



**THE BAR OF MONTRÉAL
ANNUAL FEDERAL COURTS SEMINAR
*THE MOST SIGNIFICANT CASES OF THE YEAR***

**RECENT CASES IN MARITIME LAW
Justice Sean Harrington, Federal Court**

**Tuesday, 13 May 2014, from 16:30 to 18:30
Montréal, Quebec
30 McGill Street**

I. SUPREME COURT OF CANADA

- A. *Marine Services International Ltd v Ryan Estate*, 2013 SCC 44, [2013] 3 SCR 53:

On appeal from the Court of Appeal for Newfoundland and Labrador. Fishermen dying in maritime accident. The federal *Marine Liability Act*, S.C. 2001, c. 6, s. 6(2), allows a negligence action; the Newfoundland *Workplace Health, Safety and Compensation Act*, RSNL 1990, c W-11, s 44, prohibits actions in respect of injury against an employer. The Supreme Court applies provincial law. Question: suppose this action had taken place at the Federal Court?

- B. *Peracomo Inc v TELUS Communications Co*, 2014 SCC 29 (the fishing vessel « Realice »):

Fisherman intentionally cutting submarine fiber-optic cable. The Federal Court and the Federal Court of Appeal held that the appellant was not entitled to limit his liability pursuant to the 1976 *Convention on limitation of liability for maritime claims* because the damage was caused by intentional conduct. The Supreme Court held that the Convention applied as the act was not committed with the intention to cause damage, such as interrupting telecommunication services, because the fisherman believed that the cable was abandoned and useless.

The Federal Court, the Federal Court of Appeal and the Supreme Court held that *Peracomo Inc* lost the benefit of its insurance policy because of "wilful misconduct" as

set out at s. 53(2) of the *Marine Insurance Act*, S.C. 1993, c. 22. Comparison with the *Civil Code of Québec*.

II. FEDERAL COURT OF APPEAL

A. *Comfact Corporation v Hull 717 (Ship)*, 2013 FCA 93:

Appeal dismissed. The Court held that the supply of labour to a shipbuilder for the construction of a vessel does not amount to the supply of services for the operation or maintenance of a vessel within the meaning of paragraph 139(2)(a) of the *Marine Liability Act*, SC 2001, c 6.

B. *Mercury XII (Ship) v MLT-3 (Bell Copper No. 3) (Ship)*, 2013 FCA 96:

Is the one-year limitation period prescribed by the Hague-Visby Rules applicable? The Court held that the contract was not a contract of carriage, thus these Rules do not apply.

C. *Alberta v Toney*, 2013 FCA 217:

The Federal Court does not have jurisdiction to entertain a claim against the provincial Crown in admiralty and maritime law matters.

III. FEDERAL COURT

A. *Cameco Corporation v MCP Altona (Ship)*, 2013 FC 23:

Judicial sale of a ship by the acting marshal in admiralty. Proceeds of sale. Ranking of priorities.

B. *Westshore Terminals Limited Partnership et al v Cape Apricot (Ship) et al*, 2014 FC 136:

Pursuant to s. 43(8) of the *Federal Courts Act*, only one ship may be arrested in an *in rem* claim. The decision is currently under appeal.

C. *9171-7702 Québec inc v Canada*, 2013 FC 832:

Action against Canada for breach of contract for sale of a ship. The Court applied provincial law pursuant to section 17 of the *Federal Courts Act* instead of Canadian maritime law pursuant to section 22 of the *Federal Courts Act*. Suppose the vendor was a private person.

D. *Oceanex Inc v Praxair Canada Inc*, 2014 FC 6:

Cargo of dangerous goods, damages, mitigation of damages. Qualification of expert witnesses.

E. *AK Steel Corporation v Arcelormittal Mines Canada Inc*, 2014 FC 118:

FOB sale. Federal Court jurisdiction. Applying *Monk Corp v Island Fertilizers Ltd.*, [1991] 1 S.C.R. 779 — conflicts of law — under appeal.

F. *Adventure Tours Inc v St. John's Port Authority*, 2014 FC 420:

Control of public right to navigation - access to federal public property.

G. *ACPG inc c Pêcheries Guy Laflamme inc*, 2014 CF 456 (English translation not yet available):

Warehouse contract. Exoneration clause. Stipulation for the benefit of a third party.

IV. A GOOD WEBSITE:

<http://www.admiraltylaw.com/index.php>

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