

Federal Court



Cour fédérale

**Date: 20170530**

**Docket: T-1699-16**

**Citation: 2017 FC 530**

**Ottawa, Ontario, May 30, 2017**

**PRESENT: The Honourable Mr. Justice Zinn**

**BETWEEN:**

**ADMINISTRATOR OF THE SHIP-SOURCE  
OIL POLLUTION FUND**

**Applicant**

**and**

**REFERENCE IN THE MATTER OF A CLAIM  
BY HER MAJESTY THE QUEEN IN RIGHT  
OF CANADA AS REPRESENTED BY THE  
MINISTER OF FISHERIES, OCEANS, AND  
THE CANADIAN COAST GUARD  
INVOLVING THE EX FISHING VESSEL  
“MARYJACK”**

**Respondent**

**JUDGMENT AND REASONS**

[1] The Administrator of the Ship-source Oil Pollution Fund [the Administrator], makes this application pursuant to section 18.3 of the *Federal Courts Act*, RSC 1985, c F-7, for a reference

to determine whether the Administrator has the right to require a claimant to execute the Release and Subrogation Agreement as a condition precedent to payment of their claim.

[2] This reference has proceeded between the Administrator and the Canadian Coast Guard [the CCG] on the basis of a test case involving a claim made by the CCG against the Ship-source Oil Pollution Fund [the Fund] pursuant to the *Marine Liability Act*, SC 2001, c 6, for the costs and expenses it incurred in responding to an oil spill caused by the sinking of the fishing vessel *Maryjack*.

[3] The relevant provisions of the *Marine Liability Act* are appended as Appendix A.

[4] Pursuant to sections 101 and 103 of the Act, the Administrator receives claims from persons or organizations that have suffered oil pollution prevention expenses or damages caused by oil pollution. Upon receipt of a claim, the Administrator investigates and assesses the claim and makes an “offer of compensation to the claimant for whatever portion of it that the Administrator finds to be established:” Section 105(1)(b).

[5] The claimant may either accept or reject the offer. This reference deals only with the circumstance where a claimant has accepted the offer. Subsection 106(3) provides that if the offer is accepted, “the Administrator shall without delay direct payment to be made to the claimant” and the “claimant is then precluded from pursuing any rights that they may have had against any person in relation to the occurrence to which the offer of compensation relates.” The Administrator has the right to recover from the ship owner the amounts it has paid under the Act.

[6] On May 31, 2014, the *Maryjack* was reported to the CCG as sinking and discharging oil. Between May 31 and June 4, 2014, personnel of the CCG contained the pollution from the *Maryjack* with booms and sorbent material. A salvor was retained by the CCG to raise and dewater the wreck, and to tow her to their premises for removal of pollutants and deconstruction.

[7] The CCG made a claim for \$94,689.51 for the costs related to the above-described services pursuant to section 103 of the *Act*. The Administrator investigated and assessed the claim, resulting in an offer to CCG to settle the claim. By letter dated November 13, 2015, the Administrator made the settlement offer, as follows:

We have now completed our investigation and assessment of this claim in the amount of \$94,689.51 which was received on July 10, 2015. We find the amount of \$86,228.70 to be established. Therefore on the basis of our findings we offer the amount of \$86,228.70, plus interest, as full and final settlement, pursuant to the *Marine Liability Act (MLA)*.

...

Enclosed with this offer is a Release and Subrogation Agreement to be executed on behalf of the Coast Guard.

[8] The attached Release and Subrogation Agreement is attached as Appendix B.

[9] By letter dated December 11, 2015, the CCG accepted the “offer of \$86,228.70 plus interest” and, with respect to the Release and Subrogation Agreement, it advised that it “is considering options on how to proceed.” In the end, it refused to sign the Release and Subrogation Agreement, and the Administrator has not made the payment of the settlement funds.

[10] The record shows that previously the Administrator required all claimants other than the CCG to execute the Release and Subrogation Agreement, and that claimants, including local government, provincial governments, and other branches of the federal government, did so. In December 2014, the Administrator decided to require the CCG to execute the Release and Subrogation Agreement as well.

[11] The position advanced by the Administrator in this reference is that the Release and Subrogation Agreement is no broader than the release and subrogation provisions of paragraphs 106(3)(b) and (c) of the *Act*. The CCG does not agree with that interpretation of those statutory provisions, but submits that the proper interpretation is not an issue before the Court on this reference and ought not to be addressed as it is a hypothetical.

[12] If the Administrator is correct in its interpretation of these statutory provisions, one must ask why it is insisting on the execution of a document that says nothing more than what is already set out in the *Act*. The answer, it seems to me, is that it is hedging its bets in case it is not correct in that interpretation.

[13] At the hearing, the Administrator submitted that when it settles a claim against a ship owner, it is required to execute a full and final release that would prevent it from taking any further action against the polluter arising from the vessel in question. Having made such a settlement with the polluter, it asks what remedy it would have if an additional clean-up claim was later advanced by the CCG or other claimant related to the “occurrence” it had settled.

[14] The CCG submits that the Administrator does not have the authority to require that it execute the Release and Subrogation Agreement as a condition precedent to payment of a valid claim. It submits that the Administrator's position that it provides for no more than the statutory provisions is wrong, but that if it is correct, it renders subsections 106(3)(b), (c), and (d) and subsection 102(1) redundant and irrelevant. In any event, it is the position of the CCG that the Administrator's interpretation is inconsistent with the explicit process described in subsection 106(3)(a).

[15] The CCG submits that the language of paragraph 106(3)(a) makes it clear that once an offer from the Administrator has been accepted by a claimant, the Administrator has no further discretion to request or require anything from the claimant; she "shall without delay direct payment to be made to the claimant of the amount of the offer out of the Ship-source Oil Pollution Fund."

[16] In my view, the position advanced by the CCG is correct in law. Section 106 of the *Act* sets out the rights of the parties upon acceptance of an offer by a claimant. Specifically, if a claimant accepts "an offer of compensation" from the Administrator, the Administrator "shall without delay direct payment to be made to the claimant of the amount of the offer." The rights of the Administrator are just those prescribed by subsection 105(1) of the *Act*, namely to investigate and assess a claim, and to make an offer of compensation to the claimant for whatever portion of the claim it finds to have been established.

[17] While the Administrator may be required to execute a full and final release in settling a subrogated action against a vessel owner, this does not permit the Administrator to require the execution of a similar release by claimants. The statutory scheme does not provide for the requirement of an execution of a release by the claimant and the release itself is provided for in the *Act*.

[18] The release by claimants and subrogation rights of the Administrator are those provided for in paragraphs 106(3)(b) and (c), no more and no less. Whether the use of the word “occurrence” in paragraph 106(3)(b) limits the CCG or any other claimant to making only one claim arising from the event giving rise to the spillage, is not a question that arises on the facts before the Court or that should be answered in this reference.

[19] In *Alberta (Attorney General) v Westcoast Energy Inc.*, [1997] FCJ No 77, 1997 CarswellNat 112 (FCA), the Federal Court of Appeal held at paragraph 12 that in applications under section 18.3 and subsection 28(2) of the *Federal Courts Act*, “[t]he Court is not empowered to determine academic questions of law or to engage in speculation; its role is to determine as opposed merely to consider.”

[20] There is no reference seeking an answer to the meaning of “occurrence” in the *Act*, or the ability to submit multiple claims in relation to one vessel. There is only a reference as to whether the Administrator can demand a claimant to execute its Release and Subrogation Agreement as a condition precedent to payment. That question has been answered. The answer is that it cannot.

[21] Should a situation arise when there is an additional claim advanced after the first has been paid by the Administrator, that is the occasion when the Administrator may seek a reference on the issue of the meaning of “occurrence” but as Justice Boswell observed in *Re Francis*, 2016 FC 750 at para 14: “In order for this Court to exercise its jurisdiction under subsection 18.3(1) of the *Federal Courts Act*, the Federal Court of Appeal has held that the question proposed for determination must result from a live controversy and cannot be simply academic or speculative.”

[22] The parties agreed that given the nature of the reference, no order as to costs should be made, and none will.

**JUDGMENT**

**THIS COURT'S JUDGMENT is that** this reference determines that the Administrator of the Ship-source Pollution Fund does not have the right to require a claimant to execute the Release and Subrogation Agreement as a condition precedent to payment of their claim under the *Marine Liability Act*, SC 2001, c 6, and there is no order as to costs.

"Russel W. Zinn"

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Judge



## APPENDIX A

*Marine Liability Act, SC 2001, c 6:*

### **Liability of Ship-source Oil Pollution Fund**

101 (1) Subject to the other provisions of this Part, the Ship-source Oil Pollution Fund is liable for the matters referred to in sections 51, 71 and 77 in relation to oil, Article III of the Civil Liability Convention and Article 3 of the Bunkers Convention, if

(a) all reasonable steps have been taken to recover payment of compensation from the owner of the ship or, in the case of a ship within the meaning of Article I of the Civil Liability Convention, from the International Fund and the Supplementary Fund, and those steps have been unsuccessful

(b) the owner of a ship is not liable by reason of any of the defences described in subsection 77(3), Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention and neither the International Fund nor the Supplementary Fund are liable;

(c) the claim exceeds

(i) in the case of a ship within the meaning of Article I of the Civil Liability Convention, the owner's maximum liability

### **Responsabilité de la Caisse d'indemnisation**

101 (1) Sous réserve des autres dispositions de la présente partie, la Caisse d'indemnisation assume les responsabilités prévues aux articles 51, 71 et 77 en rapport avec les hydrocarbures, à l'article III de la Convention sur la responsabilité civile et à l'article 3 de la Convention sur les hydrocarbures de soute dans les cas suivants :

a) malgré la prise de toutes les mesures raisonnables dans les circonstances, il a été impossible d'obtenir une indemnité de la part du propriétaire du navire ou, dans le cas d'un navire au sens de l'article premier de la Convention sur la responsabilité civile, de la part du Fonds international et du Fonds complémentaire;

b) d'une part, le propriétaire du navire n'est pas responsable en raison de l'une des défenses mentionnées au paragraphe 77(3), à l'article III de la Convention sur la responsabilité civile ou à l'article 3 de la Convention sur les hydrocarbures de soute et, d'autre part, le Fonds international et le Fonds

under that Convention to the extent that the excess is not recoverable from the International Fund or the Supplementary Fund, and

(ii) in the case of any other ship, the owner's maximum liability under Part 3;

(d) the owner is financially incapable of meeting their obligations under section 51 and Article III of the Civil Liability Convention, to the extent that the obligation is not recoverable from the International Fund or the Supplementary Fund;

(e) the owner is financially incapable of meeting their obligations under section 71 and Article 3 of the Bunkers Convention;

(f) the owner is financially incapable of meeting their obligations under section 77;

(g) the cause of the oil pollution damage is unknown and the Administrator has been unable to establish that the occurrence that gave rise to the damage was not caused by a ship; or

(h) the Administrator is a party to a settlement under section 109.

...

#### **Action by Administrator**

102 (1) If there is an occurrence that gives rise to

complémentaire ne sont pas responsables non plus;

c) la créance excède :

(i) dans le cas d'un navire au sens de l'article premier de la Convention sur la responsabilité civile, la limite fixée à la responsabilité du propriétaire du navire en vertu de cette convention, dans la mesure où l'excédent ne peut être recouvré auprès du Fonds international ni auprès du Fonds complémentaire,

(ii) dans le cas de tout autre navire, la limite fixée à la responsabilité du propriétaire du navire en vertu de la partie 3;

d) le propriétaire du navire est incapable financièrement de remplir les obligations que lui imposent l'article 51 et l'article III de la Convention sur la responsabilité civile, dans la mesure où le Fonds international et le Fonds complémentaire ne sont pas tenus de remplir l'une quelconque de ces obligations;

e) le propriétaire du navire est incapable financièrement de remplir les obligations que lui imposent l'article 71 et l'article 3 de la Convention sur les hydrocarbures de soute;

f) le propriétaire du navire est incapable financièrement de remplir les obligations que lui impose l'article 77;

the liability of an owner of a ship under section 51, 71 or 77, Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention,

(a) the Administrator may, either before or after receiving a claim under section 103, commence an action in rem against the ship that is the subject of the claim, or against any proceeds of sale of the ship that have been paid into court; and

(b) subject to subsection (3), the Administrator is entitled in any such action to claim security in an amount not less than the owner's maximum aggregate liability determined in accordance with section 71 or 77, or Article V of the Civil Liability Convention.

#### **Claims filed with Administrator**

103 (1) In addition to any right against the Ship-source Oil Pollution Fund under section 101, a person who has suffered loss or damage or incurred costs or expenses referred to in section 51, 71 or 77, Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention in respect of actual or anticipated oil pollution damage may file a claim with the Administrator for the loss, damage, costs or expenses.

#### **Limitation period**

(2) Unless the Admiralty Court

g) la cause des dommages dus à la pollution par les hydrocarbures est inconnue et l'administrateur est incapable d'établir que l'événement qui est à l'origine des dommages n'est pas imputable à un navire;

h) l'administrateur est partie à la transaction d'une affaire conclue en vertu de l'article 109.

...

#### **Action intentée par l'administrateur**

102 (1) En cas d'événement dont la responsabilité est imputable au propriétaire d'un navire au titre des articles 51, 71 ou 77, de l'article III de la Convention sur la responsabilité civile ou de l'article 3 de la Convention sur les hydrocarbures de soute, l'administrateur peut, même avant d'avoir reçu la demande visée à l'article 103, intenter une action réelle contre le navire qui fait l'objet de la demande ou à l'égard du produit de la vente de celui-ci déposé au tribunal, et, à cette occasion, peut, sous réserve du paragraphe (3), demander une garantie d'un montant au moins égal à la responsabilité maximale cumulée du propriétaire calculée conformément aux articles 71 ou 77 ou à l'article V de la Convention sur la responsabilité civile.

fixes a shorter period under paragraph 111(a), a claim must be made

(a) within two years after the day on which the oil pollution damage occurs and five years after the occurrence that causes that damage; or

(b) if no oil pollution damage occurs, within five years after the occurrence in respect of which oil pollution damage is anticipated.

### **Exception**

(3) Subsection (1) does not apply to a response organization referred to in paragraph 51(a), 71(a) or 77(1)(b) or a person in a state other than Canada.

### **Administrator's duties**

105 (1) On receipt of a claim under section 103, the Administrator shall

(a) investigate and assess it; and

(b) make an offer of compensation to the claimant for whatever portion of it that the Administrator finds to be established.

### **Offer of compensation**

106 (1) If the Administrator makes an offer of compensation to a claimant under paragraph 105(1)(b), the claimant shall, within 60 days

### **Dépôt des demandes auprès de l'administrateur**

103 (1) En plus des droits qu'elle peut exercer contre la Caisse d'indemnisation en vertu de l'article 101, toute personne qui a subi des pertes ou des dommages ou qui a engagé des frais mentionnés aux articles 51, 71 ou 77, à l'article III de la Convention sur la responsabilité civile ou à l'article 3 de la Convention sur les hydrocarbures de soute à cause de dommages — réels ou prévus — dus à la pollution par les hydrocarbures peut présenter à l'administrateur une demande en recouvrement de créance à l'égard de ces dommages, pertes et frais.

### **Délais**

(2) Sous réserve du pouvoir donné à la Cour d'amirauté à l'alinéa 111a), la demande en recouvrement de créance doit être faite :

a) s'il y a eu des dommages dus à la pollution par les hydrocarbures, dans les deux ans suivant la date où ces dommages se sont produits et dans les cinq ans suivant l'événement qui les a causés;

b) sinon, dans les cinq ans suivant l'événement à l'égard duquel des dommages ont été prévus.

### **Exceptions**

(3) Le paragraphe (1) ne

after receiving the offer, notify the Administrator whether they accept or refuse it and, if no notification is received by the Administrator at the end of that period, the claimant is deemed to have refused the offer.

#### **Appeal to Admiralty Court**

(2) A claimant may, within 60 days after receiving an offer of compensation or a notification that the Administrator has disallowed the claim, appeal the adequacy of the offer or the disallowance of the claim to the Admiralty Court, but in an appeal from the disallowance of a claim, that Court may consider only the matters described in paragraphs 105(3)(a) and (b).

#### **Acceptance of offer by claimant**

(3) If a claimant accepts the offer of compensation from the Administrator,

(a) the Administrator shall without delay direct payment to be made to the claimant of the amount of the offer out of the Ship-source Oil Pollution Fund;

(b) the claimant is then precluded from pursuing any rights that they may have had against any person in respect of matters referred to in sections 51, 71 and 77, Article III of the Civil Liability Convention and Article 3 of

s'applique pas à un organisme d'intervention visé aux alinéas 51a), 71a) ou 77(1)b) ou à une personne dans un État étranger.

#### **Fonctions de l'administrateur**

105 (1) Sur réception d'une demande en recouvrement de créance présentée en vertu de l'article 103, l'administrateur :

a) enquête sur la créance et l'évalue;

b) fait une offre d'indemnité pour la partie de la demande qu'il juge recevable.

#### **Offre d'indemnité**

106 (1) Le demandeur a soixante jours, à compter de la réception de l'offre d'indemnité visée à l'alinéa 105(1)b), pour l'accepter ou la refuser; si l'administrateur n'est pas avisé du choix du demandeur dans ce délai, celui-ci est présumé avoir refusé.

#### **Appel à la Cour d'amirauté**

(2) Le demandeur peut, dans les soixante jours suivant la réception de l'offre d'indemnité ou de l'avis de rejet de sa demande, interjeter appel devant la Cour d'amirauté; dans le cas d'un appel du rejet de la demande, la Cour d'amirauté ne prend en considération que les faits mentionnés aux alinéas

the Bunkers Convention in relation to the occurrence to which the offer of compensation relates;

(c) the Administrator is, to the extent of the payment to the claimant, subrogated to any rights of the claimant referred to in paragraph (b); and

(d) the Administrator shall take all reasonable measures to recover the amount of the payment from the owner of the ship, the International Fund, the Supplementary Fund or any other person liable and, for that purpose, the Administrator may commence an action in the Administrator's or the claimant's name, including a claim against the fund of the owner of a ship established under the Civil Liability Convention and may enforce any security provided to or enforceable by the claimant.

#### **Books of account and systems**

120 (1) The Administrator shall cause

(a) books of account and records in relation to them to be kept; and

(b) control and information systems and management practices, related to financial and management matters, to be maintained.

#### **Administrator's responsibilities**

105(3)a) et b).

#### **Acceptation de l'offre**

(3) L'acceptation par le demandeur de l'offre d'indemnité entraîne les conséquences suivantes :

a) l'administrateur ordonne sans délai que la somme offerte soit versée au demandeur par prélèvement sur la Caisse d'indemnisation;

b) le demandeur ne peut plus faire valoir les droits qu'il peut avoir contre qui que ce soit à l'égard des questions visées aux articles 51, 71 et 77, à l'article III de la Convention sur la responsabilité civile et à l'article 3 de la Convention sur les hydrocarbures de soute en ce qui concerne l'événement auquel se rapporte l'offre d'indemnité;

c) dans la limite de la somme versée au demandeur, l'administrateur est subrogé dans les droits de celui-ci visés à l'alinéa b);

d) l'administrateur prend toute mesure raisonnable pour recouvrer auprès du propriétaire du navire, du Fonds international, du Fonds complémentaire ou de toute autre personne responsable la somme qu'il a versée et, à cette fin, peut notamment intenter une action en son nom ou au nom du demandeur, réaliser toute garantie donnée à celui-ci

(2) The books, records, systems and practices shall be kept or maintained, as the case may be, in a manner that provides reasonable assurance that

(a) the assets of the Ship-source Oil Pollution Fund are safeguarded and controlled;

(b) the transactions of the Ship-source Oil Pollution Fund are conducted in accordance with this Part; and

(c) the financial, human and physical resources of the Ship-source Oil Pollution Fund are managed economically and efficiently and the operations of that Fund are carried out effectively.

ainsi qu'intenter une action contre le fonds du propriétaire constitué aux termes de la Convention sur la responsabilité civile.

### **Documents comptables**

120 (1) L'administrateur veille :

a) à faire tenir des documents comptables;

b) à mettre en oeuvre, en matière de finances et de gestion, des moyens de contrôle et d'information et à faire appliquer des méthodes de gestion.

### **Responsabilité de l'administrateur**

(2) Pour l'application du paragraphe (1), l'administrateur veille, dans la mesure du possible, à ce que :

a) les actifs de la Caisse d'indemnisation soient protégés et contrôlés;

b) les opérations de la Caisse d'indemnisation se fassent en conformité avec la présente partie;

c) la gestion des ressources financières, humaines et matérielles de la Caisse d'indemnisation soit menée de façon économique et efficiente et à ce que ses opérations soient réalisées avec efficacité.

## APPENDIX B

Schedule "A"

CANADA

**IN THE MATTER OF:** A claim by Her Majesty the Queen in Right of Canada against the Ship-source Oil Pollution Fund

**AND IN THE MATTER OF:** Part 7 of the *Marine Liability Act*

### RELEASE AND SUBROGATION AGREEMENT

KNOWN ALL PERSONS BY THESE PRESENTS that HER MAJESTY THE QUEEN IN RIGHT OF CANADA as represented by the MINISTER OF FISHERIES AND OCEANS hereinafter called the "Releasor", for and in consideration of the principal sum of \$86,228.70 plus interest, now paid to the Releasor by the Ship-source Oil Pollution Fund established pursuant to Part 7 of the *Marine Liability Act (MLA)* (the "Releasee"), the receipt of which is hereby acknowledged, in full and final settlement of any claim the Releasor now has or may in the future have against the Releasee, does hereby remise, release and discharge the Releasee from all claims, demands, suits or actions whatsoever which the Releasor ever had, now has or hereafter can, shall or may have for any loss, damage, cost or expense incurred by reason of, or arising out of, or in any way related to, the sinking on May 31, 2014, at Sibell Bay in Lady Smith Harbour, British Columbia, of the ex-fishing vessel M/V Maryjack.

THE RELEASOR WARRANTS that she has incurred costs and expenses of not less than the amount of \$86,228.70.

#### IN FURTHER CONSIDERATION OF THE ABOVE PAYMENT:

- (a) The Releasor acknowledges and agrees that pursuant to s. 106(3) of the *MLA*, the Releasee is subrogated to all our rights of recovery from the party or parties liable for the incidents described in the first paragraph above.
- (b) The Releasor agrees to assist the Releasee to effect such recovery and in connection therewith agrees to provide him with all documents, correspondence and records (including electronic records) pertaining to our loss or damage and to make any affidavits or declarations and to give such oral evidence as we can properly make or give and generally render such assistance as may from time to time be reasonably required by the Releasee, subject to reimbursement of any reasonable expenses incurred in connection therewith.



- (c) The Releasor authorizes the Releasee to file suit against any such party or parties in the name of the Releasor, or in the name of the Releasee, with authority to begin, continue, prosecute, compromise or withdraw, in the name of the Releasor, but at the sole expense of the Releasee, any and all legal proceedings which it may consider necessary to give effect to this.
- (d) The Releasor agrees to execute in the name of the Releasor any documents which may be necessary to carry out the purpose of this Release and Subrogation Agreement.
- (e) The Releasor acknowledges and agrees that any monies collected from any such party or parties, whether received in the first instance by us or by the Releasee shall be property of the Releasee.

The terms of this Release and Subrogation Agreement are contractual and not a recital.

IN WITNESS WHEREOF the authorized representative of the Releasor has executed this Release and Subrogation Agreement at \_\_\_\_\_, on \_\_\_\_\_, 2015.

The HAND AND SEAL of the authorized Representative of the Releasor was affixed hereunto in the presence of:

\_\_\_\_\_  
Name (Print)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

\_\_\_\_\_  
SEAL and SIGNATURE

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1699-16

**STYLE OF CAUSE:** ADMINISTRATOR OF THE SHIP-SOURCE OIL  
POLLUTION FUND  
v  
REFERENCE IN THE MATTER OF A CLAIM BY HER  
MAJESTY THE QUEEN IN RIGHT OF CANADA AS  
REPRESENTED BY THE MINISTER OF FISHERIES,  
OCEANS, AND THE CAMADIAN COAST GUARD  
INVOLVING THE EX FISHING VESSEL  
“MARYJACK”

**PLACE OF HEARING:** VANCOUVER, BRITISH COLUMBIA

**DATE OF HEARING:** APRIL 26, 2017

**JUDGMENT AND REASONS:** ZINN J.

**DATED:** MAY 30, 2017

**APPEARANCES:**

David F. McEwen FOR THE APPLICANT

Lisa Riddle FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Alexander Holburn Beaudin & FOR THE APPLICANT  
Lang  
Barristers and Solicitors  
Vancouver, BC

William F. Pentney FOR THE RESPONDENT  
Deputy Attorney General of  
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Vancouver, BC