1996 - 1997
Developments in Canadian Maritime Law

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Marine Insurance

Shearwater Marine Ltd. v. Guardian Insurance Co. et.al.(February 28, 1997) No.C935887 (B.C.S.C.). In this matter the Plaintiff claimed under a marine insurance policy for the constructive total loss of a 93 year old converted wooden fish packer. The vessel sank while moored to a log boom breakwater. The Defendant insurers denied coverage arguing that the assured had breached a warranty that provided: "Vessel inspected daily basis and pumped as necessary." The vessel was not boarded on a daily basis for the purpose of "inspection". It was, however, observed from a distance (often of 300 yards) and pumped as necessary. The Court held that compliance with the warranty did not require daily boarding of the vessel but, rather, that daily observation by a knowledgeable observer was sufficient. The Court further went on to consider whether the warranty was a "true warranty", the breach of which would void the policy, or merely a suspensive condition, the breach of which merely suspends the policy while the breach continues. The Court held that the warranty was a suspensive condition. This was relevant as the vessel had been boarded and pumped the day before the sinking. A final issue concerned whether the vessel was truly a constructive total loss ie. whether the cost of repair exceeded the insured value. This, in turn, depended on whether the assured's normal labour charge-out rate was used to calculate the repair cost or whether the actual cost to the assured (ie.without a profit element) was used. The Court held that the normal charge-out rate should be used.

Marler v Royal Insurance Company et.al. , (October 3, 1996) No. C12405/93(Ont. Ct. Gen. Div.). This was an action by a vessel owner against his underwriter and insurance broker. The underwriter provided the broker with a quotation for insurance which contemplated issuance of an All Risk policy upon compliance with all survey recommendations and a re-survey. It also included a warranty: "Warranted laid-up and out of commission". The quotation was provided to the assured who instructed the broker to procure the insurance. The assured subsequently put the vessel in the water. When the broker learned of this she advised the assured

that the warranty did not permit the boat to be in the water. The insurer later advised the assured that the policy was cancelled. Nine days later the vessel sank. The Court held that the assured, an experienced sailor, boat owner and marine lawyer, was aware of the meaning of the warranty and had breached the warranty by putting the vessel in the water. Accordingly, the action was dismissed.

Catherwood Towing Ltd. v. Commercial Union Assurance Co. et.al., (July 17, 1996) Vancouver Registry No.CA019997 (B.C.C.A.). The issue in this case was whether the tug owner's P&I policy offered coverage in respect of loss of or damage to cargo on board a barge. The barge and cargo were owned by the same person and were being towed by the tug owner pursuant to a contract of towage at the time of the loss. The insurer denied coverage on the basis of a clause in the policy that excluded "all liability in respect of cargo". The tug owner relied on the wording of a Tower's Liability endorsement which extended coverage to the "tow or the freight thereof or to the property on board". Both the trial Judge and the Court of Appeal held that the cargo exclusion in the policy applied only to cargo on board the insured vessel (ie. the tug) and not to cargo on board the barge which was owned by the cargo owner and not insured under the policy. Further, it was held that the word "freight" in the endorsement meant goods transported in a vessel. In result, there was coverage under the policy.

Burrard Towing Co. v Reed Stenhouse Limited et.al.(April 23, 1996)Vancouver Registry No.CA019659 (B.C.C.A.)This case involved the interpretation of a Tower's Legal Liability Policy. The facts were that a barge under demise charter to a tug company capsized while under tow and the cargo was lost. The barge was an insured vessel under the tug company's policy. The issue in the case was whether the tug company had legal liability coverage for the lost cargo. The policy contained an express exclusion for "liability in respect of cargo on board vessels insured herein". It also, however, contained an endorsement which provided: "coverage is extended to include Legal Liability of the Assured...in respect of loss of, or damage to...her tow...or the property thereon...". The Tug company argued that this endorsement extended the coverage to cargo on the barge notwithstanding the exclusion. The Court of Appeal held, however, that in interpreting the insurance policy it was necessary to distinguish between liabilities arising out of contracts of towage and those arising out of contracts of carriage. The Court held that the endorsement applied only to contracts of towage and not to contracts of carriage. It further held that, as the tug and barge were both supplied by the tug owner, the contract was one of carriage. Accordingly, the cargo exclusion applied and the Underwriters were not liable under the policy.

Percy v West Bay Boat Builders and Shipyards Ltd. et.al., (March 29, 1996) No. C920575 Vancouver Registry (B.C.S.C.). This case involved a third party action between a yacht builder and its insurance broker. The builder alleged its broker was negligent and in breach of contract in that it failed to ensure the builder had adequate insurance coverage. The issue arose when the builder was sued by a customer after the customer's yacht caught fire. The customer alleged that the boat was negligently manufactured by the builder. The action by the customer was settled out of court for a substantial sum. The builder sought reimbursement of the settlement funds it paid to its customer and of its legal costs from the broker. The builder alleged that the broker had enticed it away from another broker/insurer by promising "full coverage" at better rates. As it turned out, the policy obtained for the builder by the broker did not provide the same coverage as was provided by the prior policy. Specifically, it did not cover the product liability claim of the builder's customer. If the prior policy had been in place, the builder would have been covered for this claim. The broker was found liable in negligence and contract .

Whiten v Pilot Insurance, (January 25, 1996) No. 94-CU-77550-CM, (Ont. Ct. Gen.Div.). This case is not a marine insurance case. It is nevertheless of importance because the Plaintiff obtained punitive damages against the insurer in the amount of $1 million. An award of punitive damages of this size is unprecedented in Canadian insurance law, whether marine or non-marine. The case involved a claim under a fire policy. The insurer declined the claim and alleged arson on the part of the Plaintiff. The insurer did this despite its adjuster's recommendation that the loss be paid. The insurer was not able to prove its allegations of arson which the jury found were contrived and of no real substance. Accordingly, punitive damages were awarded. The same principles could apply in a marine insurance case if a marine insurer alleged, but did not prove, an

intentional scuttling.

Carriage of Goods

Me Thierry Van Dooselaere v Unispeed Group Inc. and SGS Supervision Services(January 27, 1997) No. T-1452-92 (F.C.T.D.). This was an action by the Plaintiff shipper against the carrier and surveyors for excessive freight charges. The Plaintiff negotiated a freight rate for 1486 metric tonnes of creosoted poles. During the course of loading the poles it was discovered that the cargo occupied more space than anticipated and the carrier demanded additional freight which the Plaintiff was forced to pay. The Plaintiff subsequently retained a surveyor to measure the cargo. The surveyor did so and the Plaintiff paid on the basis of the survey. Upon delivery the cargo was again surveyed by two independent surveys both of whom agreed that the original survey significantly overstated the amount of cargo. The Court held that the carrier and the surveyor were jointly and severally liable for the excessive freight charges the Plaintiff was forced to pay.

Bethlehem Resources Corporation v Vancouver Wharves, (January 9, 1997), No. C943469, (S.C.B.C.). This was a motion for summary judgment brought by the Plaintiff against the Defendant, a terminal operator, for shortages to ore concentrate shipped through the Defendant's facility. The relationship between the parties was governed by an agreement which specifically provided that the terminal would only be liable for "proven negligence". The Court held that normal shrinkage might have accounted for the shortages and further held that the Plaintiff had not proven an act of negligence to support the claim.

Alcan Aluminum Ltd. v Unican International S.A. et.al. , (June 17, 1996) No. T-1217-90 (F.C.T.D.). In this matter the Plaintiff claimed damages against the owner and time charterer of the "CarryBulk" for breach of a booking note contract. Due to engine problems the vessel did not have sufficient power to make its way through the ice to the agreed port of loading and the time charterer ordered the ship to another port where it loaded other cargo. The Plaintiff then made alternate, and very costly, arrangements to have other vessels carry its cargo. The time charterer also claimed damages from the Plaintiff arguing that it was the Plaintiff that breached the booking note contract by shipping its cargo on these other vessels. The Court held that the time charterer and not the Plaintiff was in breach of the booking note contract. The Court found the conduct of the time charterer was anticipatory breach and the Plaintiff was justified in making alternate arrangements to ship the cargo. The time charterer argued, in the alternative, that the substitution clause gave it a defence to the Plaintiff's claim but the Court held the substitution clause could offer no defence where the named vessel had already begun to perform under the agreement. The time charterer was therefore held liable. The owner, however, was not found liable as the Court held the booking note was signed by the charterer on its own behalf and not as agent on behalf of the owner. Although successful on the issue of liability, the Plaintiff was not completely successful on the matter of damages. Most of the damages claimed were disallowed on the basis that time was not of the essence and the Plaintiff could have waited and chartered another ship at a later date at a much more reasonable price. The Plaintiff's claim for compound interest was also disallowed. The trial Judge held that compound interest should only be awarded where the Plaintiff demonstrates that his or her loss cannot be fairly compensated without an award of compound interest.

Alcan Aluminum Ltd. v Unican International S.A. et.al. , (September 25, 1996) No. T-1217-90 (F.C.T.D.). In this matter the Plaintiff had been awarded damages against the Defendant ship owner for breach of a time charter. The parties could, however, not agree on issues of interest and costs and the case was referred back to the Court . The Court held that the Plaintiff was only entitled to pre-judgment interest at the legal rate of 5%. The Plaintiff was not entitled to pre-judgment interest at the prevailing commercial rates since it led no evidence on the point. The Plaintiff was, however, allowed to rely on Provincial legislation with respect to post-judgment interest and, pursuant to the applicable Provincial legislation, the Plaintiff obtained more than the legal rate. On the question of costs, the Defendant argued that two offers to settle it made should be taken into account in its favour. The Court, however, agreed with the Plaintiff that the offers could not be taken

into account because the first was not a firm offer of settlement but only an offer by counsel to "recommend" a settlement and, the second was conditional.

Wirth Limited et.al. v The "Federal Danube", (May 10, 1996) No. T-1701-90 (F.C.T.D.) This case concerned damage to a cargo of steel rails carried from Antwerp to Montreal. The carrier acknowledged receipt of the cargo at Antwerp in apparent good order and condition except for some slight rusting. Upon discharge at Montreal the cargo was noted as being in substantially the same condition except one rail was damaged. The cargo was then carried by Rail to Winnipeg. Upon delivery to the consignee at Winnipeg it was noted that approximately 10% of the rails had been damaged by scratches to their base. The scratches were slightly rusted by salt water mist indicating the damage occurred prior to arrival at Montreal. The Plaintiff argued that the carrier was liable as having received the cargo in good order and condition and delivered it in bad condition. The Court, however, stated that the clean bills of lading were not a statement that the cargo was in perfect condition when it arrived at Antwerp. The clean bills of lading meant only that upon a reasonable and practical examination of the cargo, no damage was visible. The Court noted that, except for one rail, the cargo was delivered at Montreal in the same condition as received at Antwerp, ie. with no visible damage. It was therefore held that the carrier was only liable for damage to one rail.

Canadian Pacific Forest Products Limited et.al. v The"Beltimber" et.al.(April 23, 1996) No. T-1861-92(F.C.T.D.) This case involved loss of a cargo of lumber carried on deck from Canada to Europe. In defence of the claim the carrier relied on the exemption for deck carriage contained in Hague/Visby Rules. The bills of lading were claused "on deck at shipper's risk". Clause 8 of the bill of lading was a "liberty" clause which specifically allowed the carrier to stow goods on deck and provided that: "Goods stowed on deck shall be at all times and in every respect at the risk of the shipper/consignees. The carrier shall in no circumstances whatsoever be under any liability for loss of or damage to deck cargo, howsoever the same may be caused...". The Plaintiff argued, inter alia, that these provisions did not protect the carrier as they did not expressly exclude liability for negligence. The Court noted that these provisions, by themselves, would have protected the carrier but further noted that the "Both to Blame" and "Transhipment" clauses of the bill of lading specifically referred to negligence as a head of liability. The Court held that the express inclusion of negligence in these other clauses made the omission of a reference to negligence in the deck cargo clauses significant. Accordingly, the Court held that the deck cargo exclusion did not cover liabilities arising as a consequence of the carrier's negligence.

Matsuura Machiner Corporation et.al. v Hapag Lloyd A.G. et.al.(March 5, 1996) No.T-2260-94 (F.C.T.D.) In this matter the Federal Court held that it did not have jurisdiction in a claim against a road carrier under a through bill of lading. See a more complete summary below under Canadian Maritime Law.

Collisions

Sutton et.al. v. Petman,(June 14, 1996) Vernon Registry Nos. 14583 & 14612 (B.C.S.C.). This was a motion to dismiss a Third Party action. The matter arose out of a fatal collision between two pleasure craft. One vessel was owned by the Third Party but had been loaned to, and was being operated by, the Third Party's son at the time of the accident. The Defendant, the owner and operator of the second vessel, commenced Third Party proceedings against the owner of the first vessel. The Court dismissed the Third Party action. It was conceded that the Third Party could not be held liable by mere reason of ownership of the vessel (as in an automobile case) but that the Defendant had to show a cause of action and evidence in support. The Court further held that the Third Party could not be held liable under the doctrine of vicarious liability as the Third Party had given possession of the vessel to his son and did not exercise any operational control thereafter. The only basis upon which the Third Party could be held liable was in negligence. The Defendant relied on the fact that the collision occurred at or near dusk and that the lights on the Third Party's boat were not operational. The Court, however, found that the Third Party was not aware the vessel would be operated at night and was not aware the lights were not working. The Court further held that there was no requirement

that a boat owner periodically check the operation of the lights when it was not intended to use the boat at night.

Conrad v Snair(December 7, 1995) No. 109424 (N.S.C.A.). This case involved a collision at night between a Boston Whaler and an anchored unlit sailboat. As a result of the collision, a passenger of the Boston Whaler was seriously injured. The issues concerned the liability for the collision, contributory negligence, and limitation of liability. Both the trial Judge and the Court of Appeal found that the driver of the Boston Whaler was entirely at fault for the collision. The driver was found to have been travelling at an excessive rate of speed and failed to maintain a proper lookout. With respect to the sailboat, the trial Judge and the Court of Appeal held that there was no presumption of fault because of the failure to exhibit an anchor light. They further found that there was a local custom to not display anchor lights. The driver of the Boston Whaler also argued that his passenger was contributorily negligent in that she knew of his propensity to drive his boat in a particular manner. The Court of Appeal held that even if the master was known to be reckless, that would be an insufficient basis for a finding of contributory negligence. Although in light of these findings, the Court of Appeal did not need to decide whether contributory negligence on the part of the plaintiff would be a complete bar to damages, it nevertheless gave the opinion that if the Plaintiff had been negligent, the Provincial contributory negligence statute would apply to apportion damages. Finally, the driver of the Boston Whaler argued that he was entitled to limit his liability under the Canada Shipping Act because the accident occurred while he was acting in his capacity as master and not owner of the vessel. In lengthy reasons the Court of Appeal analysed the problems that arise where the master is also the owner. Ultimately, the Court agreed with the trial Judge that the owner/master of the Boston Whaler was at fault as owner in failing to ensure his alter ego, the master, travelled at a safe speed.

Nordholm I/S v The Queen, (January 8, 1996), No.T-1215-89, (F.C.T.D.) . This interesting case involved a collision between the Canadian Naval vessel "Kootenay" and the "Nordpol" on June 1, 1989, in conditions of fog. At the time of the collision the "Kootenay" was engaged in anti-submarine exercises that required her not to emit any radar or radio signals. The "Kootenay" was observed on radar by those on board the "Nordpol" but she could not be raised by radio and her movements were erratic suggesting she was a fishing vessel. The "Nordpol" therefore maintained her course and speed of 13.5 knots assuming the "Kootenay" would pass astern of the "Nordpol". Of course, the "Kootenay" did not pass astern. A close quarters situation developed and the two ships collided. The Court held that both ships were liable and apportioned liability 70% to the "Kootenay" and 30% to the "Nordpol". The "Kootenay" was held primarily responsible because she created the dangerous situation by participating in naval exercises in busy shipping lanes, in fog, without having given any notice to vessel traffic or shipping and without the use of any navigational aids such as radar. The "Nordpol" was also criticized for excessive speed, for failing to take avoiding action and for failing to appreciate the close quarters situation and risk of collision. On the issue of damages, the Court had to consider what was the appropriate date for conversion of foreign currency and what was the appropriate method of calculating loss of use for a warship. On the first issue, the Court reaffirmed that damages incurred in a foreign currency are to be converted to Canadian dollars using the prevailing rate on the date of the commission of the tort. On the second issue, the Court held that there should be damages for loss of use of the "Kootenay", calculated using the capital cost of the ship. It did not matter that the "Kootenay's" duties were performed by other naval ships. There was still a loss to the Defendant; a loss of a "margin of safety".

Ens v Gabany , (January 19, 1996), No.75911/91Q, (Ont.Ct. Gen.Div.). Apportionment of liability was the issue in this small vessel collision case. The Plaintiff's vessel was at anchor and was hit by the Defendant's vessel. The Court apportioned liability 70% to the Defendant and 30% to the Plaintiff. The faults on the part of the Defendant were travelling at night at an excessive rate of speed when having consumed sufficient alcohol to have affected his judgment and vision. The faults on the part of the Plaintiff were not having an anchor light and anchoring his vessel in an area where through traffic was predictable and probable.

Limitation of Liability

Cox v Brown , (October 4, 1996) Vernon Reg No.10545 (B.C.S.C.). This was a summary trial for a declaration that the Defendant was entitled to limit her liability under the *Canada Shipping Act*. The facts were that a small motor boat operated by the Defendant struck a swimmer in Okanagan Lake. At the time, the Defendant was operating the boat without the permission of the owner, the Defendant's father. (An action against the owner was dismissed by consent as a result of a summary trial application brought by the owner.) The Plaintiff argued that as the Defendant did not have the permission of the owner to operate the vessel she was not "acting in the capacity of master" and was therefore unable to limit. The Court, however, held that it was bound by the decision of the British Columbia Court of Appeal in *Whitbread v Walley*, (1988) 26 B.C.L.R. (2d) 120, a case in which the operator was entitled to limit notwithstanding that the vessel was being operated without the permission of the owner. (This case was, of course, appealed to the Supreme Court of Canada [1989] 2 S.C.R. 1273, on the issue of whether operators of pleasure craft generally could limit liability.) A second issue in this case was the appropriate date for converting gold francs to dollars where there had been no payment into Court. The Court held that the appropriate date was the date of judgment.

Meeker Log and Timber Ltd. et. al. v The "Sea Imp VIII" et. al. (May 30, 1996) Vancouver Registry CA019851 (B.C.C.A.)The British Columbia Court of Appeal held that a tug owner was entitled to limit its liability where the accident could not have been guarded against and was caused solely by a navigational error on the part of the Tug skipper. See summary below under Tug and Tow.

Conrad v Snair(December 7, 1995) No. 109424 (N.S.C.A.). The Nova Scotia Court of Appeal held an owner/master was not entitled to limit his liability. See summary above under Collisions.

Tug and Tow

Meeker Log and Timber Ltd. et. al. v The "Sea Imp VIII" et. al. (May 30, 1996) Vancouver Registry CA019851 (B.C.C.A.)The British Columbia Court of Appeal rendered a short oral judgment from the bench dismissing an appeal and cross-appeal from the decision of Mr. Justice Peter Lowry, reported at 1 B.C.L.R. (3d) 320. The issues concerned the interpretation of standard towing conditions and limitation of liability pursuant to the Canada Shipping Act. The standard towing conditions were composed of multiple parts each of which contained a slightly different exclusion. They also incorporated parts of the Carriage of Goods by Water Act. The plaintiffs argued that the conditions when read as a whole, and with or without the incorporated provisions of the Carriage of Goods by Water Act, were so inconsistent and ambiguous that no effect could be given to them. The Trial Judge agreed and held the conditions were of no effect. On the limitation aspect of the case, the Trial Judge held that the tug owner was entitled to limit its liability as the cause of the accident was an error in navigation which the owner could not have guarded against. Both parties appealed. The Court of Appeal agreed with the Trial Judge's reasoning and dismissed both appeals. In result, the standard towing conditions were ruled invalid but the tug owner was entitled to limit its liability.

Primex Forest Products Ltd. v Harken Towing Co. Ltd. (February 19, 1997) No. 95-21071 (B.C. Prov. Ct. , Small Claims). This small claims matter is of interest because it is the first case in B.C. to consider towing conditions since the Court of Appeal rendered its decision in The "Sea Imp VIII". The towage conditions were very similar to those in The "Sea Imp VIII" except the clauses were individually numbered and there was an express clause limiting liability to $500.00. The Small Claims Court held that the difference in wording/form was significant and distinguished The "Sea Imp VIII"on this basis. In result the Court gave effect to two of the exemption clauses finding they were clear and unambiguous. The clauses the Court gave effect to were an "owner's risk" clause and a clause that deemed the tug owner's employees to be the employees of the claimant.

Burrard Towing Co. v Reed Stenhouse Limited et.al.(April 23, 1996)Vancouver Registry No.CA019659 (B.C.C.A.)This case involved the interpretation of a Towers Legal Liability Policy. It is summarized above under Marine Insurance.

Pollution

Newfoundland Processing Ltd. v The "South Angela",(September 23, 1996) Nos. T-457-88, T-584-90, T-620-90 (F.C.T.D.). The issue in this case was who was responsible for an oil spill that occurred at the Come By Chance Oil refinery. The spill resulted after the Defendant vessel had discharged its cargo of crude and was involved in a line draining process. The Court held that both the Plaintiff and Defendant were equally at fault. The Plaintiff was at fault in that the cause of the spill was a backflow from the refinery and there were no check valves in place which, although not required by law, would have made the Plaintiff aware of the backflow. The Defendant was at fault in that it had failed to close a valve which, if closed, would have prevented the backflow from entering the slop tank and overflowing into the sea. The Court further held that the contributory negligence of the Plaintiff was not a bar to recovery. In doing so the Court relied upon and adopted the reasoning of the Newfoundland Court of Appeal in Bow Valley (Husky) Bermuda v Saint John Shipbuilding Limited, (1995) 130 Nfld. & PEIR 92.

Admiralty Practice

Smallwood v Hill(January 8, 1997) Nos. C24305 & C24306 (Ont. C.A.) This was an appeal from an order under s. 572 (3) of the Canada Shipping Act extending the time in which to issue a Statement of Claim. The facts of the matter were that a boating accident occurred on August 4, 1990, but action was not commenced by the injured Plaintiff until January 26, 1995 ie. 30 months after the two year limitation period in s. 572(1) of the Canada Shipping Act had expired. The cause of the missed limitation period was solicitor's negligence which was then compounded by the solicitor's failure to do anything about the mistake when it was drawn to his attention. The Court of Appeal noted that this was a marginal case but nevertheless held that the motions judge had not erred in exercising his discretion in favour of an extension of time.

Shorworld International Inc. et.al. v. Fednav Ltd. et.al.(January 13, 1997), No. T-989-92 (F.C.T.D.). In this carriage of goods case the Defendant delivered a formal offer to settle pursuant to Rule 344.1. The offer did not provide for costs but the Plaintiff accepted it and demanded costs up to the date of the offer based on column III of Part I of Tariff B. The Court held that the Plaintiff was entitled to the costs demanded.

Elders Grain Company Limited v. The "Ralph Misener" et.al.(January 17, 1997), No. T-1836-90 (F.C.T.D.). In this matter an *In Rem* Statement of Claim was served upon a ship by delivering a copy of the Statement of Claim to the Master on board the ship. The issue was whether such service was valid service under Rule 1002 which specifically provides that service on a ship is to be effected by attaching a copy of the Statement of Claim to the mast or some other conspicuous part of the ship. The Court reasoned that the Rules should be given a flexible, liberal interpretation and held that service on the Master was sufficient.

Mario Neves et.al. v. The "Kristina Logos" et.al.(January 16, 1997) No.T-1041-95 (F.C.T.D.). This was an application by the Crown for leave to sell the Defendant vessel *pendente lite*. The application was granted on the grounds that the costs of maintaining the vessel amounted to over $500,000.00 and the ongoing cost was $60,000.00 per year. Further, there was evidence the vessel was deteriorating in value and its classification certificate would soon expire.

Valmet Paper Machinery Inc. v Hapag-Lloyd AG et.al.(December 23, 1996) Vancouver Reg. C960793

(B.C.S.C.) . This was an application by the Defendant freight forwarder to set aside service *ex juris* of the Statement of Claim and for an order staying the action on the basis of a jurisdiction clause. On the first point the Court found that the Plaintiff had established a good arguable case that the Defendant's contractual obligation was as a common carrier and therefore that there was a breach of contract in British Columbia. Under the Rules of the Supreme Court of British Columbia service *ex juris* was allowed where there was a breach of contract committed within the province. On the jurisdiction clause issue the Court found that the clause did not apply as it related to forwarding activities and the Plaintiff had established a good arguable case that the Defendant was a carrier. Further, the Defendant's standard conditions, including the jurisdiction clause, did not apply to "bulky loads" and the Court held the cargo in question was a bulky load. The Court then went on to consider the various factors affecting *forum conveniens* and determined that British Columbia was an appropriate forum.

Olbert Metal Sales Limited v. The "Harmac Dawn" et.al.(December 5, 1996), No. T-539-92 (F.C.T.D.). This was a carriage of goods case in which both the shipper and consignee were initially added as Plaintiffs. The Plaintiff, shipper, later brought this motion for leave to discontinue its action against the Defendant carriers. The grounds were that both Plaintiffs were initially joined because of uncertainty as to who had title when the goods were damaged but it had now been determined when risk and title passed and it was therefore no longer necessary for the shipper to remain a party. The Court refused the Plaintiff leave to discontinue holding that to do so would prejudice the Defendants who would be deprived of their right to discover the shipper. The case contains a good discussion of when title and risk pass under an FOB sale.

The Queen v The "Western Horizon" et.al.(November 19, 1996) No.T-1620-96 (F.C.T.D.). This was a motion by the Plaintiff to sell the "Western Horizon" *pendente lite* and a motion by the Defendant to stay any such sale. The Plaintiff was the holder of a registered mortgage against the vessel in the amount of $200,000.00. The vessel, however, was only valued at approximately $60,000.00. The Plaintiff's motion was allowed by the Court on the grounds that: there was a large discrepancy between the value of the ship and the mortgage; the ongoing cost of moorage could exceed the value of the vessel by the conclusion of a trial; the vessel was deteriorating; and, the Defendant had not come forward to offer to share the moorage or maintain the vessel or put up security of $60,000.00. The Court also declined to order a stay of the sale finding that there was no serious issue to be determined and that the balance of convenience did not favour a stay.

Tan v The "Pacific Brilliance" et.al.. , (October 21, 1996) No. T-1325-95(F.C.T.D.). This was an application to strike out a Third Party Claim. The main action arose out of the death of a shipyard employee who fell from a gangplank while disembarking from the vessel. The dependents of the deceased commenced action against the owners and operators of the ship who, in turn, sought to third party the terminal where the ship was moored at the material time. The Court found that both the shipyard and the terminal were employers registered under the Workers Compensation Act of British Columbia and that the Act prevented the Defendants from bringing the Third Party proceedings.

Pusan Pipe America Inc. v The "Nicole" et.al.. , (September 6, 1996) No. T-205-95(F.C.T.D.). This application before the Prothonotary at Vancouver concerned production of documents. The Court upheld a claim for privilege over various survey reports which the Court found were prepared on the instructions of counsel in anticipation of litigation and not as a matter of routine.

Gleason v The "Dawn Light",(September 19, 1996) No. T-1903-96 (F.C.T.D.). This matter concerned a motion to set aside an arrest warrant. The case involved a dispute over title to a ship. The Plaintiff alleged that he had entered into a binding agreement of sale with the Defendant but that the Defendant, in breach of contract, sold the ship to another. The Defendant sought to set aside the warrant on the grounds that the ship had been sold to another and that therefore the beneficial ownership had changed. The Associate Senior Prothonotary held that beneficial ownership was irrelevant to an action in rem relating to title. Accordingly, the Court refused to set aside the arrest.

I. Deveau Fisheries Ltd. v Cummins Americas, Inc. , (June 17, 1996) No. T-1312-95 (F.C.T.D.). This case

concerned a claim by the Plaintiff against the Defendant for negligent repair of a ship's engine. The Defendant in turn commenced Third Party proceedings against a sub-contractor for contribution and indemnity in respect of work done by the sub-contractor to the cylinder heads of the engine. The sub-contractor brought a motion to strike the Third Party action on the grounds that it was not within the jurisdiction of the Federal Court. The sub-contractor argued that all of the work that it did was done in its own shop. It did not do any work to the ship or on the ship. The Court, however, held the work done was necessary to enable the ship to carry out its operations and was therefore governed by maritime law and within the admiralty jurisdiction of the Court.

Quinlan Brothers Limited v The "Tricon Commander" et.al.,(May 23, 1996) No. T-2690-94 (F.C.T.D.). In this matter the surety of a bail bond brought an application for their bond to be released. The action had been commenced and the Defendant ship arrested in November, 1984. Bail was posted in January 1986 and the ship was released from arrest the following month. Nine years then passed without any significant action being taken by either party. The Court ordered that the Plaintiff show cause why the action should not be dismissed for delay.

Granville Shipping Co. v Pegasus Lines Ltd. , (February 21, 1996) No. T-293-91 (F.C.T.D.). This case involved a claim by the Plaintiff for unpaid hire under a charterparty and a counterclaim by the Defendant for damages for delay. The Plaintiff brought a motion for summary judgment on the main claim and a motion for an order staying the counterclaim and referring it to arbitration pursuant to the arbitration clause in the charterparty. The Court declined the request for summary judgment finding there were genuine issues of fact and credibility. With respect to the stay application, the Court held the request for a stay had not been made in a timely manner and further held the Plaintiff had waived its right to a stay of the counterclaim by commencing the main action in the Federal Court.

Pacific Tractor Rentals (V.I.)Ltd. v The "Palaquin", (June 14, 1996) No.T-2616-95 (F.C.T.D.). The issues in this case were whether an arrest warrant extends to property taken off a vessel prior to arrest and whether repairs to a vessel under arrest paid for by the vessel's owner form part of the arresting party's security. The case concerned machinery owned by the Plaintiff that had been lost overboard from the "Palaquin" during alleged heavy weather. The heavy weather also damaged the engine of the "Palaquin". Subsequent to the accident, but before action had been commenced, the engine was removed from the "Palaquin" for repair and the electronics were removed for safekeeping. A Warrant for Arrest was served on the vessel after the removal of these items. The Plaintiff brought a motion before the Prothonotary for an order that the arrest warrant extended to the engine and electronics removed from the vessel. The Court held that the arrest warrant extended to items that had been removed from the ship before the arrest. A second aspect of the case concerned whether the increase in the value of the ship as a consequence of the engine repairs would benefit the Plaintiff. The Court held that repairs done and paid for by the owner subsequent to the accident, but before arrest, increased the value of the res to the benefit of the arresting party. However, the value of repairs done and paid for by the owner after the arrest did not form part of the arresting party's security.

Elecnor S.A. v The "Soren Tourbo" et.al. (May 30, 1996) T-152-95 (F.C.T.D.). This case addresses the issue of whether the Plaintiff must name all sisterships in a Statement of Claim. The action was originally commenced on January 25, 1995, against the ship "Soren Turbo". The Statement of Claim was renewed on January 15, 1996 for a further twelve months. This renewal was, however, subject to the proviso that if the "Soren Tourbo" had been within the jurisdiction, the Order could be set aside. The owner subsequently moved to set aside the Order on the grounds that a sistership of the "Soren Tourbo" had been within the jurisdiction during the initial currency of the Statement of Claim. The owner argued that the Plaintiff's failure to include the sistership in the Statement of Claim and to serve her while she was in the jurisdiction disentitled it to a renewal of the pleading. The Prothonotary held, however, that the sistership provisions in the Federal Court Act and Rules were permissive and not mandatory. The fact that a sistership not named in the Statement of Claim had been in the jurisdiction did not disentitle the Plaintiff to a renewal of the pleading.

Companhia Siderurgica Nacional v The "Imperial Confidence" et.al.(April 23, 1996) No.T-3083-94 (F.C.T.D.). This was an ex parte motion by the Plaintiff to extend the time for service of the Statement of Claim. The Prothonotary extended the time for service in rem as the Defendant vessel had not been in the jurisdiction since the Statement of Claim was issued. However, the Court refused to extend the time for service in personam. The Prothonotary held that inadvertence or a mere slip in practice was not a sufficient reason to extend the time for service.

Porto Seguro Companhia De Seguros Gerais v Belcan S.A. et.al.(March 29, 1996) No. A-201-94 (F.C.A.) This appeal raises a very interesting and unusual issue concerning the use of assessors in maritime cases. The main issue in the case concerned who was at fault for a collision between the "Federal Danube" and the "Beograd" on December 11, 1984. The trial Judge, who was assisted by two assessors, found the accident was wholly caused by the "Beograd". At trial and on appeal the Appellant argued that the assessors were biased because they had in the preceding ten years acted as expert witnesses for the opposite counsel and, one of them had 15 years earlier done work for one of the respondents. The Court of Appeal agreed with the trial judge that these matters did not raise a reasonable apprehension of bias. A more difficult point was that the trial Judge had refused to allow the Appellant to call expert evidence. Two of three Justices in the Court of Appeal reaffirmed the admiralty rule that prohibits a party from calling expert evidence except on subjects other than navigation and seamanship. The majority did however agree with the Appellant that the rule should not be extended to situations where the assessors are not seamen. The majority held that where the Judge sits with assessors who are not seamen he/she is not precluded from hearing expert evidence within their area of expertise. Nevertheless, the majority held that in the circumstances of the case there was no prejudice caused to the Appellant by the Judge's refusal to hear the expert witness. The dissenting Justice held that this admiralty practice was contrary to the rules of Court and the principles of natural justice and would have allowed the appeal. Leave to appeal to the Supreme Court of Canada has been filed.

Jordan v Towns Marine Electronics Ltd. et.al.(April 30, 1996) No. T-1577-95 (F.C.T.D.) This was an appeal from a decision of the Prothonotary in which the Defendant was ordered to produce three adjuster's reports. The Defendant had claimed privilege over the reports arguing they were made in contemplation of litigation. On appeal, the Defendant argued that as the adjusters were appointed by the liability insurer of the Defendant, the only possible purpose for the preparation of the reports could be litigation. The Court disagreed. The appeal was dismissed and the Defendant was ordered to produce the reports. Both the Prothonotary's decision and that of the Justice on appeal contain some useful discussion concerning whose intention is relevant in determining claims for privilege (the author or the person who commissions the report).

Pennecon v The "Jean Raymond" , (January 12, 1996), No. T-1877-85, (F.C.T.D.). This was a motion to dismiss a claim for want of prosecution. The claim had been filed in August, 1985. The Statement of Defence was not filed until November 1, 1989. On November 15, 1991, the Plaintiff filed a Notice of Intention to Proceed but no steps were taken. Various minor notices were sent over the next 4 years. In July, 1995, the Plaintiff filed a further Notice of Intent to Proceed and the Defendant responded with the motion for dismissal. The Court held that the appropriate test in a motion to dismiss for want of prosecution is that there has been inordinate delay, that the delay is not excusable, and that the delay is likely to cause serious prejudice to the Defendant. The Court held this test had been met and allowed the motion. On the key question of prejudice, the Defendant led affidavit evidence establishing that during the ten year delay it had lost contact with two important witnesses.

Portbec Forest Products Ltd. v The "Bosporus"(February 22, 1996) No. T-556-92 (F.C.T.D.). This case concerned Rule 310(2) of the Federal Court Rules which permits a non-resident to be served by serving an agent within the jurisdiction. The Plaintiff served the Defendant shipping line and shipowner by serving a local port agent who had been authorized to sign bills of lading and to attend to the Defendant ships husbandry. The Defendants led evidence to the effect that the local agent had only been used in respect of this one single charter party. The Court held that this was insufficient to support service under Rule 310.

Canadian Maritime Law

Ordon Estate v Grail , (October 22, 1996) Nos. C19472, C21973, 289D/93, 92-CQ-21426, 92-CQ-25769, 92-CU-47573 and 93-CU-69258 (Ont. C. A.). This case is essential reading for all Canadian maritime law practitioners. It concerns five separate actions commenced in the Ontario Court General Division. All of the actions involved boating accidents which resulted in a fatality and/or in serious personal injury. The actions gave rise to similar legal issues which were addressed by the Ontario Court of Appeal. The issues related to the jurisdiction of the Ontario Court General Division, the interpretation of Part XIV of the *Canada Shipping Act* relating to fatal accidents, and the content and definition of Canadian Maritime Law. The Court of Appeal held as follows:

- Part XIV of the *Canada Shipping Act* applies to both *in rem* and *in personam* actions.
- Provincial superior courts have concurrent jurisdiction with the Federal Court over maritime fatal accident claims as well as other maritime claims. Notwithstanding the reference to "Admiralty Court" in Part XIV and the fact that it is defined as Federal Court, if Parliament had intended to oust the jurisdiction of the superior courts it would have done so explicitly as it did in other areas.
- When considering whether a particular provincial law should be applied to a maritime related accident claim, it is necessary to determine whether the provincial law would encroach on or destroy the uniformity of federal maritime law. In other words, would the application of provincial legislation frustrate the exclusive, uniform federal jurisdiction relating to navigation and shipping.
- The fatal accident provisions of the Ontario *Family Law Act* conflict with Part XIV of the *Canada Shipping Act* and therefore do not apply to a maritime fatal accident claim.
- Section 38 of the Ontario *Trustee Act*, which allows the personal representative of the deceased to bring an action on behalf of the estate for damages (including pain and suffering) suffered by the deceased before his death, does not conflict with the *Canada Shipping Act* and therefore, such an action may be brought following a maritime fatal accident.
- Although the Ontario *Occupiers Liability Act*, including its reference to ships and vessels, is valid provincial legislation, it does not apply to an accident on a body of inland water where basic principles of negligence apply. There is no "gap", and therefore no need to introduce provincial legislation.
- The Ontario *Negligence Act* applies to maritime torts.
- Although loss of guidance, care and companionship is not referred to in Part XIV of the *Canada Shipping Act* the phrase "damages to the dependents" is broad enough to include loss of guidance, care and companionship.
- Part XIV of the *Canada Shipping Act* impliedly excludes siblings from those who can claim as dependents, however, the term "dependents" should be interpreted to include a common law spouse, otherwise the Act would violate the Charter of Rights and Freedoms.
- Damages for personal injury consequent upon a maritime accident should also be expanded to include loss of guidance, care and companionship.
- The limitation period for a fatal maritime accident, whether involving a collision or otherwise, is the one year period prescribed in Part XIV. Although section 572 of the Canada Shipping Act when standing alone would seem to provide for a two year limitation in collision cases, it makes no practical sense to treat cases of collision differently.

Newfoundland Processing Ltd. v The "South Angela",(September 23, 1996) Nos. T-457-88, T-584-90, T-620-90 (F.C.T.D.). The Federal Court Trial Division held that the contributory negligence of the Plaintiff was not a bar to recovery. See the full summary above under Pollution.

I. Deveau Fisheries Ltd. v Cummins Americas, Inc. , (June 17, 1996) No. T-1312-95 (F.C.T.D.). The

Federal Court Trial Division held that a Third Party claim against a sub-contractor of a ship repairer was governed by Canadian Maritime Law and within the admiralty jurisdiction of the Court. See the full summary above under Admiralty Practice .

Dreifelds v Burton, (April 10,1996) No. 8339/94 (Ont. Ct. Gen.Div.) The issue in this case was whether the one year limitation period in the Canada Shipping Act for fatal accidents applied to a recreational diving accident. The accident occurred on June 7, 1992 in Lake Ontario but action was not commenced until December 23, 1994. The Court characterized the case as a diving and swimming accident that had nothing to do with the operation or navigation of a ship and therefore held that admiralty law and the Canada Shipping Act did not apply. The Court then went on to consider whether the two year limitation period in the Ontario Family Law Act should be extended to permit the Plaintiffs to proceed with their action. The Court extended the limitation period holding it was missed due to "solicitor's error" and that there was no prejudice to the Defendant.

Vogel v Sawbridge et.al.(April 3, 1996) No. 24638 Kelowna Registry (B.C.S.C.); ***Barker v Sawbridge et.al.*** (April 3, 1996) No. 24639 Kelowna Registry (B.C.S.C.). This was a summary trial to dismiss two actions as time barred. The actions arose out of the deaths of two persons aboard the yacht "Kingfisher" while it was moored at Nanaimo Harbour, British Columbia. It was alleged in the Statement of Claim that the deaths were caused by the faulty operation of a heater in the yacht which emitted high levels of carbon monoxide. The deaths occurred on December 22, 1992 but actions were not commenced until December 21, 1994. The Plaintiffs claimed relief under the Family Compensation Act of British Columbia. The British Columbia Supreme Court, following the earlier decision of the British Columbia Court of Appeal in Shulman v McCallum [1933] 7 W.W.R. 567, held that the actions were governed by Canadian Maritime Law and not the provincial Family Compensation Act. Accordingly, the Court held that the actions were governed by the fatal accident provisions of the Canada Shipping Act and that the applicable limitation period was therefore the one year period provided by s.649 of that Act. The Court refused to exercise any inherent jurisdiction to extend the limitation period stating that to do so would conflict with and abrogate the clear provisions of a statute which contained no curative provisions.

Matsuura Machiner Corporation et.al. v Hapag Lloyd A.G. et.al.(March 5, 1996) No.T-2260-94 (F.C.T.D.) . This matter concerned the jurisdiction of the Federal Court over road carriers. The action involved damage to a cargo of goods carried from Japan to Toronto under a through bill of lading. The goods were carried by sea to New York and then by truck to Toronto. The contract for the road carriage portion of the voyage was between the road carrier and the ocean carrier. The Court held that these facts did not support a claim for jurisdiction over the road carrier.

Miscellaneous

Salvage and Wrecks, Priorities, Arbitration/Jurisdiction Clause, Personal Injury, Charterparties, Necessaries, Other

Salvage and Wrecks

Ontario v Mar-Dive Corp. , (December 20, 1996) Nos. 92-CU-60398, 92-CU-60588 & 92-CQ-21849 (Ont. Ct. Gen. Div.). This very interesting case concerned a dispute over the ownership of and salvage rights to the S.S. "Atlantic", a double-sided wheeled paddle steamer that sank in 1852 on the Ontario side of Lake Erie. The competing claimants were the Crown in the Right of Ontario, Michael Fletcher, a diver who had found and marked the wreck in 1984, and various U.S. companies whose principals found the wreck in 1989. The U.S. companies removed various artifacts which they transported to California. They then commenced proceedings in California which resulted in a judgment granting them salvage rights and recognizing their "uncontested claim of title". The California District Court further issued an injunction against Fletcher who

continued to dive on the wreck. The U.S. companies then sought to enforce this judgment in Ontario. The Ontario Court General Division, however, declined to do so. The Ontario Court held that the District Court of California did not have jurisdiction as there was no real and substantial connection with California. The Court further found that even if the California Court had jurisdiction the judgments were obtained by means of half-truths and artificiality and as such it would be against public policy to enforce them. The Court then went on to consider the claim of the Ontario Crown to ownership. The Court held that the "Atlantic" had been abandoned by her owners at the time of the sinking. It further held that the vessel became the property of the Crown either as owner of the lake bed in which the vessel had become embedded or pursuant to the Crown's Royal Prerogative which entitles it to all unclaimed wrecks.

Priorities

Scott Steel Ltd. v. The "Edmonton Queen" et.al.(January 30, 1997) No. T-1457-93 (F.C.T.D.) This was an appeal from the order of the Prothonotary setting the priorities among various claimants to the proceeds of the Court ordered sale of the stern wheeler *"Edmonton Queen"*. The contest was between the builder who had a possessory lien over the vessel, the mortgagee who held a builder's mortgage which matured into a registered mortgage and a supplier of goods and services. The usual ranking of priorities in such a case would be that the possessory lien holder would rank first (after the Marshall's fees), the mortgagee would rank second and the supplier of goods and services last. The mortgagee argued that the Court had the jurisdiction to depart from the usual order of priorities. The Court upheld the decision of the Prothonotary to not depart from the usual order of priorities unless very special circumstances were shown or it was necessary to prevent an obvious injustice. The Court found no such obvious injustice and declined to interfere with the usual order of priorities. The decision also contains a useful discussion of the standard of review upon an appeal from a Prothonotary's order.

Brotchie v The "Karey T.", (August 9, 1996) No. T-2369-93 (F.C.T.D.). In this matter the Court confirmed that the normal order of priorities upon the sale of an arrested vessel is as follows: first, to the Admiralty Marshall for reasonable charges and disbursements; second, to holders of maritime liens such as those arising out of a collision; and third, to holders of registered mortgages.

Arbitration/Jurisdiction Clause

Ocean Fisheries Ltd. v Pacific Coast Mutual Marine Insurance Company, (January 2, 1997), No. T-2205-96 (F.C.T.D).This was an application to stay the proceedings on the basis of arbitration provisions contained in the by-laws of the Defendant, a mutual insurance company, and incorporated by reference into the terms of an insurance policy. The Plaintiff argued that the arbitration provisions should be read contra preferentem against the Defendant and, that when so read they did not apply. The Prothonotary held that there was no ambiguity in the provisions and that they did apply. Further, the Prothonotary disagreed that the doctrine of contra proferentem should apply to an insurance policy issued by a mutual insurance company such as the Defendant. This case is under appeal.

Granville Shipping Co. v Pegasus Lines Ltd. , (February 21, 1996) No. T-293-91 (F.C.T.D.). In this matter the Federal Court declined to stay a counterclaim holding that the Plaintiff had waived its right to rely on the arbitration clause by commencing the action in breach of the arbitration provision. See the full summary above under Admiralty Practice.

Can-Am Produce and Trading Ltd. v The "Senator" et.al.(April 22, 1996) No. T-2353-95 (F.C.T.D.) This matter concerned a motion by the Defendant to stay proceedings by reason of a jurisdiction clause in the bill of lading. The Plaintiff opposed the motion on three grounds: that there were two jurisdiction clauses in the bill of lading which were inconsistent; that Canada was the more convenient jurisdiction; and that the action was also against Canadian stevedores who were not subject to the jurisdiction clause. The Prothonotary held

that the two jurisdiction clauses in the bill of lading could be read together and that the other grounds argued by the Plaintiff were not sufficiently compelling to depart from the jurisdiction chosen by the contract.

Siderurgica Mendes Junior S.A. v The "Ice Pearl" , (January 31, 1996), Vancouver Reg. No.C951424, (B.C.S.C.). In this cargo case the Plaintiffs argued that an arbitration clause in a charter party should not be given effect to on two grounds: First, that the bill of lading contained a "supersession clause" that did not specifically refer to the arbitration provision and, second, that the Defendant had waived its right to arbitration. On the first issue, the Court held that the "supersession clause" did not oust the arbitration agreement. On the second issue, the Court seemed to question whether there could be waiver or estoppel in relation to an agreement to arbitrate. The salient facts were that the Defendant had filed an appearance and had promised to file a Statement of Defence but had not yet done so. The Defendant had also issued a Demand for Discovery of Documents and had requested particulars of the Statement of Claim. The Court referred to the Commercial Arbitration Code which provides that an application for a stay shall be brought not later than when submitting the first statement on the substance of the dispute. The Court held that since the Defendant had not yet filed a defence it had not submitted its first statement on the substance of the dispute and was therefore not precluded for requesting a stay.

Personal Injury

Efford v Bondy (January 24, 1996) Victoria Registry No. 1158/92 (B.C.S.C.) In this matter the Plaintiff was injured on board a rigid hull inflatable boat while whale watching off Tofino, British Columbia. The Plaintiff injured her back when the bow of the boat came down hard when crossing the wake of a large fishing vessel. The Plaintiff alleged the Defendant was negligent in his operation of the boat and in failing to warn of the danger. The Court found that the Defendant had operated the boat in accordance with accepted safe boating practices but it also found that the Defendant had failed to adequately warn the Plaintiff. Specifically, the Court held that it was not sufficient that the Defendant had advised the Plaintiff that the bow seat was the roughest and that people with back problems should sit further back. The Court held that the Defendant should also have instructed passengers with respect to the location of safe handholds and the way in which to brace themselves. Nevertheless, the Plaintiff was found 75% at fault because she had a prior back problem and had been warned by her doctors to avoid heavy lifting.

Charterparties

Sail Labrador Ltd. v Navimar Corp., (June 28, 1996) No. T-275-90 (F.C.T.D.). This matter concerned a dispute relating to an option to purchase given in a charterparty. The Plaintiff had entered into a five year bareboat charter of the ship "Challenge". The charterparty included a provision entitling the Plaintiff to purchase the "Challenge" for a specified sum at the conclusion of the charter. The option was "subject to full performance". The Plaintiff attempted to exercise the option at the conclusion of the five year charter. The Defendant refused to honour the option and alleged that the Plaintiff had breached various clauses of the charterparty. The Court, however, held that any breaches of the charterparty by the Plaintiff had either been remedied before the option was exercised or were of a minor nature and did not disentitle the Plaintiff from exercising the option.

Necessaries

Calogeras Marine Inc. v Navihouse S.A., (September 18, 1996) No. T-2682-94 (F.C.T.D.). In this matter the Plaintiff ship chandler recovered the unpaid portion of an invoice relating to goods supplied to the Defendant vessel. The only issue was whether the Plaintiff was entitled to recover a discount that had been given to the Defendants. The Court held the discount was conditional on prompt payment by the Defendants and, since they did not pay the invoice in full when due they were not entitled to the discount.

Other

Killam v Brander-Smith(February 28, 1997) No.A964074 (B.C.S.C.). This was an application to set aside an arbitration award. The arbitration concerned the sale of a 22 foot fibreglass boat. The purchaser alleged that the vendor had misrepresented the condition of the engine. The arbitrator held that the doctrine "buyer beware" applied and found in favour of the vendor. The Court upheld the arbitrator's decision.

CSL Group Inc. v Canada , (December 3, 1996) No. T-1307-90 (F.C.T.D.). This matter was a test case in which the Plaintiff sought to recover substantial damages for delays experienced by its ships in the transit of the St. Lawrence Seaway during November and December, 1989. The delays were caused by a public service strike. Because of the strike ice breakers were not in service and the summer buoys were not removed. This resulted in restrictions on navigation being imposed including closure of sections of the river. The Plaintiff argued that the Defendant was negligent in failing to designate the relevant employees under the Public Service Staff Relations Act as necessary in the interest of public safety. Such a designation would have prevented the designated employees from taking part in the strike. The Court dismissed the Plaintiff's action. The Court held that the Government had no obligation to designate employees under the Act for the purpose of preventing inconvenience or economic hardship and that the crown employees who neglected to designate the relevant employees in a timely manner also owed no duty to the Plaintiff. The case contains a good discussion of Federal Crown liability.