

IN THE HIGH COURT OF AUSTRALIA)
 PERTH OFFICE OF THE REGISTRY)

NO. P71 of 2004

ON APPEAL FROM THE FEDERAL COURT OF AUSTRALIA,
 WESTERN AUSTRALIA DISTRICT

BETWEEN:

OLBERS CO LTD

Applicant

and

THE COMMONWEALTH OF
 AUSTRALIA

First Respondent

and

AUSTRALIAN FISHERIES
 MANAGEMENT AUTHORITY

Second Respondent

DRAFT NOTICE OF APPEAL

1. The applicant appeals pursuant to special leave granted on [date] from the whole of the judgment of the full Federal Court of Australia, Western Australia District, given on 16 September 2004.

Grounds

2. The applicant appeals on the following grounds:
 - (a) The Full Federal Court wrongly interpreted the Fisheries Management Act 1991 ("the Act") in finding that s106A of the Act gave the First Respondent or its agents an absolute right to seize a vessel on the High Seas without complying with s84 and s87 of the Act.
 - (b) In interpreting the Act, the Full Federal Court failed to have any or any proper regard to the provisions of the Act as a whole. The Full Federal Court failed to have regard to the requirements to interpret legislation in a manner which is consistent with Australia's international obligations and not to find extra-territorial effect in the legislation unless that was expressly provided for.
 - (c) The Full Federal Court was wrong to find that the seizure of the *Volga* was lawful, where the First Respondent and/or its agents seized the vessel on the High Seas without complying with s87 and in a manner which was contrary to the common law.

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 Doc#491496

- (d) The Full Federal Court was wrong, in any event, to find that s106A effected automatic forfeiture from the time of an offence without completion of the process under ss106B - 106G.
- (e) The Federal Court wrongly interpreted the provisions of the Act, in particular s84, 87 and 106A-106G, so as to prevent any remedy being available for the wrongful seizure of the vessel on the High Seas, whether the remedy is under the Act, on its proper construction, or, there is a remedy for breach of statutory duty or otherwise at common law.

Order Sought

3. The applicant seeks:

- (a) An order setting aside the decision of the Full Federal Court dated 16 September 2004.
- (b) A declaration that the Respondents' seizure and detention of the *Volga*, its catch and equipment was unlawful.
- (c) An order that the Respondents pay damages to the Applicant.
- (d) An order that the proceeding be remitted to the trial Judge in the Federal Court for a hearing on the assessment of damages.
- (e) An order for costs in favour of the applicant.

Dated 10 November 2004



Solicitor for the applicant

To: The Respondents and their solicitors, the Australian Government Solicitor,
Level 19, Exchange Plaza 2, The Esplanade, Perth, Western Australia 6000.

TAKE NOTICE: Before taking any step in the proceedings you must, within **14 DAYS** after service of this application, enter an appearance in the office of the Registry in which the application is filed, and serve a copy on the applicant.

The Applicant's Solicitor is Jackson McDonald, Level 25, 140 St Georges Terrace,
Perth, Western Australia 6000.