

**On the Shoulders of Our Giant:
A Reflection on Bill Tetley's Contribution to Maritime Law**

Sir Isaac Newton, in a letter to Richard Hooke in 1676, quoting earlier writers, said: "If I have seen further it is by standing on the sholders [sic] of Giants". On Canada Day, 2014, this country and the world bid farewell to a giant in the field of maritime law, in the person of William A. Tetley, Q.C., C.M., better known to his vast cohort of friends and admirers around the globe simply as "Bill".

It is difficult to summarize, in a few pages, the amazing life and outstanding accomplishments of this great man, who, as it were, put Canada on the admiralty law map, in a career spanning some sixty years. Bill in fact had three major careers, in each of which he excelled: first, as a practising lawyer in Montreal with Martineau, Walker, Allison, Beaulieu & Tetley (now Fasken Martineau) from 1952 to 1970; then, as a member of the National Assembly of Quebec from 1968 to 1976 (holding three ministerial portfolios during that period); and finally, as a professor of maritime and admiralty law at McGill University from 1976 to 2012. This piece will focus on the third career, as a member of the academy.

Professor Tetley's books, especially *Marine Cargo Claims*, first published while he was still in practice in 1965, and now in its fourth (two-volume) edition of 2008, came to be regarded almost as a bible, not only by students, but also by lawyers, judges and many categories of business people involved in the shipping industry (shipowners, charterers, brokers, underwriters, marine surveyors, etc.). His other works, in both admiralty law and the conflict of laws, complemented "MCC": *Maritime Liens and Claims*, 1985 and 1998; *International Conflict of Laws: Common, Civil and Maritime*, 1994; and *International Maritime Law*, 2002. The 2002 book was in fact an edited version of his contribution to the International Encyclopedia of Comparative Law, published in English by the Max Planck Institute in Hamburg, Germany. It is said that in court, his writings are sometimes quoted by both sides in argument in the same case. Little wonder that his books were translated into Russian, Japanese and Chinese.

In all his books and his plethora of articles published over the decades, Bill strove to study and expound principles and rules of maritime law and private international law in a comparative mode: He examined them in their historical context (over time); he analyzed differences and similarities as between the civil law and the common law traditions reflected in those rules and principles; and he took account of the diverse national legislation of many lands that grew from those legal traditions. Among the most useful aspects of *Marine Cargo Claims*, for example, is its appendix containing national summaries of carriage of goods law of some 45 countries, written by established practitioners or professors from those jurisdictions. This aspect of Tetley's scholarship is particularly noteworthy, in that most legal authors hesitate to write about the laws and legal traditions of other jurisdictions, and this despite the fact that maritime law, by its very nature, is an international activity *par excellence* that calls for such a comparative insight.

Professor Tetley always eagerly sought comments on his writings, and so, when the Internet appeared, hastened to establish a website (now still on-line at www.mcgill.ca/maritimelaw) and made sure that his articles were posted there for all and sundry to read. He invited, welcomed and responded to comments from anyone. His glossaries of maritime law terms, conflict of laws

terms, and his tables of international maritime conventions and national laws, and of the package/kilo limitations of over 40 countries, were and are the object of thousands of "hits" on his website, down to the present day. The site also contains a vast array of other materials, on Canadian and world history, politics and amusing anecdotes from his own long and fascinating life.

Bill Tetley was a tireless worker, with an unbridled passion for maritime law and the conflict of laws, pouring boundless energy (seven days a week), not only into his writings, but into the teaching of students. Christmas Day frequently found him at home, correcting exams! Sundays too were work days for Bill, but only after he had attended the weekly service at St. Peter's Anglican Church, to which he belonged for his entire lifetime. At McGill, he taught at least two, if not three, generations of young people, from all over the world, who eagerly registered for his courses, even when his lectures began at 8:00 a.m.! A few lucky students were also accorded the privilege of working with the great man during their summer holidays, assisting in his research. A very few super-privileged individuals, including the author of these lines, had the opportunity of seconding him in his research and writing, on a full-time basis, for years.

But Tetley's teaching was not restricted to McGill. In his 30 plus years as an educator, he lectured in a "mini-course" every winter (from 1984 to 1998) at Tulane University in New Orleans, which merited him the title of "Distinguished Visiting Professor of Maritime and Commercial Law", and in 1999, Tulane inaugurated the annual "William Tetley Maritime Law Lectures" in his honour. In his three decades as a professor, he lectured in the U.S., the U.K., the U.S.S.R., Belgium, France, Germany, Italy, Sweden, the Netherlands, Spain, Portugal, Greece, Slovenia, Croatia, Malta, South Africa, Australia, Singapore, Hong Kong, China, Puerto Rico, Venezuela, Colombia, Argentina and Brazil – and across Canada. He thus built up a veritable legion of former students, as well as a worldwide network of colleagues on every continent. He was especially proud of being named Visiting Professor at Dalian Maritime University in the People's Republic of China in 1996, and he soon began incorporating references to the Chinese Maritime Code into his books and articles. McGill named three fellowships after him in 2004, for doctoral and master's students.

Some of the main ideas that Bill expounded in maritime law, and defended repeatedly orally and in writing against all critics, are worth recalling here:

- That admiralty law, even in England, as well as in the U.S. and Commonwealth countries, is fundamentally civilian in origin, although the common law has made important contributions to it over the centuries, thus providing us in Canada, in particular, with an especially rich admiralty law tradition -- a fact finally recognized by the Supreme Court of Canada only in more recent years;
- That maritime liens are substantive rights in the property of others, rather than only procedural remedies, and therefore should be recognized as such by the courts of other countries, and ranked according to the forum's order of priorities;
- That mandatory rules of other jurisdictions should be afforded greater consideration in the conflict of laws, and that double *renvoi* should be rejected in private international law;

- That shipowners and charterers *jointly* perform the functions of "carrier" and therefore should be held jointly and severally liable, as joint venturers, for their faulty acts and omissions that cause loss or damage to cargo interests (as they are under the Hamburg Rules, for example);
- That the demise clause and the identity of carrier clause, although in general usage in bills of lading and upheld by courts, are of questionable validity, given the public order nature of article 3(8) of the Hague and Hague/Visby Rules, and that they obscure and compromise the true, joint venture character of the carriage of goods by water operation.
- That properly construed, the Hague and Hague/Visby Rules apply to sea waybills, and not merely to bills of lading – a view he maintained, despite the contrary weight of academic opinion, and some judicial pronouncements;
- That legislative reform that makes it easier for carriers to contract out of liability for their negligent conduct is retrograde and should be rejected (one of Tetley's main criticisms of the Rotterdam Rules).
- That the quest for uniformity in international maritime law requires a greater measure of humility among the actors involved and a willingness to compromise among the States and interests involved, in a sincere quest for justice and harmony.

The above list could go on and on. On all these issues and others, Bill never gave up fighting for the solutions that he believed were just and desirable for the common good, and combating contractual provisions and legislative reform proposals that he deemed ill-advised and counter-productive. Not content with expounding the law as it was, he hastened to state, in no uncertain terms, just what he thought it should be. And he then let the proverbial chips fall where they might. But convinced as he was that his views were correct and progressive, he seemed always able to separate the ideas he opposed from the people who advocated them. He remained courteous and friendly to all, respectful of opinions even when they diverged from his own, and, like the true democrat he was, always open to further reflection and discussion. He completed his 87 years on this earth, leaving few, if any, enemies, and a plethora of warm memories in the minds and hearts of all who had crossed his path, including those who had disagreed with him most strongly on one or another issue.

Professor Tetley held a succession of key positions in maritime-related organizations, both nationally and internationally: President of The Canadian Maritime Law Association (1981-1984); President of the Association of Average Adjusters of Canada (1986-1987); President of the Association of Maritime Arbitrators of Canada (1990-1995); Member of the Executive Council of the Comité Maritime International (CMI) (1986-1990) and its Vice-President (1990-1994); Honorary Life Vice-President of the CMI (1994). In 1986, he chaired a six-person committee in London that settled a dispute between two UN organizations. In 1992, he chaired the task force on the maritime industry in Montreal that issued a unanimous report resolving certain labour problems in the Port of Montreal. He also served as Chair of the International Maritime Arbitration Organization in Paris. In 1999, he was named an arbitrator of the Singapore International Arbitration Centre, and in 2001 as an arbitrator of the China Maritime Arbitration Commission (CMAC). Tetley was also an honorary member of the Maritime Law Association of the United States and of the Maritime Law Associations of Slovenia and Croatia.

He was an editor or contributor to all major maritime law journals and law reports in Europe and North America, including Lloyd's Maritime and Commercial Law Quarterly, Lloyd's Law Reports, Droit Maritime Français, American Maritime Cases, European Transport Law, the Journal of Maritime Law & Commerce, the Tulane Maritime Law Journal, the University of San Francisco Maritime Law Journal, La Revue Scapel and the Journal of International Maritime Law.

Bill's awards are no less impressive. They include, in particular, his Queen's Counsel designation in 1968, the Albert Lilar Prize for maritime law, presented only every three years (1981); his admission to the Order of Canada (1995); the F.R. Scott Award of McGill University (2007), recognizing his significant contribution to law, and his exceptional service and leadership to society. The Canadian Bar Association awarded him the Walter S. Owen Book Prize for his *Marine Cargo Claims* (2009).

As much or more could be said about his awards and career in the Royal Canadian Navy at the end of World War II, and his subsequent achievements in municipal and provincial politics and legal practice, including the writing of his seminal work on the October Crisis of 1970, published in 2006. But the above reflections on his involvement with the maritime world and with the education of tomorrow's leaders in that important domain may suffice to help us all realize how much of a debt we owe him, especially in this country, and how much his counsel and friendship will be missed in the years to come. His total devotion to his wife Rosslyn, their four children and nine grandchildren would require another article.

If we today can see farther into the mists of tomorrow's national and international shipping and the law that may (or should) govern it (hopefully with greater uniformity than at present), it must surely be at least in part because of the sturdy shoulders of Bill Tetley our giant, on which so many have perched and peered out for so very long a time, even as they absorbed something of the giant's spirit and zeal.

May the good professor now at last enjoy "fair winds and following seas" in a better world, and may we who carry on in this one imitate his energy and commitment to promoting the vision, so dear to his big heart, of a more just and harmonious rule of law upon the waves.

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