiffs.

**Background:**

[3] Limbo Cove Resources Inc. is a Nova Scotia limited company. Matthew Moore resides in the Halifax Regional Municipality and he is the sole officer, director, and shareholder of Limbo Cove.

[4] John David Fraser resides in Pleasant Bay, Nova Scotia.

[5] In the summer of 2006, Matthew Moore, then 26 years of age, won almost 15 million dollars in a lottery. At that time, he lived in Pleasant Bay, Nova Scotia and was the owner of a hotel property there.

[6] After the lottery win, Matthew Moore decided to obtain licences, a vessel, traps and other equipment to enter the commercial fishery in Pleasant Bay. In January 2007, Limbo Cove (then a numbered company known as 3204492 Nova

Scotia Limited) was incorporated for the purpose of purchasing licences, equipment, and a vessel. In February 2007, Limbo Cove purchased a groundfish licence, a snow crab licence with 18 traps, a lobster licence, a herring/mackerel bait licence, fishing equipment and a fishing vessel for \$900,000.00. The value assigned to the licences was \$735,000.00 and the remainder was for a vessel and equipment. Only Matthew Moore provided funds for this purchase. The vendor was a fisher from Cheticamp looking to leave the fishery due to illness. Both Matthew Moore and John David Fraser had heard that the fisher was interested in selling and getting out of the fishery. John David Fraser did not have any discussions with the fisher selling the licences.

[7] At the time Limbo Cove purchased the licences, etc., Matthew Moore was unable to hold a fishing licence in his name as he did not meet the eligibility requirements.

[8] Matthew Moore had two friends in mind who he thought could hold the licences in their name. One was Justin McEvoy and the other was the defendant, John David Fraser. Matthew Moore preferred to have John David Fraser hold the licences as he had more experience in fishing and being the captain of a fishing boat. In the fall of 2006, Matthew Moore asked John David Fraser to hold the licences. John David Fraser had held both snow crab and lobster licences in the late 1980s and early 1990s. He sold those licences in 2002 and 2004 to get into the whale watching business and to maintain that business. The whale watching business did not fare well and John David Fraser entered into a Consumer Proposal in 2005 and declared bankruptcy in 2007. He fished on vessels owned by other people in 2005 and 2006.

[9] When Matthew Moore was getting ready to purchase the licences, vessel and equipment in late 2006/early 2007, a mutual relative of the parties suggested that John David Fraser get his paperwork ready so he could hold the licences being purchased by Limbo Cove/Matthew Moore. In January 2007, John David Fraser applied to the Department of Fisheries and Oceans (DFO) to be recognized as a New Entrant in the fishery in Pleasant Bay. He received a letter from DFO in February 2007 indicating that he did not meet the criteria for New Entrant status. He appealed that decision on February 24, 2007. On February 27, 2007, Limbo Cove/Matthew Moore purchased the licences, vessel, and equipment from the Cheticamp fisher.

[10] With the lobster season coming up and the appeal of New Entrant status still not resolved, Limbo Cove/Matthew Moore entered into agreements with another friend. Jason McEvoy agreed to hold the licences in trust for Limbo Cove under a

Licensing and Assignment Agreement and to be employed by Limbo Cove pursuant to an employment agreement. These February 26, 2007, documents represented what is known in the fishing industry as a Trust Agreement pursuant to which the fisher held the licences in his name but did not have any beneficial interest in the licences. The fisher entered an employment contract to receive a weekly salary.

[11] On April 27, 2007, John David Fraser's appeal was granted and he was given New Entrant status.

[12] Between the date that Justin McEvoy signed the agreements and the date that John David Fraser won his appeal, there was friction between the two as both wanted to captain the fishing vessel. At this point, Matthew Moore was threatening to sell the licences.

[13] After John David Fraser's appeal was granted, they sought to have the licences transferred from Justin McEvoy to John David Fraser. That request for transfer and the subsequent appeal were denied as a licence could not be transferred twice in a 12-month period. As a result of the dispute and the inability to transfer the licences, the licences were not fished in the 2007 fishing season.

[14] On April 12, 2007, DFO announced a new policy for Preserving the Independence of the Inshore Fleet in Canada's Atlantic Fisheries (PIIFCAF). PIIFCAF established an Independent Core category with qualifications that had to be met to receive new or replacement inshore vessel-based licences. To be Independent Core a fisher could not be party to a controlling agreement. Controlling agreements were agreements between a licence holder and another person which permitted the other person to control or influence the licence holder's decision to submit a request to DFO for the transfer of the licence to another person (PIIFCAF policy: s. 2 definitions of "core enterprise" and "controlling agreement" and s.3(1) of PIIFCAF). After April 12, 2007, trust agreements were no longer permitted except for some grandfathering provisions to allow fishers subject to controlling agreements to terminate the agreements (s. 5 of PIIFCAF).

[15] On April 27, 2007, the day John David Fraser's appeal was granted, documents were sent to the parties' mutual relative for John David Fraser's signature. These documents were a trust agreement and an employment contract, similar if not identical, to the ones signed by Justin McEvoy. These contracts would govern the relationship between the parties if the licences were able to be transferred into John David Fraser's name. John David Fraser signed the agreements on April

29, 2007. Because of the inability to transfer the licences from Justin McEvoy to John David Fraser, these contracts were never acted upon.

[16] Elliot Fraser, the lawyer who prepared the trust agreement and employment contract for John David Fraser's signature, was not aware of the new PIIFCAF policy which had been announced on April 12, 2007.

[17] Pursuant to DFO rules, the licences in question had to be transferred to John David Fraser prior to April 27, 2008, while he still had New Entrant status. John David Fraser was not yet discharged from bankruptcy. Matthew Moore wanted John David Fraser to be discharged from bankruptcy before the licences were transferred so that no creditors could make a claim against the licences. John David Fraser was granted an early discharge in early March 2008 thanks to a payment of \$23,000.00 supplied by Limbo Cove/Matthew Moore.

[18] In March 2008, the licences were transferred from the name of Justin McEvoy to the name of John David Fraser. On March 31, 2008, a series of agreements were entered into between Limbo Cove/Matthew Moore and John David Fraser. These agreements transferred legal ownership of the licences to John David Fraser. John David Fraser signed promissory notes to repay Limbo Cove/Matthew Moore the money paid for the licences and the bankruptcy payment. John David Fraser agreed to fish the licences, assign the catch to Limbo Cove and sell the licences back to Limbo Cove in eight years. A further assignment agreement was entered into on April 30, 2008.

[19] DFO had concerns about the transfer of the licences and placed the licences Under Review until they could be satisfied that the licences were not subject to a Controlling Agreement. John David Fraser provided a "Declaration concerning controlling agreements" and further assurances to DFO that there was no controlling agreement in relation to the licences. Elliott Fraser provided a letter to DFO confirming that he had not been retained by the private investor (Limbo Cove/Matthew Moore) to prepare any documents that would be a controlling agreement. Elliot Fraser also indicated to DFO that, to the best of his knowledge, there had been no agreements where the private investor could control or influence John David Fraser's decision to submit a request to DFO for the issuance of a replacement licence to another fisher and John David Fraser had complete control to decide on any request for a transfer. After these two assurances and an investigation by DFO, the licences were no longer Under Review and were in the name of John David Fraser.

[20] There were further agreements in June 2008, March 2013, and January 2014, to purchase further snow crab traps. John David Fraser fished the licences from 2008 until 2015 when difficulties which had been developing between John David Fraser and Limbo Cove/Matthew Moore reached a boiling point.

[21] In 2015, with the assistance of counsel, it was agreed that John David Fraser could fish the licences, use the Limbo Cove vessel, and the net proceeds of the catch would be placed in trust with Elliot Fraser.

[22] On March 2, 2016, the closing date specified in the agreement for the licences to be sold back to Limbo Cove/Matthew Moore, John David Fraser did not attend for the closing. A demand letter requested that John David Fraser transfer back the licences and execute the documents necessary to do so. In return, John David Fraser would be released from the promissory notes. A later demand for the payment of the promissory notes did not result in any payments by John David Fraser.

[23] On February 23, 2016, counsel for John David Fraser sent a letter to DFO to request that John David Fraser be placed in the “Under Review” category. Along with the letter, counsel provided some of the 2008 agreements and the opinion that John David Fraser had been under a Controlling Agreement since March 31, 2008. As a result of the letter and documents, John David Fraser’s category was changed to, and remains, Under Review.

[24] Although the parties did not reach a further agreement, John David Fraser arranged to have the net proceeds of the 2016-2020 fishing seasons placed in trust with his lawyers pending the outcome of this case. John David Fraser did not use the Limbo Cove vessel after 2015 and instead leased vessels to fish the licences.

[25] The Statement of Claim, filed October 28, 2016, alleges breach of contract. The Plaintiffs request specific performance, damages in the alternative, payment of the promissory notes in the further alternative, damages for breaching the assignment of catch, and restitution for unjust enrichment in the further alternative.

[26] The Defendant filed a defence and counterclaim which was amended. Defences of mistake, *non est factum*, and misrepresentation and fraud were not pursued by the Defendant. The Defendant submits that the 2008 agreements signed by John David Fraser are unenforceable as being contrary to public policy or unconscionable. He submits that specific performance should not be granted due to impossibility and that if the agreements are found to be enforceable that damages should be awarded instead of specific performance. If the agreements are found to



be unenforceable, the Defendant submits that damages should be awarded to the Plaintiffs in the amount of the promissory notes reduced by Limbo Cove's retained earnings as of December 31, 2014, and the amount held in trust for the 2015 fishing season. The Defendant counterclaims for a declaration that John David Fraser is the legal and beneficial owner of the fishing licences and the fishing gear associated with the licences. The Defendant also asks that Limbo Cove/Matthew Moore be reimbursed for the promissory notes and interest reduced by what is owed John David Fraser from the amounts generated by the fishing licences from 2008 to 2020.

[27] An expert report valued the licences as of June 2019 as: Lobster \$400,000.00, Snow Crab with 23 traps, \$2,645,000.00 and Groundfish \$20,000.00. The purchase price of the licences in February 2007 was: Lobster \$105,000.00; Snow Crab with 18 traps \$615,000.00 and Groundfish at \$15,000.00. Five further snow crab traps were added to the licence between 2008 and 2014 with a total purchase price of \$223,000.00.

**Issues:**

- (a) Is the Moore Asset Purchase Agreement (Tab 2, Joint Exhibit Book) contrary to PIIFCAF?
- (b) Is the Moore Asset Purchase Agreement unenforceable as being contrary to public policy?
- (b) If not, are the 2008 Agreements as a whole unconscionable?
- (c) Were the agreements between the parties a sham?
- (d) If the 2008 Agreements are contrary to public policy or unconscionable, what is the appropriate remedy?
- (e) If the 2008 Agreements are not contrary to public policy and not unconscionable, what is the appropriate remedy?

**Position of the Parties:**

**(a) Plaintiffs' Position**

[28] The Plaintiffs' position is that the licences were placed in the name of John David Fraser until Matthew Moore could qualify to have the licences placed in his own name. This was done pursuant to the agreements signed on March 31, 2008. Matthew Moore had health issues which could result in it taking longer for him to obtain the fishing experience necessary to hold the licences. The Plaintiffs paid for all the licences, additional traps, vessels, gear, expenses, and yearly licence renewals. John David Fraser provided no money to the fishing enterprise. The agreements amounted to a swap where on the closing day, March 2, 2016, John David Fraser would sell the licences back to Matthew Moore and the promissory notes owed by John David Fraser would be forgiven. Both Matthew Moore and lawyer Elliot Fraser thought that the March 31, 2008, agreements were compliant with PIIFCAF.

[29] John David Fraser was paid a salary and some bonuses to captain the fishing vessel owned by Limbo Cove/Matthew Moore. Matthew Moore fished on the boat as a deck hand during most of the years between 2008 and 2014 with the exception of 2013 when his illness prevented him from fishing. Difficulties developed in the relationship between Moore and John David Fraser.

[30] John David Fraser refused to sell the licences back to Matthew Moore and breached the contracts. The Plaintiffs contend that now that the fishing licences have increased in value by over 200% that John David Fraser wants to keep the licences for himself. They want specific performance ordering that John David Fraser do everything necessary to transfer the licences to Matthew Moore.

### **(b) Defendant's Position**

[31] The Defendant's position is that his friend, Matthew Moore, was financing his return to fishing. John David Fraser says that he and Moore agreed: (a) Moore would pay for the licences; (b) John David Fraser would fish the licences; (c) John David Fraser would accept deckhand wages; and (d) all profits generated from fishing would be used to pay for the licences. John David Fraser understood that all the agreements and documents were PIIFCAF compliant. John David Fraser signed declarations with DFO saying he was not in a controlling agreement.

[32] John David Fraser acted as a co-owner of the fishing operations and made repairs to the equipment on his own time without compensation from Limbo Cove.

[33] John David Fraser disagrees that Matthew Moore fished as a deckhand from 2008 to 2014.

[34] In 2016 John David Fraser provided many of the 2008 agreements to DFO and asked to be placed Under Review. John David Fraser has been Under Review since 2016.

[35] The Moore Asset Purchase Agreement which would allow Matthew Moore to purchase the licences back is contrary to public policy and the March 31, 2008, agreements, as a whole, are unconscionable.

**DFO Policies:**

[36] Counsel very helpfully provided the court with an agreed statement of facts regarding the relevant DFO policies relating to the inshore fleet in the Gulf Region. DFO divides fishing activities into fleets which are distinguished from one another by where they fish and by length of vessel. The licences in question here are Gulf Region licences of the “inshore fleet”.

[37] The core concept for the inshore fleet is that there is a core group of a maximum number of fishers, all of whom are licenced and headed by individual fishers. The core concept was established in 1996 and entry into the core group is possible only by replacing an existing core enterprise. A core enterprise is composed of: (a) a fish harvester (known as the head of the enterprise); (b) registered vessel(s); and (c) the licence(s) the fish harvester holds.

[38] The Fleet Separation Policy established in 1979 and the Owner-Operator Policy, established in 1989 are part of policy initiatives designed to support an independent inshore fleet in Atlantic Canada. The Fleet Separation Policy’s objective is to separate the harvesting and processing sectors to avoid vertical integration of the fisheries, with a specific prohibition on corporate licences. The Owner-Operator policy provides that a licence will be issued in the name of an individual fish harvester and licence holders are required to fish their licences personally. The objective is to avoid the concentration of licences.

[39] Prior to 2007, trust agreements were common in Atlantic Canada’s fisheries. Under a trust agreement, licences would be issued by DFO to a fisher who qualified to hold a licence. While the fisher was the registered licence holder with DFO, he or she had no beneficial interest in the licence. All benefits from the licences, financial, decisional, or other, were assigned to another person (typically the person or corporation that paid for the licence or committed to pay for the licence).

[40] In 1999, DFO launched a review to modernize the policy framework on how Atlantic fisheries were managed. The end result was the announcement and implementation of PIIFCAF on April 12, 2007. Various documents regarding PIIFCAF for the Gulf Region can be found on the DFO website at: <https://www.dfo-mpo.gc.ca/fisheries-peches/initiatives/piifcaf-pifpcca/index-eng.html>

[41] The objectives of PIIFCAF:

The objectives of this Policy are to:

- reaffirm the importance of maintaining an independent and economically viable inshore fleet;
- strengthen the application of the Owner-Operator and Fleet Separation policies;
- ensure that the benefits of fishing licences flow to the fish harvester and the coastal community; and
- assist fish harvesters to retain control of their fishing enterprises. (Policy Statement Section 1)

[42] PIIFCAF made Independent Core Status a precondition to being eligible to hold a licence. To be in the Independent Core category none of the licences of the enterprise could be subject to a Controlling Agreement. Controlling Agreements are defined as:

**Controlling Agreement (CA)** means an agreement between a licence holder and a person, corporation or other entity that permits a person, other than the licence holder, to control or influence the licence holder's decision to submit a request to DFO for issuance of a "replacement" licence to another fish harvester (commonly referred to as a "licence transfer"). Agreements between the licence holder and a Recognized Financial Institution (RFI) are not Controlling Agreements if (1) there is no third party involved in the Agreement or (2) any co-signor, guarantor or other surety involved in an agreement does not control or influence the licence holder's decision to submit a request to DFO for the issuance of a "replacement" licence to another fish harvester. (Definitions, Section 2)

Controlling agreements and their purpose are outlined in a March 20, 2014, DFO document of Questions and Answers regarding PIIFCAF:

A controlling agreement is an agreement between a licence holder (fisherman) and an individual or entity that permits someone other than the licence holder to control or influence the licence holder's decision to submit a request to the Department of Fisheries and Oceans for the issuance of a replacement licence (licence transfer).

Controlling Agreements undermine the independence of inshore fleets because they compromise the ability of fishermen to make independent decisions in their own best interests and place the control of licences in fewer hands.

In an Information Note on PIIFCAF on DFO's website, it is noted that not every agreement involving a fishing licence falls within the definition of a Controlling Agreement:

“The key issue is to determine if the licence holder has full control over whether, or when they can request the issuance of a replacement licence, and to whom they want the replacement licence issued. In other words, is the licence holder free to independently decide to proceed with a request to DFO for a “transfer”.

That same Information Note indicates that PIIFCAF was not designed to hinder a fish harvester's ability to raise capital, rather to preserve the independence of the inshore fleet and, among other things, curtail the concentration of licences in the hands of a few. Powers of Attorney or Rights of First Refusal in relation to decisions regarding licences are considered Controlling Agreements.

[43] DFO recognized that at the time of the announcement of PIIFCAF there were many trust agreements and similar arrangements in place and they provided a period of seven years to allow the licence holder to terminate the Controlling Agreement or bring it into compliance with PIIFCAF.

[44] DFO defines a Fishing Licence as an instrument by which the Minister grants permission to a person to harvest fish and indicates that the permission terminates upon expiry of the licence (Commercial Fisheries Licensing Policy for the Gulf Region Chapter 1 section 7: <http://www.glf.dfo-mpo.gc.ca/Gulf/Licenses-Delivery/Commercial-Fisheries-Licensing-Policy>)

[45] From the announcement of PIIFCAF on April 12, 2007, fishers had until March 31, 2008, to file a Declaration confirming whether or not they were a party to a Controlling Agreement. A new Declaration must be filed every time a fisher requests new or replacement licences. Licences are renewed yearly.

[46] Where a licence holder declares that they are not a party to a Controlling Agreement in relation to a licence in their name, and there is no reasonable basis to believe that the licence holder filed a false Declaration, the licence holder is eligible to be categorized as Independent Core. DFO reserves the right to review the licence holder's categorization if DFO has reason to believe a licence holder categorized as

Independent Core does not meet the criteria for that category. The category for the fisher is then “Under Review”.

[47] The Under Review process starts internally with reference documents being provided to the Regional Senior Policy Advisor. Based on the evidence, he or she can recommend categorizing the licence as “Under Review” and refer the matter to the Regional Review Committee for a second level of review.

[48] If the Regional Director accepts the recommendation, a letter signed by him or her will be sent to the licence holder advising that he or she is Under Review and a Regional Review Committee will review the matter.

[49] While Under Review, PIIFCAF provides that a licence holder can continue to fish but DFO will not process various requests such as, a request for a new or replacement licence or a request to transfer a licence. The Regional Review Committee will hold a hearing and make recommendations which are given to the Regional Director who can: (a) remove Independent Core status; (b) conduct further investigation; or (c) remove the Under Review restrictions.

[50] If the decision is to remove Independent Core status, the licence holder will no longer be eligible to hold the licence and the licences cannot be re-issued or renewed in subsequent years. A licence holder who has had his or her Independent Core status removed can appeal to the Atlantic Fisheries Licence Appeal Board who makes a recommendation to the Minister of Fisheries. The Minister can accept the fisher’s request for re-issuance of the licence(s) or confirm the decision to remove the fisher from the Core Enterprise group.

### **Analysis:**

### **Evidence of Matthew Moore Fishing:**

[51] John David Fraser submits that I should find that Matthew Moore was not a credible witness as he testified that he fished during the 2013 fishing season, but the overwhelming evidence was that he did not. I accept that Matthew Moore did not fish during the 2013 fishing season. When it was pointed out to Matthew Moore that he authored an email in 2013 expressing his disappointment at having missed the entire fishing season, he readily admitted that he was mistaken. He also readily admitted he was mistaken by including the year 2013 in his application to be recognized as a New Entrant which he filed in 2015. He said that he was sick from the fall of 2012 and missed the whole 2013 season. Matthew Moore also admitted

that he was mistaken when he said he fished in 2015, as that was the year that the parties entered into an agreement to place the net profits in trust. His responses regarding fishing in 2013 and 2015 came during a portion of cross-examination where he had been taken through all of the T4 slips and all of the Records of Employment for all employees of Limbo Cove from 2008 forward. I accept that Matthew Moore was confused and that his responses related to the 2013 and 2015 fishing seasons were mistakes.

[52] Much of the dispute revolved around how much time Matthew Moore was actually on the fishing vessel from 2008 to 2015. Matthew Moore's position was that he was on the fishing vessel as a crew member for the lobster and snow crab seasons in all years except 2013 and 2015. He was not asked if he was on the boat every day of those seasons. On the other hand, John David Fraser's evidence was that Matthew Moore had minimal involvement in the fishing and was on board the vessel from time to time mostly to help set the traps, but that Matthew Moore was never a crew member. John David Fraser did indicate that Matthew Moore was on the vessel for half of the snow crab season in 2014. Emails between the parties would suggest that Matthew Moore was not in Pleasant Bay for much of the 2010 lobster fishery.

[53] The parties called witnesses to testify about the fishing in Pleasant Bay during the relevant time period. All the witnesses described themselves as friends and neighbours of both parties. The evidence from these fishers varied from Matthew Moore fishing every second day, 30 days over three years, and seeing Matthew Moore around the wharf and crossing paths with him when out fishing. The evidence is clear that Matthew Moore was a commercial fisher between 2008 and 2015. He was not fishing every day, but he fished more than from time to time.

#### **Nature of the Agreement Between the Parties:**

[54] Matthew Moore's position was that when he purchased the licences, vessel, and gear he planned to earn his fishing time and then fish the licences. John David Fraser says that Matthew Moore bought the licences for him and he was to pay off the purchase price by fishing. I accept that both Matthew Moore and John David Fraser actually believe that their position is correct.

[55] An examination of the evidence presented does not support John David Fraser's characterization of the arrangement between him and Limbo Cove/Matthew Moore. The evidence was clear that Matthew Moore was in charge of the fishing

operation. The evidence from the fishers was that Matthew Moore paid the salaries, decided on who was hired, gave direction, purchased new equipment when necessary and was known to be the directing voice of the fishing enterprise. This is illustrated by an event in 2012 when Matthew Moore wanted John David Fraser to attend the annual general meeting of the harbour authority and John David Fraser wanted to go fishing for halibut. The boat did not go fishing that day.

[56] Other evidence to support Matthew Moore's version of events was evidence from Henry Burton who had discussions with Matthew Moore after the lottery win and before the licences were purchased. Matthew Moore told him that he would like to get a licence and work it out so that his circle of friends would have good financial possibilities. At the time the licences came up for sale, Burton and Matthew Moore discussed the need for Matthew Moore to get his sea time so that he could hold the licences in his own name. When there was conflict between John David Fraser and Justin McEvoy over who was to captain the boat, John David Fraser indicated in a 2007 email to McEvoy that all they had to do was fish together for two years and "this is the greatest opportunity we will ever get" (Tab 317, joint exhibit book). Around the same time in an email to both John David Fraser and McEvoy, Matthew Moore indicated that it was his boat, his licences, his gear and his company (Tab 318, joint exhibit book). Matthew Moore indicated to both that they would be paid from lobster season to the end of crab season whether the boat fished or not.

[57] Matthew Moore's intention to help friends succeed financially is supported by a March 24, 2007, email from Moore to John David Fraser and Justin McEvoy. Matthew Moore wrote that the licences were supposed to be:

"an end all solution for helping out at least four friends, possibly even 6 or more. First it would give justin a couple of years of experience being a captain and learning to have an organized business before purchasing his own, it would give JD (a nickname for John David Fraser) his 2 years/20 weeks fishing again and learn to have an organized business before purchasing his own..." (Tab 311, joint exhibit book)

[58] Inconsistent with John David Fraser's characterization of the arrangement with Limbo Cove/Matthew Moore were instances in both 2007 and 2012 when Moore threatened to sell the licences or to start the process to transfer them back to himself.

[59] John David Fraser was not involved in the negotiations for the original purchase of the licences. John David Fraser did not pay for the expenses. John David Fraser never asked to see Limbo Cove's financial statements. He did see the



weekly catches until 2010. John David Fraser never asked how much he continued to owe or how much he had paid off with the fish sales. At one point, John David Fraser asked to be paid a percentage of the catch instead of a weekly salary. Receiving a percentage of the catch would not have made sense if John David Fraser's understanding was correct. He would have increased the length of time to pay off what he owed Limbo Cove/Matthew Moore if a percentage of the catch was going to pay him, rather than to pay what he owed. John David Fraser knew that he had to sell the licences back in 2016.

[60] John David Fraser signed one promissory note for the first 18 trap snow crab licence and another for the three traps added to the licence in June 2008. However, in 2013 and 2014 when two separate snow crab traps were purchased, John David Fraser did not sign a promissory note for either. For the 2014 purchase he did not sign the asset purchase agreement. These two traps added value to the licence held in John David Fraser's name but there were no documents requiring John David Fraser to pay anything for the \$103,000.00 cost of the traps.

[61] The trust agreement signed by John David Fraser in 2007 shows that the arrangement was not as John David Fraser asserts. There was no way to mistake those documents for John David Fraser actually owning or purchasing the licences. John David Fraser knew that all of the proceeds from fishing went to the company. Nothing in the evidence shows a change in the parties' agreement and intentions between April 2007 when the Trust Agreement was signed, and March 31, 2008, when the other documents were signed. I would have expected a significant event to explain why John David Fraser went from having no beneficial interest in the licences to actually becoming the ultimate legal and beneficial owner of the licences. The only significant change was that PIIFCAF had come into existence and trust agreements were no longer permitted by DFO as a tool to have someone else hold a licence.

[62] I accept the evidence of Elliot Fraser that he was unaware of PIIFCAF when he prepared the trust agreement between John David Fraser and Limbo Cove. When Elliot Fraser learned of PIIFCAF he tried to structure an arrangement that was not a trust agreement, but would achieve the intention of allowing John David Fraser to fish the licences until Matthew Moore could hold them in his own name.

[63] I accept the evidence of Henry Burton regarding conversations he had with John David Fraser in 2012 and 2014. These discussions were at a time when there was friction between the parties. John David Fraser told Burton that he was not

getting respect from Matthew Moore and that he could make a lot of trouble for Matthew Moore if he wanted. John David Fraser told Burton that he had an “ace up his sleeve”. Burton also testified that John David Fraser said that Elliot Fraser and Matthew Moore had done things that were wrong or illegal. John David Fraser told Burton that before he would sign the licences over to Matthew Moore, he would see everything in the garbage. Burton testified that John David Fraser told him that the paperwork was not up to DFO’s standards and he could make a lot of trouble for everyone if he was not to go along. John David Fraser testified he remembers telling Burton he wanted more respect but said other things Burton said he did not think took place.

[64] John David Fraser asks that I interpret the Assignment Agreements (Tab 6 and 11 of the Joint Exhibit Book) as meaning that the gross proceeds of the sale of all fish under the licences was to be used to pay the purchase price of the licences by John David Fraser. That interpretation would mean that Limbo Cove would have incurred approximately \$150,000.00 of debt each fishing season to finance John David Fraser’s purchase of the licences. Reading all the agreements leads to no other reasonable conclusion than there was to be the “swap” which both Matthew Moore and Elliot Fraser testified was the actual intent of the agreements. The interpretation that all gross proceeds were to be used to pay for the purchase price of the licences does not make business sense.

[65] The only evidence to suggest that John David Fraser was to actually own the licences came in documents submitted to DFO. In those documents John David Fraser indicated that he was purchasing the licences with the financial backing of a friend. Except for John David Fraser’s original application for New Entrant status, most of the assertions in the DFO documents were made after PIIFCAF. After PIIFCAF, the parties were aware that they had to be careful how they described the arrangement to remain compliant with the policy. Emails between the parties at the time show that John David Fraser consulted with either or both Matthew Moore and Elliot Fraser before having communication with DFO. I find that these statements to DFO were attempts to show that the parties were not acting contrary to PIIFCAF. Some statements made to DFO were untrue.

[66] John David Fraser also points to the unpaid work on gear and traps he did during the off season each year as showing that he owned the licences. There was some evidence that he had assistance in this work, but I accept that John David Fraser did 90 percent of the work to get ready for the fishing season. I am not sure why John David Fraser took this task upon himself other than that he was and is a

professional fisher who takes pride in his work. Based on all of the evidence, I am satisfied that it was not because he was the actual owner of the licences. The signed agreements and other evidence show clearly that John David Fraser was not intended to be the ultimate owner of the licences in question.

[67] While John David Fraser may have wanted to believe, and may have actually believed, that he was going to be the owner of the licences, his beliefs are not reasonable nor are they supported by the evidence. He testified that he knew on the date that he signed the agreements that he would have to sell back the licences to Matthew Moore if Moore became a fisher.

### ***Prima Facie* Validity of the Agreements**

[68] The 2008 agreements are reduced to writing and signed, they are valid and enforceable on their face. The onus is on John David Fraser to show why the agreements should not be enforced.

#### **(a) Is the Moore Asset Purchase Agreement contrary to PIIFCAF?**

[69] I accept that both Matthew Moore and John David Fraser were told by Elliot Fraser and both believed that the agreements signed on March 31, 2008, were PIIFCAF compliant. I also accept that they knew that they had to be very careful when discussing the details of their arrangement with DFO. In drafting the agreements, Elliot Fraser's goal was to have the licences fished until Matthew Moore could hold them in his own name. I accept, despite submissions by John David Fraser, that Elliot Fraser thought that by framing the agreements as purchase and sale agreements, rather than a trust agreement, the arrangement would comply with PIIFCAF. Elliot Fraser was using his best efforts to design a system to achieve the purpose and be PIIFCAF compliant. I accept Elliot Fraser's evidence that because PIIFCAF was new at the time the correct approach was not clear.

[70] It is easy to be critical of the agreements, but it must be remembered that PIIFCAF created a whole new world where trust agreements were no longer permitted. Mechanisms or agreements to achieve the goal were not as clear as they may be today. Because Elliot Fraser thought that the documents he drafted were PIIFCAF compliant, he did not knowingly mislead DFO when he told DFO there was no controlling agreement. I also accept that because both John David Fraser and Matthew Moore thought the agreements complied with PIIFCAF, they also

believed that their declarations to DFO that there was no controlling agreement were true.

[71] While Elliot Fraser tried to make the agreements PIIFCAF compliant, the March 31, 2008, Asset Purchase Agreement where Matthew Moore was to repurchase the licences on March 2, 2016, did not comply with PIIFCAF. Clearly under the Moore Asset Purchase Agreement, John David Fraser did not have full control over when he could request the issuance of a replacement licence, and to whom he wanted the replacement licence issued. He was not free to independently decide to proceed with a request to DFO for a transfer. John David Fraser could not transfer or sell the licences without being in breach of the agreements. He could not dispose of all or any part of the licences without breaching the contracts. He was required to sell the licences back to Matthew Moore on March 2, 2016. The Asset Purchase Agreement allowed Matthew Moore to control or influence John David Fraser's decision to submit a request to DFO for a replacement licence to another fisher (definition of Controlling Agreement in PIIFCAF) and constituted a controlling agreement. John David Fraser could not decide whether to transfer the licences, to whom to transfer the licences or when to transfer the licences without breaching the agreements signed on March 31, 2008.

[72] The Moore Asset Purchase agreement is contrary to PIIFCAF.

**(b) Is the Moore Asset Purchase Agreement unenforceable as being contrary to public policy?**

[73] While the Moore Asset Purchase Agreement is a Controlling Agreement and contrary to PIIFCAF, it does not necessarily follow that being contrary to a DFO policy means that the agreements are contrary to public policy and unenforceable.

[74] The Defendant submits that the Moore Asset Purchase Agreement is unenforceable as being illegal under the common law because it is contrary to public policy.

[75] Categories of public policy interests traditionally held to be sufficient to override a contract include those: injurious to the state; injurious to the justice system; in restraint of trade; involve immorality; and affect marriage (*Schuppener v. Pioneer Steel Manufacturers Limited*, 2020 BCCA 19, para.24). In *Schuppener* the court notes that although the categories of public policy are not closed, significant judicial restraint is called for. Freedom of contract will often, but not always trump other societal values and the power of a court to decline enforcement exists, but in

the interest of certainty and stability of contractual relations, it will rarely be exercised. It should be involved only in clear cases in which the harm to the public is substantially incontestable (*Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)*, 2010 SCC 4 (CanLII), para 117).

[76] The agreements in question do not fall into any of the categories in *Schuppener*. They do not rise to the level that harm to the public is substantially incontestable. They do not violate a statute.

[77] The Moore Asset Purchase Agreement is contrary to the PIIFCAF policy of DFO. However, a closer analysis of the purpose and objectives of the policy is warranted. Matthew Moore and Limbo Cove are not fish processors who are looking to control fishers and therefore, there is no breach of the Fleet Separation Policy. The purpose of the Owner Operator policy is to avoid a concentration of licenses in the hands of a few. That is not violated by these agreements. The concerns expressed in the review that preceded PIIFCAF were about the extensive use of trust arrangements that circumvented the Fleet Separation Policy by having the benefit of the licence still being held by a corporation (*Elson v. Canada (Attorney General)*, 2019 FCA 27 (CanLII) para. 8). Those concerns are not present in this arrangement.

[78] While the Moore Asset Purchase Agreement was contrary to the letter of PIIFCAF, it was not contrary to the spirit of the policy. The arrangement in question was not a threat to the independence of the inshore fishery which PIIFCAF was trying to protect. It was an arrangement between two friends to allow the licences fished while the true owner of the licences obtained his fishing time and qualified to hold the licences in his own name. Unfortunately for the two friends, the arrangement severely damaged their friendship.

[79] The Moore Asset Purchase Agreement does not violate the principles that PIIFCAF was trying to protect. PIIFCAF's purpose was to preserve the independence of the inshore fleet in the Atlantic fisheries and to ensure that the benefits from inshore fishing enterprises continue to be retained by independent fishers. The arrangement between Matthew Moore and John David Fraser was not in conflict with either of those stated purposes. If violating a government policy could result in a finding of illegality for being contrary to public policy, these agreements clearly do not.

**(b) If not, are the 2008 Agreements, as a whole, unconscionable?**

[80] Having found that the Moore Asset Purchase Agreement is not contrary to public policy, I must consider whether the agreements are, as a whole, unconscionable. The law in relation to unconscionability was recently reviewed by the Supreme Court of Canada in *Uber Technologies Inc. v. Heller*, 2020 SCC 16. The purpose of unconscionability is described as the protection of vulnerable persons in transactions with others (para. 60). The court in *Uber* did not depart from the two step process of: (1) proof of an inequality of bargaining power and (2) a resulting improvident bargain (para. 65). Inequality of bargaining power exists when one party cannot adequately protect their interests in the contracting process (par. 66). There are two common examples of inequality: (1) necessity and (2) cognitive asymmetry, where only one party can understand and appreciate the full import of the contractual terms (paras. 70-71). These provide examples of how weaker parties may be vulnerable to exploitation in the contracting process. What matters is the presence of a bargaining process where the law's normal assumptions about free bargaining either no longer hold substantially true or are incapable of being fairly applied (para. 72).

[81] For the second part, a bargain is improvident if it unduly advantages the stronger party or unduly disadvantages the more vulnerable one (para. 74). Improvidence is measured at the time of the contract, not if the agreement now works a hardship (para. 74). The circumstances at the time of the formation of the contract must be examined to look at market price, the commercial setting or the positions of the parties (para. 75). For a person who is in desperate circumstances the evidence should be on whether the stronger party has been unduly enriched such as when the price of goods or services departs significantly from the usual market price (para. 76). Where the weaker party did not understand the meaning and significance of important terms, the focus is on whether they have been unduly disadvantaged by those terms. Terms are unfair when they flout the reasonable expectation of the weaker party or cause an unfair surprise. It is an objective standard with regard to the context (para. 77).

[82] The Supreme Court summarized the concept of unconscionability as:

[79] Unconscionability, in sum, involves both inequality and improvidence (Crawford, at p. 143; Swan, Adamski and Na, at p. 986). The nature of the flaw in the contracting process is part of the context in which improvidence is assessed. And proof of a manifestly unfair bargain may support an inference that one party was unable adequately to protect their interests (see Chen-Wishart (1989), at pp. 47-48; *Portal Forest Industries Ltd. v. Saunders*, [1978] 4 W.W.R. 658 (B.C.S.C.), at

pp. 664-65). It is a matter of common sense that parties do not often enter a substantively improvident bargain when they have equal bargaining power.

[83] In applying the above principles to this case, John David Fraser was in a difficult financial situation. He had entered into a Consumer Proposal as a result of the failed whale watching business. Matthew Moore was in a very good financial position as a result of his recent lottery win. There was a financial imbalance between the parties but I would not describe John David Fraser as desperate. He had entered the Consumer Proposal to deal with his financial problems and he was working on fishing boats as he always had, except that, at least for the 2006 season, he was not the captain of the boat but a deckhand.

[84] John David Fraser was not an unsophisticated man when it came to fishing and the business of fishing. That was apparent from his testimony. He knew the policies of DFO. He had bought and sold fishing licences in the past. He had hired lawyers to assist in the preparation and execution of those agreements. John David Fraser knew his way around the fishery, in Pleasant Bay and beyond.

[85] While John David Fraser indicated that he thought Matthew Moore was setting him back up in the fishing business, I have already found that his belief was not reasonable.

[86] John David Fraser did not get legal advice before he signed the March 31, 2008, agreements but the evidence is clear that he was advised by Elliot Fraser that he could get his own lawyer. John David Fraser's evidence was that he thought he did not need to get his own lawyer, but he agreed that the message in relation to legal advice was not to rely on Elliot Fraser. Elliot Fraser informed him of the purpose of each document and pointed out significant clauses in the agreements. While the contracts were not read to him in full and he chose not to read them for himself, he understood the nature and purpose of each contract he signed. John David Fraser knew that he had to sell the licences back to Matthew Moore on March 2, 2016. He knew that proceeds from the fishing went to Limbo Cove and not him. He knew that he was hired as the captain of the boat and what his wages were. He knew that the wages were the going rate at the time of the contract. He knew what the promissory notes were. He knew he was not buying the boat and the gear for fishing. John David Fraser agreed that he could have walked away rather than sign the agreements.

[87] John David Fraser testified that he thought Elliot Fraser was working for both himself and Matthew. When questioned on cross-examination, he agreed that Elliot

Fraser informed him that he could get independent legal advice. John David Fraser testified that while he had spoken to Elliot Fraser about both his appeal and Justin McEvoy's appeal he never instructed Elliot Fraser, he never signed a retainer agreement, he never paid Elliot Fraser any money, and he did not have any say in the contents of the documents. While some of the documents that went to DFO indicated that Elliot Fraser was representing John David Fraser in relation to the appeal and the transfer of the licence, it would not be reasonable for John David Fraser to believe that Elliot Fraser was representing him in relation to agreements with Matthew Moore. John David Fraser understood Elliot Fraser was Matthew Moore's lawyer. He testified that he first met Elliot Fraser as Matthew Moore's lawyer. John David Fraser had retained lawyers for transactions prior to signing these agreements.

[88] While there was a financial imbalance between the two parties it did not prevent John David Fraser from protecting his own interests in the contracting process.

[89] While I do not find that there was inequality of bargaining power necessary to ground a claim of unconscionability, I will consider whether the agreements in their totality were improvident or manifestly unfair.

[90] For the fishing season prior to the contracts being signed, John David Fraser had worked as a deckhand, a job he testified he did not like. The agreements provided him an opportunity to be the captain of a fishing boat again and to be in charge. John David Fraser was paid what he agreed was the "going rate" at that time. John David Fraser received pay raises and bonuses when the company became profitable. In the swap arrangement described by both Matthew Moore and Elliot Fraser, John David Fraser would have the opportunity to captain the boat. The arrangement and agreements with Limbo Cove/Matthew Moore assisted John David Fraser when he was in a poor financial situation.

[91] The promissory notes could have been called at any time and John David Fraser would have been required to pay them. Elliot Fraser explained that this was done to ensure payment in unforeseen circumstances. The intent of the agreements was not to call the notes, but to enter into a swap arrangement where John David Fraser was lent the money to purchase the licences by Limbo Cove/Matthew Moore and he agreed to sell them back to Matthew Moore on the closing date in eight years. Calling the notes was neither contemplated nor done.



[92] There was a second assignment agreement entered into in April 2008 which better described the responsibilities of the parties. The April 30, 2008, agreement required John David Fraser to do all that was necessary to maintain the licence and ensure that the proceeds of the catch went to Limbo Cove. Limbo Cove agreed to bear all costs of holding the licences and to save John David Fraser harmless from fines, etc., arising from violations of any regulation or policy. These obligations were not one sided or unfair to John David Fraser. Limbo Cove/Matthew Moore bore all the risk. John David Fraser bore no risk.

[93] When looking at the circumstances surrounding the 2008 agreements, it must be remembered that PIIFCAF was a new policy and it caused uncertainty.

[94] The licences are now worth over \$2,000,000.00 more than they were in 2008 but that does not mean that the contracts made in 2008 were improvident. Matthew Moore intended to qualify to hold the licences and John David Fraser agreed to fish the licences until that happened. Both Limbo Cove/Matthew Moore and John David Fraser received benefits from these contracts. I do not find the agreements to be manifestly unfair or improvident.

**(c) Were the agreements between the parties a sham?**

[95] As stated above, I accept that Elliot Fraser intended the contracts signed between the parties to be PIIFCAF compliant. He failed in that regard in relation to the Moore Asset Purchase Agreement. The parties testified that they thought what they signed was PIIFCAF compliant. The concept of a swap did not create a sham as the transactions were not intended by the parties to give the appearance of creating legal obligations different than what was actually intended. John David Fraser was made the actual owner of the licences and that was intended. Because he was the owner of the licences, John David Fraser could have transferred them but that would have breached the contracts. The agreements were what they purported to be. John David Fraser owned the licences for a period of time but he was obligated to sell them back to Matthew Moore on March 2, 2016. The March 31, 2008, documents were not a sham.

**(d) If the 2008 Agreements are contrary to public policy or unconscionable, what is the appropriate remedy?**

[96] Having found that the agreements are not contrary to public policy nor unconscionable, I do not have to consider this question.

**(e) If the 2008 Agreements are not contrary to public policy and not unconscionable what is the appropriate remedy?**

[97] Having found that the agreements are not unenforceable as being contrary to public policy or unconscionability, I will deal with the appropriate remedy for the enforceable agreements.

**Specific Performance**

[98] The Plaintiffs ask for specific performance of the contracts as damages are inadequate to compensate Limbo Cove/Matthew Moore for John David Fraser's failure to sell back the licences. Specific performance is more complicated in this case as it is clear that the Minister of Fisheries and Oceans has the absolute discretion to issue licences for fisheries (*Fisheries Act*, R.S.C., 1985 c. F-14, s. 7).

[99] The Plaintiffs are asking for an order requiring John David Fraser to take all possible steps to effect the transfer of the licences to Matthew Moore. In *Dynamic Transport Ltd. v. O.K. Detailing Ltd.*, [1978] 2 SCR 1072 the court made an order for specific performance which included an order that the respondent would seek subdivision approval of the land.

[100] Specific performance is an extraordinary discretionary remedy when the Plaintiffs can show that the asset is unique and that damages would be an inadequate remedy (*Parker v. Burrige Estate*, 2019 NSSC 171 para. 125 upheld on appeal 2020 NSCA 63). Here the Defendant agrees that the licences are unique.

[101] Fishing licences have been the subject of orders for specific performance (*Parker v. Burrige Estate*; *R. Baker Fisheries Ltd. v. Widrig*, 1998 CanLII 4472 (NS SC); upheld on appeal, *Widrig v. R. Baker Fisheries Ltd.*, 1998 NSCA 20 and *Gaudet v Dugas*, 2015 NBQB 59 (CanLII); upheld on appeal, *Dugas v. Gaudet et al.*, 2016 NBCA 19 (CanLII); leave to appeal denied, *Cyrénus Dugas v. Peter Gaudet, et al.*, 2017 CanLII 4175 (SCC).

[102] In the present case the Defendant submits that specific performance is not an appropriate remedy because it is impossible. Courts have refused to order specific performance based on the improbability of obtaining the regulatory body approval (*Van, et al. v. Qureshi, et al.*, 2011 ONSC 5746; upheld on appeal, *Van v. Qureshi*, 2014 ONCA 243 and *Genge v Dredge*, 2008 NLTD 172). In the *Van* case the evidence was that the chances of success were just greater than zero percent and

extremely remote, if non-existent (paras. 64 and 66). The court found that it would “make a mockery of justice” to order the party to make their best efforts (para. 65). In *Genge*, the DFO policies prohibited the transfer requested (para. 104). That is not the case here.

[103] The Defendant relies on *Doucette and 508428 N.B. Limited, a body corporate v. Jones*, 2006 NBCA 38, where the vendor agreed to make all efforts to transfer a crab licence to the purchaser. The vendor agreed to hold the licence in trust for the purchaser while steps were taken to get DFO approval of the transfer. After an investigation, the vendor’s licence was revoked by DFO and he was no longer able to transfer the licence to the purchaser.

[104] The cases referred to by the Defendant are different than the one here. Currently, John David Fraser’s licences are not revoked, they are Under Review. I am not satisfied on the evidence that DFO allowing a transfer of the licences is impossible, just greater than zero percent, or extremely unlikely. As stated above, the letter but not the spirit of the PIIFCAF policy was violated.

[105] To allow John David Fraser to keep the licences, which was never the intent of the agreements, would provide him with a windfall by becoming the owner of licences worth \$3.5 million dollars when he did not provide any funds to purchase them.

[106] John David Fraser is ordered to take all possible steps to effect the transfer of all of the licences to Matthew Moore.

**Monies Held in Trust:**

[107] Since I find that the agreements are enforceable, all of the monies held in trust by the lawyers for the years 2015, 2016, 2017, 2018, 2019 and 2020 should be released to Limbo Cove/Matthew Moore, minus any wages that should be paid to John David Fraser, (if he was not compensated in the years 2016 to 2020). John David Fraser cannot profit from his unilateral decision to continue fishing the licences.

[108] The monies held in trust by Elliot Fraser for the 2015 season is \$52,290.00. Taxes were paid on that amount. The monies held in trust for the fishing seasons 2016-2020 were not taxed. The net proceeds are: \$42,512.84 for 2016; \$46,250.93 for 2017; \$33,358.03 for 2018; \$57,434.52 for 2019 and \$43,302.59 for 2020.

**Other Relief:**

[109] Prejudgment interest is awarded.

[110] The Plaintiffs are entitled to costs. If the parties cannot agree on an amount, they should contact the court to arrange for the matter of costs to be heard.

[111] The Plaintiffs are to pay the Defendant the previously awarded costs of \$850.00.

**Conclusion**

[112] The March 31, 2008, agreements are not contrary to public interest or unconscionable. They are enforceable and the Defendant is to take all steps necessary to have the licences transferred to Matthew Moore. All the fishing proceeds held in trust are to be transferred to Limbo Cove except any wages to the Defendant for the years 2016-2020. The Plaintiffs are entitled to prejudgment interest. The Plaintiffs are entitled to costs. The Plaintiffs are to pay the outstanding costs award of \$850.00.00 to the Defendant. The Defendant's counterclaim is dismissed.

Lynch, J.