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**Ottawa, Ontario, February 17, 2022**

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

**IN THE MATTER OF THE *CANADA SHIPPING ACT, 2001*, SC 2001, c 26, THE *MARINE PERSONNEL REGULATIONS*, SOR/2007-115,**

**BETWEEN:**

**BRITISH COLUMBIA FERRY AND MARINE WORKERS' UNION**

**Applicant**

**and**

**CANADA (MINISTER OF TRANSPORT) AND BRITISH COLUMBIA FERRY SERVICES INC.**

**Respondents**

# JUDGMENT AND REASONS

Table of Contents


I. Overview ..... 2
II. Facts ..... 5
III. Standard of review and applicable principles and legislation ..... 12
IV. Analysis ..... 17
A. Preliminary issues ..... 17

(1) Standing of the Union ..... 17
(2) Concern that the Union's voice is not being heard ..... 17
(3) Whether the A Matrix is determinative ..... 18
(4) BC Ferries' failure to use Application Form B ..... 20
(5) Continued discretion on the part of Transport Canada to direct live on-board evacuation and safety drills ..... 20
(6) Relevance of the Island Class ferries' safety policies and procedures ..... 21
(7) Sufficiency of the record ..... 24
(8) Transport Canada's consideration of international instruments ..... 24
(9) Summary of the elements of the MPR, the A Matrix and the Muster List ..... 30
B. Issues raised by the Union ..... 36
(1) Was it unreasonable for Transport Canada to decide that a five-person crew could conduct safe deck and engineering watches during emergencies as required by subparagraphs 207(4)(b)(i) and (ii) of the MPR? ..... 36
(2) Was it unreasonable for Transport Canada to decide that a five-person crew could perform specified emergency duties simultaneously as required by paragraph 207(4)(d) of the MPR? ..... 41
(3) Was the determination of sufficient crew to undertake certain required tasks unreasonable? ..... 46
(4) Was it unreasonable for Transport Canada to decide that a five-person crew could perform the evacuation procedures required by the LSER as set out in subsection 207(5) of the MPR? ..... 57
V. Costs ..... 61
ANNEX ..... 64

## I. Overview

[1] In January 2020, British Columbia Ferry Services Inc. [BC Ferries], a publicly owned Canadian company and Canada's largest ferry operator, took delivery in Vancouver of two newly built Island Class ferries, the *Island Aurora* and the *Island Discovery* [collectively, the Island Class ferries], as part of its fleet renewal program to replace two of its aging passenger and vehicle ferries operating on routes within the coastal waters of British Columbia. As Canadian flagged vessels registered in Victoria, the Island Class ferries are subject to the

provisions of the *Canada Shipping Act, 2001*, SC 2001, c 26 [Act], and its regulations, in particular the *Marine Personnel Regulations*, SOR/2007-115 [MPR], which, along with the Act, require a vessel to be staffed with a sufficient number of competent crew for its safe operations and to have issued a safe manning document [SMD] specifying the minimum complement of crew—minimum safe manning levels [MSM levels]—as well as the remaining information set out in paragraph 202(3)(b) of the MPR.

[2] In March 2020, BC Ferries applied to Transport Canada for two SMDs for each of the new ferries, along with a proposal on MSM levels; two SMDs were requested for each ferry so as to accommodate fluctuations in passenger levels throughout the year. Transport Canada may issue multiple SMDs for a vessel setting different MSM levels to reflect the varying circumstances in which the vessel operates, such as the number of passengers or the nature of operations. BC Ferries' application for a Class A SMD proposed a minimum complement of six crew for up to 394 passengers—a total of 400 people on board—while the application for a Class B SMD proposed five crew for up to 220 passengers—a total of 225 people on board. In April 2020, Transport Canada issued to BC Ferries a Class A SMD [the A Licence] with an MSM level of seven crew (one more than what BC Ferries proposed) when up to 400 people are on board, and a Class B SMD [the B Licence] with an MSM level of six crew (again one more than what BC Ferries proposed) when up to 225 people are on board.

[3] Following discussions between BC Ferries and Transport Canada—discussions which included the Canadian Ferry Association—on May 19, 2020, BC Ferries submitted a new application for a Class C SMD for the Island Class ferries, this time proposing an MSM level of

five crew members (a master, a mate, an engineer, a deckhand and a single rating) for up to 150 people on board, which Transport Canada assessed and issued on May 25, 2020 [the C Licence] after concluding that a complement of five crew members met the standards set out in the MPR with up to 145 passengers on account of the Island Class ferries' "automation, modern technology, alternative arrangements and additional equipment." Transport Canada also advised BC Ferries that it was required to ensure that the Island Class ferries comply with all requirements of the MPR and the *Fire and Boat Drills Regulations*, SOR/2010-83 [FBDR], "at all times, particularly the effectiveness of the muster lists in meeting these requirements". The two aging passenger and vehicle ferries which the Island Class ferries were meant to replace regularly sailed with a minimum complement of six and seven crew respectively.

[4] The British Columbia Ferry and Marine Workers' Union [Union]—the trade union certified under the *British Columbia Labour Relations Code*, RSBC 1996, c 244, to represent, *inter alia*, the crew aboard the Island Class ferries—seeks judicial review of the decision to issue the C Licence to BC Ferries on the grounds that the Island Class ferries cannot, with a complement of five crew members, meet several of the BC Ferries' fleet-and vessel-specific safety operations policies [the safety policies and procedures], including bridge watch, passenger control, rescue operations and firefighting, which are part of BC Ferries' Safety Management System [SMS]—a system-based process to organize information for the management and mitigation of risk developed as part of the *International Management Code for the Safe Operation of Ships and for Pollution Prevention* [ISM Code]—nor the applicable statutory and regulatory requirements, including the MPR.

[5] I have not been persuaded that the decision by Transport Canada to issue the C Licence was unreasonable. I am being asked to reassess the evidence and substitute my own judgment for that of an experienced and professional five-member panel at Transport Canada which, after not allowing an MSM level of five crew for up to 220 passengers, reviewed the material and determined that an MSM level of five was sufficient with up to 145 passengers on board; this I will not do and I am therefore dismissing the present application for judicial review.

## II. Facts

[6] Although they are Canadian vessels (vessels registered in Canada and flying the Canadian flag), the Island Class ferries are not Safety Convention vessels—vessels to which the *International Convention for the Safety of Life at Sea* [SOLAS] mandatorily applies (section 2 of the Act). Transport Canada is in the process of amending the *Safety Management Regulations*, SOR/98-348, to phase in the adoption of SMSs in compliance with the ISM Code for, *inter alia*, Canadian vessels that are certified to carry more than 50 passengers, however, at the time of the decision to issue the C Licence, having an SMS in place was not mandatory for the Island Class ferries. That said, given the nature of its operations, BC Ferries was "ahead of the game" and nonetheless voluntarily developed an SMS in compliance with the ISM Code—which was adopted as part of SOLAS and which sets international standards for the safe management and operation of vessels as well as for pollution prevention. Under the ISM Code, an SMS must be established by or on behalf of the owners of a vessel, providing for the implementation of policies and procedures to achieve the safety management objectives set out in the ISM Code; the safety policies and procedures must be compiled into a comprehensive safety management manual.

[7] As regards BC Ferries, its safety policies and procedures are contained in both a fleet operations manual [FOM], which applies to all vessels in the BC Ferries fleet, as well as a vessel specific manual [VSM], which is for each individual vessel yet the safety policies and procedures therein are consistent with those found in the FOM. The safety policies and procedures are regularly reviewed and updated in response to internal audits (including spot checks) or changes in the legal and regulatory environment. External audits by the vessels' classification society also regularly take place in compliance with the SMS for each vessel.

[8] Prior to March 2020, Transport Canada's methodology for determining MSM levels used a singular approach and a common SMD application form regardless of the size or type of vessel [the previous MSM assessment process]; the process would take into account certain established generic characteristics of the vessel and would determine the MSM level based on a prescriptive scoring matrix in conjunction with the observations of, and assessment by, a Transport Canada marine safety inspector of live on-board boat and fire drills [evacuation and safety drills] conducted by the crew. Somehow the process was found to be rigid given the different types of vessels and different equipment on board, and this one-size-fits-all approach proved difficult when considering automatization and modern technology aboard vessels and a vessel's SMS in the determination of safe manning levels.

[9] Following the issuance of a final research report entitled "Issuance of Safe Manning Documents for passenger ferries", in November 2018, Transport Canada announced a review of its methodology for determining MSM levels at a Canadian Marine Advisory Council [CMAC] meeting. The announcement was made in conjunction with the release to marine industry

stakeholders of a draft discussion paper with the proposed changes. Following submissions and comments from various stakeholders, including those of the Union, as well as stakeholder discussion and feedback sessions and workshops at subsequent national and regional CMAC meetings in 2019 and early 2020, on March 19, 2020, Transport Canada adopted its new SMD application process and guidelines for the assessment of a vessel's MSM level [the new MSM assessment process]. This new process involves a risk-based approach to MSM level assessment and modifies procedural aspects of the previous MSM assessment process so as to allow owners to submit more detailed and vessel-specific information at the start of the application process—for example, details of advanced automation, modern technology, alternative arrangements and additional equipment including advanced emergency features. Another procedural change was that Transport Canada no longer required live on-board evacuation and safety drills by the crew when assessing a vessel's MSM level; although actual demonstration of automation and additional equipment may warrant higher or lower crew numbers, there was no longer to be a practical demonstration of evacuation and safety drills, and a review of the muster list—as provided in the FBDR, being amongst other things, a description of the duties assigned to crew members and to be performed by them in relation to the passengers during an emergency—submitted along with the application was to be used to validate the exercise of the drills, a process called "validation through muster list".

[10] The new MSM assessment process includes five new SMD applications instead of one, each with its own customized evaluation form and matrix (application forms A to E). Application Form A is for Category 1 vessels (being either Safety Convention vessels or vessels with an SMS) and would be reviewed under the new MSM assessment process by a five-member

national safe manning team [SMT]—a panel comprised of Transport Canada marine safety inspectors from the National Capital Region and the regions—which reviews the application material and independently assesses the proposed MSM level to determine compliance with the MPR. Review of application forms B through D is to be undertaken only by regional Transport Canada marine safety inspectors and is designed for non-Safety Convention vessels with no established SMS, including fishing vessels and smaller cable ferries. Application Form E is for renewals of SMDs where there are no changes to certain prescribed elements. Under the new MSM assessment process, owners propose an MSM level within their SMD application and must satisfy Transport Canada that the crew is competent and the number of crew proposed is sufficient to perform all safety functions, including in emergencies. As mentioned earlier, Transport Canada did not accept BC Ferries' proposed MSM levels for the A and B Licences, but accepted the proposed crew complement of five for the C Licence when passenger levels are maintained at no more than 145 people.

[11] The Union did not challenge Transport Canada's adoption of the new MSM assessment process implemented on March 19, 2020.

[12] For all of its Island Class ferries' SMD applications, BC Ferries used Application Form A because the vessels were operating under an SMS; BC Ferries wanted Transport Canada to determine MSM levels in recognition of the vessels' special automated features and modern technology, including automatically activated or remotely operated fixed firefighting equipment such as a drencher system and water mist systems in the machinery and crew spaces that can be activated remotely from the central control station on the bridge, from the technical space on

deck level 1, as well as from the engineering room—with control transferrable from each console—a car deck deluge system over the covered section of the car decks, fixed fire monitors for the open space car decks, with closed circuit television cameras, smoke and heat detectors throughout the vessel with all spaces also fitted with passive structural fire protection, and a marine evacuation system [MES] which can evacuate passengers via slides to inflatable life rafts—advancements in technology that reduce the number of crew members needed to perform certain tasks in emergency situations.

[13] In support of its Class A and B SMD applications submitted on March 3, 2020—two weeks prior to the formal implementation of Transport Canada's new MSM assessment process but nonetheless assessed in accordance with the new process—BC Ferries also submitted, along with the completed Application Form A, a series of documents including a description of the automated equipment and features of the vessels and of the other regulated equipment, a muster list consisting of, for the Class A application, six crew for up to 394 passengers, and for the Class B application, five crew for up to 220 passengers, personalized duty tabs for the crew, BC Ferries' Document of Compliance [DOC] which confirms that the company is operating its fleet of passenger ferries in compliance with the ISM Code, evidence of consideration of the guidelines set out in Annex 1 and 2 of the International Maritime Organization [IMO] Resolution A.1047(27)—the Principles of Minimum Safe Manning (which updates IMO Resolution A.890(21) and is substantially similar to International Labour Organization [ILO] Resolution A.1047(27))—[IMO Resolution A.1047(27)], an emergency response tabletop exercise [tabletop exercise] undertaken as part of BC Ferries' internal risk assessment of minimum safe manning levels conducted in accordance with BC Ferries' SMS, the Island Class

ferries' Shipboard Oil Pollution Emergency Plan, the vessels' agreements with the local oil pollution response organization and detailed plans for the Island Class ferries. BC Ferries' internal risk assessment of minimum safe manning levels culminated in the preparation of the Island Class Minimum Safe Manning Risk Assessment Report [MSM Risk Assessment Report], which was also submitted once finalized on April 3, 2020, and following the request of Transport Canada to do so. I should mention that although the DOC was issued in October 2019—prior to the Island Class ferries becoming operational—the safety management certificates [SMC] for the Island Class ferries verifying their compliance with the ISM Code were issued after the decision to issue the C Licence: the SMC for the *Island Discovery* was issued in May 2020 and the SMC for the *Island Aurora* was issued in June 2020.

[14] Upon receipt of BC Ferries' Application Form A along with the supporting documents, Transport Canada assembled its five-member SMT to process the applications. The SMT used a document entitled Minimum Safe Manning Evaluation Form for Category A Vessels [the A Matrix]—a methodical option-driven series of tables and notes with references to the MPR—to perform its assessment and determination of the Island Class ferries' MSM levels. Ultimately, the vessels' MSM level is the highest number of crew determined to operate in any one of the four matrix sections. There is no issue as between the parties that, regardless of the application form submitted to obtain an SMD, the relevant matrix used by Transport Canada is not intended to be a public document or a formal set of reasons; the matrices are internal documents that are completed and used by Transport Canada as a tool to determine whether the requirements of the MPR are met. Moreover, the MSM level requirements under the MPR are only a minimum threshold; owners may implement higher manning levels when appropriate. Subsection 82(2) of

the Act requires a vessel's master to ensure that the vessel operates with enough crew to safely undertake its intended voyage; higher staffing levels may be set when necessary in specific circumstances. In the end, as stated, Transport Canada proceeded to issue to BC Ferries in April 2020 an A Licence with an MSM level of seven crew (one more than what BC Ferries proposed) and a B Licence with an MSM level of six crew (again one more than what BC Ferries proposed), for up to 400 and 225 people on board, respectively.

[15] Specifically as regards its application for its Class C SMD in May 2020, BC Ferries submitted a freshly completed Application Form A along with a revised muster list [the Muster List] reflecting five crew for up to 145 passengers; the supporting documents submitted earlier for the A Licence and B Licence remained on file and were included in the assessment process for the Class C SMD. As stated, Transport Canada issued the C Licence to BC Ferries on May 25, 2020, the decision of which is the subject of the present application for judicial review.

[16] It is to be noted that BC Ferries' applications for SMDs did not include any safety policies and procedures, whether fleet-or vessel-specific. Concurrently with the preparation of the MSM Risk Assessment Report in early April 2020, a team was set up by BC Ferries which included a senior master and chief engineer to begin preparing the initial draft of the Island Class ferries' VSMs. The Union's record before me contains VSM documents for the Island Class ferries updated to June 7, 2020. The evidence of BC Ferries confirms that those VSM documents were initially prepared on the basis of the Island Class ferries obtaining their A Licence and B Licence and that those documents are in the process of being further updated to take into account the issuance of the C Licence. In any event, what is important to note is that no Island

Class ferries safety policies and procedures were before, or considered by, the SMT at the time of the decision to issue the C Licence to BC Ferries.

[17] The Union's principal argument is that the Muster List—what the Union says represents the minimum crew requirements for compliance with the various parts of the MPR—does not match up to what Transport Canada determined to be the appropriate staffing levels. In short, the Union asserts that BC Ferries would not be able to (i) maintain the required deck and engineering watches during emergencies, (ii) perform specified emergency duties simultaneously as required by the regulations, and (iii) perform evacuation procedures, with a complement of five crew on board the Island Class ferries.

## III. Standard of review and applicable principles and legislation

[18] There is no dispute between the parties that reasonableness is the applicable standard of review. I agree. As set out by the Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*], when assessing whether a decision is reasonable, it is not simply a question of whether the decision falls within a range of possible outcomes, but rather "whether the decision bears the hallmarks of reasonableness — justification, transparency and intelligibility — and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision" (*Vavilov* at paras 83 and 99; *Montreal (City) v Old Port of Montreal Corporation Inc.*, 2021 FC 806 at para 35). The standard of reasonableness would also apply to Transport Canada's interpretation of its home statute—the Act and its regulations—in a manner that reflects international law. As was recently set out by the Federal Court of Appeal in *Canada (Attorney General) v Kattenburg*, 2021 FCA 86

[*Kattenburg*], the principles of international law, should they bear on the issue to be decided, are "merely part of the context that can inform the interpretation" of the applicable legislation (*Kattenburg* at paras 5 and 6). In addition, the review of an administrative decision cannot be divorced from the institutional context in which the decision was made, and in conducting reasonableness review, the reviewing judge should be attentive to the application of specialized knowledge by the decision-makers; "[t]his demonstrated experience and expertise may also explain why a given issue is treated in less detail" (*Vavilov* at paras 91 and 93). Moreover, assessments and determinations "legitimately drawn from the expertise or specialization of administrative decision-makers, all other things being equal, similarly may be unconstrained and may be harder to set aside" (*Entertainment Software Association v Society of Composers, Authors and Music Publishers of Canada*, 2020 FCA 100 at para 30).

[19] As stated, the decision to issue the C Licence did not include formal reasons; following the assessment by the SMT of BC Ferries' application, the C Licence was simply issued as proposed by BC Ferries. In discussing the standard of review in the absence of reasons, the Supreme Court in *Vavilov* provided the following guidance:

> [136] Where the duty of procedural fairness or the legislative scheme mandates that reasons be given to the affected party but none have been given, this failure will generally require the decision to be set aside and the matter remitted to the decision maker: see, e.g., *Congrégation des témoins de Jéhovah de St-Jérôme-Lafontaine*, at para. 35. Also, where reasons are provided but they fail to provide a transparent and intelligible justification as explained above, the decision will be unreasonable. In many cases, however, neither the duty of procedural fairness nor the statutory scheme will require that formal reasons be given at all: *Baker*, at para. 43.
>
> [137] Admittedly, applying an approach to judicial review that prioritizes the decision maker's justification for its decisions can be challenging in cases in which formal reasons have not been

> provided. This will often occur where the decision-making process does not easily lend itself to producing a single set of reasons, for example, where a municipality passes a bylaw or a law society renders a decision by holding a vote: see, e.g., *Catalyst*; *Green*; *Trinity Western University*. However, even in such circumstances, the reasoning process that underlies the decision will not usually be opaque. It is important to recall that a reviewing court must look to the record as a whole to understand the decision, and that in doing so, the court will often uncover a clear rationale for the decision: *Baker*, at para. 44. For example, as McLachlin C.J. noted in *Catalyst*, "[t]he reasons for a municipal bylaw are traditionally deduced from the debate, deliberations, and the statements of policy that give rise to the bylaw": para. 29. In that case, not only were "the reasons [in the sense of rationale] for the bylaw . . . clear to everyone", they had also been laid out in a five-year plan: para. 33. Conversely, even without reasons, it is possible for the record and the context to reveal that a decision was made on the basis of an improper motive or for another impermissible reason, as, for example, in *Roncarelli*.
>
> [138] There will nonetheless be situations in which no reasons have been provided and neither the record nor the larger context sheds light on the basis for the decision. In such a case, the reviewing court must still examine the decision in light of the relevant constraints on the decision maker in order to determine whether the decision is reasonable. But it is perhaps inevitable that without reasons, the analysis will then focus on the outcome rather than on the decision maker's reasoning process. This does not mean that reasonableness review is less robust in such circumstances, only that it takes a different shape.
>
> [Emphasis added.]

[20] To begin with, it may be easiest to set out what this case is not: this is not a case where the duty of procedural fairness or the legislative scheme requires that reasons be given or a case where a vote is determinative of the decision, nor is it a case where I cannot discern how Transport Canada construed the relevant legislation (*Kattenburg* at para 16). I accept that the record does not explicitly address the reasoning of the SMT behind the application of the MPR requirements to the BC Ferries' application for a Class C SMD, however, the approach taken by all parties in their submissions in assessing the reasonableness of the decision to issue the

C Licence was to begin with the review of the completed A Matrix as the assessment tool used to conduct the SMT's internal deliberations and discussions. When I pointed out to counsel for Transport Canada that the Court must still be able to "connect the dots" in the SMT's reasoning leading to the decision to issue the C Licence, counsel argued that the A Matrix serves that purpose by showing on a point-by-point basis how the regulations were complied with (*Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at para 11; *Vavilov* at para 97). The Union took no issue with this approach, although it asserted that such an approach actually establishes that the C Licence is not in compliance with the governing regulations.

[21] Accordingly, nor is this a case similar to *Catalyst Pharmaceuticals, Inc v Canada (Attorney General)*, 2021 FC 505 [*Catalyst Pharmaceuticals*], where Madam Justice St-Louis was recently called upon to determine the standard of review in the absence of formal reasons yet was faced with "two barriers to conducting a typical reasonableness review": there were no reasons provided by the decision-maker (in that case the Minister of Health) in coming to her decision to issue a notice of compliance with respect to a pharmaceutical company's new drug, and (more importantly as regards the matter before me) the record itself shed no light upon the Minister's interpretation of the relevant statutory provisions. In the matter before me, I am satisfied that the record does shed at least some light upon the SMT's interpretation of the requirements of the MPR and on the reasons why Transport Canada decided in the way it did (*Leahy v Canada (Citizenship and Immigration)*, 2012 FCA 227 at paras 36 to 42).

[22] In any event, the decision to issue the C Licence is the result of the assessment by a regulatory body with specialized knowledge and expertise in the complex area of navigation and shipping, whose role it is to review what is tantamount to a permit or licence request and make certain that the applicable standards for the safe operation of vessels required by the governing statute and regulations have been respected. Although the issuance of an SMD is mandatory for the Minister upon receipt of an application (subsection 202(3) of the MPR), the determination of MSM levels pursuant to section 207 of the MPR is discretionary and subject to the assessment by Transport Canada that compliance with subsections 207(3) to (6) of the MPR has been met—this requires, I would add, expertise in ship operations and the application of the principles of good seamanship by the Transport Canada marine safety inspectors. Although the record is limited, I find that it does assist in understanding the reasons for the decision to issue the C Licence (*Stemijon Investments Ltd v Canada (Attorney General)*, 2011 FCA 299 at para 36).

[23] In addition, I have reproduced in the annex to my decision the relevant sections of the *Act* and the MPR; section 207 of the MPR in particular sets out the four MSM level scenarios for the determination of the minimum complement requirements for ship operations. The main thrust of the Union’s arguments is that a minimum complement of five crew cannot meet the emergency response requirements of subsection 207(4) of the MPR.

## IV. Analysis

### A. *Preliminary issues*

#### (1) Standing of the Union

[24] I should first mention that no issue was taken by the respondents with respect to the Union's standing in the present application for judicial review; in fact, the Minister accepts that the Union does have standing. For my part, I see no reason to question it.

#### (2) Concern that the Union's voice is not being heard

[25] In its affidavits in support of its position, the Union takes issue with what it sees as the decreased involvement of its members in the determination of MSM levels for vessels under the new MSM assessment process as well as what it claims is Transport Canada's failure to take into account seafarers' views when it comes time to assess the application of safety regulations; in particular, the Union has argued that Transport Canada should make all applications for an SMD a matter of public record, open for review and subject to submissions from all those at interest, in particular the unions representing seafarers. The Union points to the ILO Maritime Labour Convention, 2006 [MLC 2006]—included in Schedule 1 of the Act, thus enabling Transport Canada to implement provisions of the MLC 2006 through the MPR (subsection 29(1) and paragraph 35(1)(d) of the Act)—and in particular Guideline B2.7.1 of MLC 2006 to support its argument that it has a right to participate in the operation of the "machinery for the investigation and settlement of complaints or disputes concerning the manning levels on a ship."

[26] I am sympathetic to the Union's concerns; seafarers are at the forefront of emergency response aboard vessels and are instrumental in safeguarding the well-being of passengers and all those on-board. However, their level of involvement in the regulatory process, in particular the determination by Transport Canada of MSM levels for vessels, is not at issue before me; as mentioned, the Union has not challenged Transport Canada's new MSM assessment process before this Court. The only issue therefore before me in the present application for judicial review is whether, in line with the new MSM assessment process, the decision to issue the C Licence was unreasonable given the applicable regulatory landscape.

(3) Whether the A Matrix is determinative

[27] During its submissions before me, BC Ferries put much emphasis on the proposition that the new MSM assessment process is a "risk-based assessment". Under this approach, the completed A Matrix would not be determinative as to MSM levels as it would only contain information which the SMT would then consider to determine whether an applicant's proposed MSM levels were commensurate with the risks identified in the application. I do not see how an argument which goes to undermine the determinative value of the A Matrix assists BC Ferries. If the A Matrix is not determinative, and somehow other principles or broader policy considerations play into the SMT's assessment of MSM levels, then it is imperative that such considerations be part of the record. On this issue, I prefer the position set out by Transport Canada, *to wit*, that the A Matrix prepared by the five-member SMT is determinative in the assessment of the MSM level for a particular vessel. I would think that any policy considerations or the application of the principles of good seamanship during the SMT's internal deliberations and discussions have already gone into the determination reflected in the A Matrix; the A Matrix

is the result of those deliberations and discussions. The SMT's determination of MSM levels is a function of the applicable regulatory requirements and not one made in the abstract. Nothing in the MPR suggests that the SMT can disregard the MPR requirements and base its decision only on the risks posed by a proposed MSM level; in the end, no risk-based approach can act as an override of regulatory compliance. In addition, and from the perspective of a reviewing court, if the completed A Matrix is not determinative of the SMT's decision to issue, in this case, the C Licence, Transport Canada risks its decision being viewed as one whereby it is looking to immunize its decision by withholding documents and information necessary for judicial review or by failing to give explanations and rationales for decision-making in application of the "'trust us, we got it right' approach" (*Canada (Citizenship and Immigration) v Canadian Council for Refugees*, 2021 FCA 72 at para 105 [*Canadian Council*]); that may not end well for Transport Canada. No level of deference by a reviewing court on account of the purported expertise of a decision-maker such as Transport Canada can shield its decisions from judicial review, and defending the reasonableness of a decision to issue an SMD which does not match up with the assessment tool matrices that are part of the record then becomes precarious and an arduous task at best. In arguing that the A Matrix was not determinative, BC Ferries would have me believe that it is not an appropriate document to evaluate the SMT's assessment of the MSM level for the Island Class ferries and ultimately the decision to issue the C Licence. If it were true that the information contained in the A Matrix is just that, information, and that it is not determinative of the SMT's assessment, the Court would be left with only supposition and arguments to perform its own duties on judicial review. I note in the evidence that three members of the SMT must be in agreement with the assessment of the MSM level for the SMD to be issued. If at least three members of the SMT cannot reach a consensus, the matter is escalated to, ultimately, the

Director General of Marine Safety and Security of Transport Canada for a final decision, at which point the record should be sufficient to allow a reviewing court to "connect the dots" and determine if the final decision with respect to the issuance of an SMD was "transparent, intelligible and justified" (*Vavilov* at para 15).

(4) BC Ferries' failure to use Application Form B

[28] The Union argues that had BC Ferries used Application Form B—meant for non-Safety Convention vessels or vessels without an SMS—the process for the Class C SMD would have yielded an MSM level of seven crew for the Island Class ferries. That may be so, however, I fail to see how this argument assists the Union. BC Ferries did not use Application Form B, nor was it obliged to. Rather, the company used Application Form A, triggering a review by a five-member panel of Transport Canada, and so as to be able to highlight the fact that the company was operating in accordance with an SMS and was ISM Code compliant, and that the vessels were equipped with automated safety and life saving equipment which reduced the need for the physical attendance of crew during every aspect of emergency response—aspects which would not have been part of the new MSM assessment process under Application Form B. In the end, it was up to the SMT to assess how those elements factor into the determination of MSM levels for the vessels as called for by the governing regulations.

(5) Continued discretion on the part of Transport Canada to direct live on-board evacuation and safety drills

[29] As mentioned, the new MSM assessment process no longer requires Transport Canada marine safety inspectors to witness live on-board evacuation and safety drills conducted by the

crew, as this exercise was replaced by the "validation through muster list" process. In fact, note 11 of the explanatory notes to the A Matrix indicates: "There shall be no practical demonstration of a Boat and Fire Drill as the review of the Muster List should validate that exercise." That said, the explanatory notes to the A Matrix are meant to inform the marine safety inspectors who are completing the document but cannot fetter their discretion in the manner in which they assess MSM levels pursuant to the MPR. I must agree with the Union that it remains within the discretion of Transport Canada to direct that such drills take place for MSM assessment if required and that the exercise of that discretion, one way or the other, may impact the reasonableness of its decision in respect of the issuance of an SMD. The Union argues that it was not clear from the documents submitted by BC Ferries what the required minimum staffing of the Island Class ferries was to be, and thus Transport Canada should have nonetheless exercised its discretion and directed that on-board evacuation and safety drills be undertaken to validate the ultimate decision; not doing so, argues the Union, rendered the decision to issue the C Licence unreasonable. It seems to me that it remains the burden of the Union to establish that the exercise of discretion by Transport Canada not to direct that on-board drills be conducted in this case was not only itself unreasonable, but also determinative in the decision to issue the C Licence. In this case, I have not been persuaded that the failure on the part of Transport Canada to conduct an evacuation and safety drill was unreasonable under the circumstances.

(6) Relevance of the Island Class ferries' safety policies and procedures

[30] Although no Island Class ferries FOM or VSM documents were before the SMT during the assessment of BC Ferries' application for a Class C SMD, as stated, the record before me contains fleet-and vessel-specific safety policies and procedures updated to June 7, 2020, which,

according to BC Ferries, are currently being updated to account for the newly issued C Licence. Two issues arise in this case: first, the Union argues that as BC Ferries elected to use Application Form A, it was under an obligation to provide its safety policies and procedures at the same time because explanatory note 9 to the A Matrix instructs that all SMS documents be provided by the applicants. Accordingly, any decision under Application Form A which does not include SMS documents must therefore, argues the Union, be unreasonable. The Union also points to the PowerPoint presentation of Transport Canada given during the lead-up to the formal implementation of the new MSM assessment process which specifies that any application using Application Form A "shall" be supported by SMS documents. To bolster its case, the Union points to the Transportation Safety Board of Canada [TSB] report on the incident involving the *Island Queen III* on August 8, 2017, to explain and highlight the background, importance and principal objectives of an SMS. I cannot agree with the Union. As I stated earlier, the explanatory notes to the A Matrix—and, I would add, any PowerPoint presentation—cannot fetter the discretion of marine safety inspectors in the manner in which they assess MSM levels pursuant to the MPR, and here, I have not been shown any statutory or regulatory provisions requiring the submission of SMS documents as part of the SMD application process. As is the case with the exercise of evacuation and safety drills, Transport Canada must be satisfied that the requirements of the MPR have been met; it continues to have discretion to insist upon up-to-date relevant SMS documents being submitted prior to an SMD being issued, and the failure to do so may be a factor in determining whether the decision to issue a particular SMD is reasonable. However, it should be kept in mind that the safety policies and procedures do not set MSM levels for vessels; that determination is made by the governing authority—here Transport Canada—in conformity with regulatory requirements; a vessel's safety policies and procedures may be

developed as a consequence thereof. In the end, the issue is whether it was unreasonable under the applicable legislative regime for Transport Canada to be satisfied that the characteristics of the Island Class ferries, including the equipment on board, its intended operations and the training of its crew, justified the issuance of the C Licence. Consequently, I have not been persuaded that the failure to provide FOM or VSM documents for the Island Class ferries as part of BC Ferries' application for a Class C SMD, rendered the decision to issue the C Licence to BC Ferries unreasonable. In any event, the Union conceded before me that if, in the normal course, there was a clearly articulated explanation by an applicant acceptable to Transport Canada confirming that the MPR were fully and clearly met, one would not need to submit SMS documents for the issuance of an SMD. In this case, as I set out below, I have not been convinced that there was not a clear and complete explanation provided by BC Ferries to Transport Canada that the MPR were fully and clearly met; in fact, the A Matrix specifically confirms that the SMT was satisfied with compliance through, to a significant extent, the submissions of BC Ferries—I take it through the completed application form itself, the MSM Risk Assessment Report and the tabletop exercise in addition to the Muster List.

[31] The second issue is the Union's focus on inconsistencies between the VSM documents, which are part of its record, and the determinations of the SMT as reflected in the A Matrix. A principal theme of the Union's case is that the Island Class ferries cannot, with a complement of five crew, meet several of the safety policies and procedures of BC Ferries that were put before me. That may be so, however, that is of little relevance, as those documents were prepared on the basis of the A Licence and B Licence and, in any event, were not before the SMT at the time of the issuance of the C Licence. In addition, the Union has not shown that the Island Class ferries'

safety policies and procedures fall within one of the recognized exemptions to the general rule that only the record that was before the administrative decision-maker is admissible on judicial review (*Association of Universities and Colleges of Canada v Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22 at para 20 [*Association of Universities*]).

(7) Sufficiency of the record

[32] I should also point out that Transport Canada refrained from submitting an affidavit from a member of the SMT addressing the deliberative process leading to the decision to issue the C Licence (*Association of Universities* at paras 19 and 20; *Shahzad v Canada (Citizenship and Immigration)*, 2017 FC 999 at para 20). In fact, the A Matrix contains no information on what considerations were taken into account or what deliberations or discussions were undertaken by the SMT in arriving at its decision. When the Union filed its notice of application, it requested all records of discussions and deliberations by Transport Canada relating to the MSM levels for the Island Class ferries pursuant to section 317 of the *Federal Courts Rules*, SOR/98-106 (*Canadian Council* at para 108). Transport Canada provided some of the requested documents, but claimed deliberative privilege on most of them; the Union decided not to challenge that claim.

(8) Transport Canada's consideration of international instruments

[33] The issue of whether Transport Canada had to consider international conventions in its assessment of MSM levels has opened up a larger debate on what constitutes an "emergency situation" under subsection 207(4) of the MPR.

[34] Although it concedes that the Island Class ferries are non-Safety Convention vessels, the Union asserts that many of the regulations adopted under the Act reference international maritime conventions and standards and argues that the determination of the reasonableness of the decision to issue the C Licence must take such international instruments into consideration; where the applicable international instruments conflict with domestic legislation, the Union argues that the higher safety standard should prevail. In support of its contention, the Union points to explanatory note 4 to the A Matrix, which states that section 202 of the MPR requires any application for an SMD to include a proposal determined by following the guidelines set out in IMO Resolution A.1047(27). That may be so, however, section 202 of the MPR only applies to Safety Convention vessels, which the Island Class ferries are not; explanatory notes cannot be treated as amendments to the Act. In any event, the application for the Class C SMD included evidence that BC Ferries' proposal for MSM levels was determined by following the guidelines set out in IMO Resolution A.1047(27), and I have not been shown by the Union where such guidelines have not been respected.

[35] In addition, the Union asserts that sections 213 and 223 of the MPR, which integrate the *Seafarers' Training, Certification and Watchkeeping Code* [STCW Code] adopted under the *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978* [STCW Convention], must be taken into consideration by Transport Canada when assessing MSM levels in emergency situations not covered under subsection 207(4); in such a case, subsection 207(3) of the MPR acts as a floor for the determination of minimum complement requirements. The STCW Code then comes into play under subparagraph 207(3)(d)(i), which refers to section 213, and subparagraph 207(3)(d)(ii), which

refers to section 223 of the MPR, and does not permit a reduction of watches during such emergency scenarios and does not allow the officer of the watch to take on additional duties.

[36] Putting aside the application of subsection 207(2) of the MPR, the Union's argument is predicated on there existing emergency situations which are not governed by subsection 207(4); the Union argues that a man overboard scenario is one such situation where the minimum complement set out in subsection 207(3) of the MPR would apply. Transport Canada disagrees that subsection 207(3) applies to man overboard scenarios, but goes further to assert that the "emergency situation" to which subsection 207(4) applies is limited to emergencies such as fires on board or "some other major event requiring passenger evacuation such as a collision or grounding." This would mean that minimum complement requirements under subsection 207(4) are not triggered in cases dealing with a man overboard or a medical emergency—that of course begs the question: what minimum complement requirements would apply in those situations?

[37] I can agree with neither the Union nor Transport Canada. There is no support for distinguishing between emergency situations, and I have not been persuaded that a man overboard scenario is not an emergency situation to which the minimum complement requirements of subsection 207(4) of the MPR apply. I must admit that the tasks to be undertaken simultaneously set out in paragraph 207(4)(d) seem more to relate to fires on board and those emergencies necessitating the evacuation of passengers, however, neither the Act nor the MPR define the term "emergency situation", nor does the MPR provide for differing minimum complements depending upon the nature of the emergency. One of the three internal policy documents guiding Transport Canada's assessment of a vessel's MSM level is Transport

Canada's *Tier I – Policy, Determination of Minimum Complement* [Tier I Policy], which contains Transport Canada's interpretation of the requirements under the MPR for MSM levels. Provision 2.1 in the Tier I Policy states that MSM levels must ensure that there are enough crew members on a vessel such that the number of crew members is sufficient to:

> - comply with the requirements of Part 2 of the *Marine Personnel Regulations*;
> - fulfill the tasks, duties, and responsibilities required for the safe operation of the vessel, for its security, for protection of the marine environment and for dealing with emergency situations; . . .

[38] I also note that, although not necessarily applicable in this case, section 24.74 of the *Workers Compensation Act Occupational Health and Safety Regulation*, BC Reg 296/97 adopted under British Columbia's *Workers Compensation Act*, RSBC 1996, c 492, includes a "man overboard" situation as an emergency, along with "fire on board", "flooding of the vessel", "abandoning ship" and "calling for help". In any event, subsection 207(4) of the MPR clearly sets out the minimum complement of a vessel "in order to deal with an emergency situation". This can involve a wide range of situations where the safety of crew members and passengers is at risk, requiring intervention by the crew, and I have not been persuaded that either the Act or the MPR limit the notion of what is an emergency situation to fires on board or situations calling for the evacuation of passengers.

[39] Upon being pressed during the hearing, Transport Canada did eventually concede that a man overboard scenario would in all likelihood be an emergency situation falling under subsection 207(4) of the MPR. In fact, in its Muster List, BC Ferries accounts for a variety of emergencies including the prospect of a man overboard as well as medical emergencies, treating

them as types of emergency scenarios requiring intervention by the crew. Consequently, and although it is not my intention to set out every scenario that would constitute an emergency situation under subsection 207(4) of the MPR, I find that a man overboard situation is such an emergency. I also appreciate that, unlike normal operations dealt with under subsection 207(3) of the MPR, a vessel would not normally be underway in emergency situations or evacuation and post-abandonment situations.

[40] This of course raises the issue of how Transport Canada assesses compliance with subsection 207(4) in the context of emergencies that do not necessarily involve a fire or the need to evacuate passengers. Transport Canada says that it did not have to consider medical emergencies and man overboard scenarios in its assessment of MSM levels because neither scenario was specified in the MPR. I agree with Transport Canada but only as regards the application of paragraph 207(4)(d) of the MPR. In my view, the determination of compliance with paragraph 207(4)(d) of scenario-specific emergencies is not necessary given the manner in which the MPR are drafted. Once Transport Canada determines a minimum complement in an emergency situation which complies with paragraph 207(4)(d) of the MPR—as evidenced in this case by the A Matrix—it need not repeat the process for different types of emergency scenarios. I suspect that in most if not all cases, that assessment and determination will be undertaken involving fire and evacuation scenarios, but that is simply a consequence of the somewhat outdated and restrictive provisions of paragraph 207(4)(d) of the MPR.

[41] However, all emergency scenarios, including man overboard and medical emergencies, remain subject to the minimum complement requirements of paragraphs 207(4)(a) to (c) of the

MPR. Transport Canada argues that it cannot envisage every scenario that would constitute an emergency situation. That may be so, however when the scenario is actually addressed in BC Ferries' documentation (as, for example, the contents of a muster list under the FBDR), I would have to think that the SMT must consider that scenario in determining the minimum complement of a vessel. That said, in this case, I have not been convinced that the Muster List reflects deployment of the crew in a man overboard situation that is inconsistent with the requirements of paragraphs 207(4)(a) to (c) of the MPR.

[42] Getting back to the issue of consideration of international instruments in the assessment of MSM levels, and putting aside what the STCW Code allows or does not allow, subsections 207(3) and 207(4) involve separate scenarios and have their own specific minimum complement compliance requirements—note, for example, that a master is specifically provided for in both subsections. That is not to say that a vessel may comply with one without having to comply with the other. Section 207 sets separate minimum complement requirements for each scenario, with the highest number—in this case calculated with the A Matrix tool—generally becoming the MSM level for the vessel. The general operations scenario under subsection 207(3) is therefore not, as suggested by the Union, the "floor" above which the other scenarios are established. Unlike the requirements under subparagraphs 207(3)(d)(i) and 207(3)(d)(ii) of the MPR, the deck and engineering watch requirements under subparagraphs 207(4)(b)(i) and 207(4)(b)(ii) do not refer to sections 213 and 223 of the MPR, and thus the determination of the minimum complement in order to deal with an emergency situation need not consider the STCW Code. In other words, any restrictions that may exist in the STCW Code on reassigning crew that is on watch duty do not apply in the assessment of the minimum complement necessary to deal

with emergency situations under subsection 207(4) of the MPR. I would think that one of the reasons for this distinction may be because, as stated earlier, a vessel would not normally be underway in emergency situations, or even during evacuation and post-abandonment situations; the vessel's engines would have been stopped. I am also mindful of subsection 207(2), which provides that a crew member performing the duties of a position listed on the SMD may be assigned to various duties in order to meet the requirements of more than one provision of section 207 of the MPR.

[43] I agree with the Union that Canada should respect its commitments when signing international treaties, however, the extent of the incorporation of any international convention is subject to the manner in which that convention or international instrument has been adopted into Canadian law; although the STCW Convention is listed in Schedule 1 of the Act, it may be given force of law in Canada by regulation either in whole or in part (subsection 29(1) and paragraph 35(1)(d) of the Act).

(9) Summary of the elements of the MPR, the A Matrix and the Muster List

[44] I think it important to set out the differing elements of the MPR, the A Matrix filled out by the SMT as part of the assessment process for the C Licence and the Muster List, as they may be somewhat confusing.

[45] Section 207 of the MPR sets out the requirements for the minimum crew complement under various scenarios: the minimum complement shall meet, where applicable, the requirements set out in subsection 207(3) for vessel operations (normal operations) as well as

those set out in subsection 207(4) in order to deal with emergency situations, while at the same time the minimum complement must be sufficient to implement, in the case of passenger-carrying vessels, the evacuation plan required by the *Life Saving Equipment Regulations*, CRC, c 1436 [LSER] (subsection 207(5)), and to deal with a post-abandonment situation (subsection 207(6)). During emergency situations, paragraph 207(4)(d) also provides certain tasks that the minimum complement must be able to simultaneously carry out, in addition to fulfilling the remaining requirements of subsection 207(4) of the MPR.

[46] The A Matrix contains four sections which mirror the scenarios set out in section 207 of the MPR: (a) normal operations, (b) emergency, (c) evacuation (abandoning ship), and (d) post-abandonment. As stated earlier, in each of the four sections, the A Matrix contains a methodical option-driven series of tables and notes that refer to the various requirements of the MPR which the SMT runs through to complete after assessing the information provided by BC Ferries and tallies up the total number of crew required in each of the four distinct sections; the highest number of the four sections becomes the MSM level for the vessel.

[47] The Muster List submitted by BC Ferries as part of the application for its Class C SMD deals with emergency and evacuation procedures and sets out the duties of the crew during the phases of emergency response and two specific types of emergencies: (1) initial response, (2) emergency stations, (3) prepare evacuation stations, (4) abandon ship plan, (5) rescue boat station (man overboard) and (6) medical emergency. The Muster List informs the SMT when determining MSM levels and assists in the completion of the sections of the A Matrix by the SMT, which allows for the determination of compliance (one way or the other) with the

minimum complement requirements of the scenarios set out in section 207 of the MPR; in the end, the SMT's assessment and determination of the MSM level is undertaken through the prism of the MPR.

[48] As stated, the A Matrix contains four sections or tables meant to correspond to the four scenarios set out in section 207 of the MPR.

(a) *A Matrix Table 1 – Normal Operations*

[49] For regular (non-emergency) operations, the boxes in table 1 of the A Matrix were completed by the SMT in accordance with the requirements of subsection 207(3) of the MPR and, in particular, the STCW Code. The deck crew is comprised of the master (who, because three deck watches were established, was counted as a member of the deck watch) and the chief mate as the additional person, both of whom would be able to fulfil the radio watch duties. The Union agrees that there is no requirement in this case for a second additional person. The A Matrix also provided for one crew member for the engineering watch, and two additional crew to undertake other tasks as required—a five crew complement. No issue is taken by the Union with respect to this section.

(b) *A Matrix Table 2 – Emergency Situations*

[50] For emergency situations, the boxes in table 2 of the A Matrix were completed by the SMT in line with the requirements of subsection 207(4) of the MPR to require a five crew complement as follows:

(a) Deck watch – the master, also acting as officer of the watch [OOW] (paragraph 207(4)(a) and subparagraph 207(4)(b)(i) of the MPR) and an additional person duly certified, both of whom, as conceded by the Union in this case, could act as the principal communicator (paragraph 207(4)(c)) as well as undertake radio watch duties (subparagraph 207(4)(b)(iii));

(b) Engineering watch – one crew member for the engineering watch (subparagraph 207(4)(b)(ii) of the MPR); and

(c) As regards other persons needed in an emergency situation: two additional crew members, validated by the SMT through the documents supplied by BC Ferries, would be needed to permit the complement to carry out simultaneously the tasks listed under paragraph 207(4)(d) of the MPR:

(i) one additional person to allow for the simultaneous operation and use of the fire-extinguishing equipment and system (subparagraph 207(4)(d)(i)); and

(ii) one additional person to allow for the simultaneous direction and control of up to 150 passengers (subparagraph 207(4)(d)(iv)) on the basis of there being one compartment normally occupied by passengers and only one muster station.

[51] The A Matrix also confirms that the SMT was able to validate through the documents supplied by BC Ferries that the requirement to operate the vessel's pumping and emergency power system (subparagraph 207(4)(d)(iii)) could be undertaken simultaneously—the Union

agrees that the chief engineer would undertake this task—as would the requirement to provide communication between the person in immediate charge of the vessel and the persons directing and controlling the passengers (subparagraph 207(4)(d)(v))—the Union agrees that the master could undertake this task. The box for the principal communicator (paragraph 207(4)(c)) has been crossed out on the template for the A Matrix—again, the Union agrees that an additional person is not required as this task may be fulfilled by the OOW.

[52] However, the A Matrix template also crosses out the box associated with the preparation for launch of the survival craft (subparagraph 207(4)(d)(ii)), something which the Union says is unreasonable because this is a specific task that must be undertaken simultaneously with the remaining tasks set out in paragraph 207(4)(d) of the MPR; I will deal with this issue further on in my decision.

[53] The explanatory notes to the A Matrix provide that where a vessel is fitted with remotely operated fire monitors, a reduction in the personnel affected to the firefighting team may be acceptable if validated by the SMT—which the colour coding of the A Matrix in the record confirms was the case. The colour coding of the A Matrix also confirms that the SMT validated by way of the assessments and explanations provided by BC Ferries in Application Form A that the crew assigned on the Muster List was able to direct and control the 145 passengers on-board. It should be remembered that the SMT had before it BC Ferries' MSM Risk Assessment Report and tabletop exercise.

(c) *A Matrix Table 3 – Evacuation (Abandoning Ship)*

[54] Unlike subsections 207(3) and 207(4), subsection 207(5) of the MPR, which deals with the scenario of evacuating passengers, does not set out the specifics of what the minimum complement of a vessel should consist of. Rather, that subsection simply states that the minimum complement shall consist of "a sufficient number of persons to carry out an evacuation" and, in the case of a passenger-carrying vessel, to implement the evacuation plan required by the LSER. Accordingly, the evacuation (abandoning ship) section of the A Matrix does not refer to any watchkeeping duties. Given that the Island Class ferries were equipped with an MES, the SMT allocated one crew member to be the person in charge of overall evacuation, one crew member necessary to be at the top of the evacuation slide and one crew member (per 150 passengers) for crowd control. In addition, the A Matrix allocated two crew for rescue boat operations—for a total of five crew.

(d) *A Matrix Table 4 – Post-abandonment*

[55] As with the evacuation scenario, the post-abandonment scenario under subsection 207(6) of the MPR does not set out the specifics of the minimum complement of a vessel, but simply states that the minimum complement shall consist of a sufficient number of persons in order to deal with a post-abandonment situation; in this case, the SMT determined that only one person was required to deal with such a situation given the parameters set out in the A Matrix.

[56] As the MSM level is to be the highest number of each of the four sections of the A Matrix, the MSM level for the Island Class ferries was set at five crew.

[57] As instructed by *Vavilov*, without reasons, my review will focus more on the outcome of the decision to issue the C Licence rather than on the SMT's reasoning process.

B. Issues raised by the Union

(1) Was it unreasonable for Transport Canada to decide that a five-person crew could conduct safe deck and engineering watches during emergencies as required by subparagraphs 207(4)(b)(i) and (ii) of the MPR?

[58] As stated, the A Matrix confirmed a deck watch made up of the master as OOW along with an additional person on the bridge in accordance with sections 214 to 216 of the MPR and a one-person engineering watch during emergency situations, leaving two crew to undertake the other tasks that may be required. The Union asserts that two crew are insufficient to carry out emergency duties as thereby the vessel must necessarily shift at least one crew member from either the deck or engineering watches to assist, thus no longer complying with deck and engineering watch requirements.

[59] The Union gives the same example of a man overboard scenario and argues that the Muster List during the rescue boat stations (MOB) phase provides that with three crew members responding to an incident, only the master and chief engineer remain on the bridge, thus the bridge and engineering watch requirements under subsection 207(3) are compromised. However, as I indicated earlier, I do not accept that the minimum complement requirements in a man overboard scenario are to be assessed under subsection 207(3) of the MPR.

[60] Alternatively, the Union argues that even if the minimum complement for a man overboard scenario is to be assessed under subsection 207(4), having only two crew available to

respond to a man overboard nonetheless creates a situation whereby the deck and engineering watch requirements under subparagraphs 207(4)(b)(i) and (ii) must again be compromised; the Union points to the Launch and Recovery of Rescue and Shepherd Boats Policy [LRRSBP]—part of the VSM documents which regulates the launching of rescue boats in the event of, *inter alia*, emergency man overboard situations—which provides for a team of four crew (person in charge, coxswain, assist in boat and davit operator) to engage in the operation of the rescue boat in a man overboard situation. Therefore, argues the Union, a crew of five still cannot maintain compulsory bridge and engineering watches while safely launching and recovering a rescue boat in an emergency situation.

[61] First, tethering the Union's argument to the Island Class ferries' safety policies and procedures is a non-starter as the LRRSBP was not before the SMT when the C Licence was issued, nor did it have to be. As stated earlier, the version of the VSM documents forming part of the Union's record was prepared on the basis of the Island Class ferries having obtained their A Licence and B Licence (where more than five crew are aboard and available) and is now in the process of being updated to take into account the issuance of the C Licence. It may very well be that once revised, and with only five crew on board, the LRRSBP may combine the duties of the person in charge with those of the davit operator, similar to what the LRRSBP provides for in the abandon ship/evacuation launch scenario, however, at this point we would only be speculating.

[62] In any event, I cannot accept the Union's argument on this issue; the Muster List provides in the rescue boat stations (MOB) phase that the deployment and re-securing of the rescue boat is to be undertaken by the mate (acting as person in charge) and that the rescue boat is to be

manned by the deckhand (acting as coxswain) and the rating (acting as the assist in boat person), during which time the master remains on the bridge (acting as the officer of the watch) along with the chief engineer (on engineering watch and acting as additional person for deck watch). I deal with the issue of the davit operator below, however, I do not see any compromise of the deck or engineering watch under this scenario in relation to the requirements of subparagraphs 207(4)(b)(i) and (ii)—the chief engineer is on the bridge during all phases of the Muster List, and I have not been shown that she or he in this case is not qualified to act as the "additional person" to satisfy the requirements of sections 214 to 216 of the MPR.

[63] In addition, I have not been convinced by the Union that the deployment and use of the rescue boat in a man overboard situation is consumed within the "prepare for launching the survival craft" task under subparagraph 207(4)(d)(ii) of the MPR, which deals with the LSER and, more appropriately, the vessel's MES. I appreciate, as I set out below, that the rescue boat acts as the power unit for the inflatable life raft, however, the context of subparagraph 207(4)(d)(ii) of the MPR does not seem to me to contemplate the use of the rescue boat in a man overboard situation, nor am I convinced that the rescue boat is to be included in the notion of "survival craft" under subparagraph 207(4)(d)(ii) of the MPR. In fact, the Muster List only provides for the launching or deployment of the MES in the prepare evacuation stations and abandon ship plan phases, at which time it is the chief engineer who deploys the MES. The deployment of the MES is not undertaken during the rescue boat stations (MOB) phase; rather, it is the mate, as the person in charge, who deploys and re-secures the rescue boat.

[64] The Union also argues that there must be flexibility in the manning requirements of vessels to allow for addressing unforeseen situations without necessitating a compromise of bridge and engineering watch requirements. That issue, I would think, is not one relating to the statutory requirements of MSM levels but rather one of policy by the owners of the vessels. The obligation of Transport Canada is to set MSM levels that comply with the regulations keeping in mind the proposed operations of the vessels as set out in the application for an SMD. If owners determine that a greater number of crew is thereafter required to give some flexibility to the master to address particular or unforeseen situations that may be encountered during those operations, owners may implement higher manning levels when appropriate. What is clear is that in the end, the master shall not operate a Canadian vessel unless it is staffed with a crew that is sufficient and competent for the safe operation of the vessel on its intended voyage (subsection 82(2) of the Act); the maintenance of minimum manning levels is not a guarantee of safety or the seaworthiness of the vessel in all circumstances.

[65] The Union also argues that BC Ferries' FOM and VSM for the Island Class ferries require three crew members on the bridge, including the master, during emergency situations, while the Muster List only provides for two members of the crew on the bridge; the Union points to the Bridge Resource Management Policy [BRMP], part of the VSM, which provides for three-person bridge manning—a navigator, a lookout/helmsperson and a monitor—during red zone situations. Again putting aside that the BRMP was not before the SMT, I believe that the Union is misinterpreting the documentation; the BRMP sets out what is meant by a red zone situation: "approaching a dock, navigating in a narrow passage, navigating in restricted visibility and any other circumstance that warrants heightened vigilance". However, a situation where the

navigation of the vessel requires a heightened sense of vigilance is distinct from emergency situations—a fire on board, a collision, grounding or any event that requires the evacuation of the vessel—for which the Muster List is prepared; the response in emergency situations is determined by the nature of the emergency (for example, responding to a fire as opposed to a man overboard situation). In short, the BRMP addresses bridge manning levels during non-emergency situations of higher risk, while the Muster List addresses bridge manning during emergencies.

[66] The Union also argues that the Emergency Response Teams Policy [ERTP]—which is part of the VSM for the Island Class ferries and which creates four emergency response teams—calls for a complement of six crew during emergency situations, including an engine room assistant, and therefore a complement of five crew would be insufficient to comply with the safety policies and procedures. However, the evidence of BC Ferries shows that with the issuance of the C Licence, the ERTP is in the process of being reviewed to remove the requirement of an engine room assistant.

[67] Rather, the issue is whether the determination by the SMT that two additional crew members—in addition to the two-person deck watch and one-person engineering watch—were sufficient to avoid compromising the deck and engineering watch requirements during an emergency situation and allow for compliance with subsection 207(4) of the MPR was unreasonable. I have not been persuaded that it was.

(2) Was it unreasonable for Transport Canada to decide that a five-person crew could perform specified emergency duties simultaneously as required by paragraph 207(4)(d) of the MPR?

[68] The Union argues that one of the unreasonable aspects of the decision to issue the C Licence is that the tabletop exercise submitted by BC Ferries as well as the manner in which the emergency phases are dealt with in the Muster List indicate that the tasks set out in subparagraphs 207(4)(d)(i) to (v) of the MPR are undertaken sequentially, while the MPR requires that they be carried out simultaneously. The Union asserts that all of the tasks that needed to be conducted simultaneously in satisfaction of paragraph 207(4)(d) are being conducted across two phases of the Muster List—for example, the task of "fighting the fire" under subparagraph 207(4)(d)(i) is being undertaken during the emergency stations phase, while the "prepare for launching the survival craft" task under subparagraph 207(4)(d)(ii) is being undertaken during the prepare evacuation stations phase; the tasks are being undertaken one after the other rather than simultaneously as required by paragraph 207(4)(d) of the MPR.

[69] I appreciate that with the "validation through muster list" initiative, the Muster List is meant to inform the SMT so as to validate compliance with the regulations, an exercise once performed through the evacuation and safety drills. However, the SMT is not tasked with ensuring that the Muster List is compliant with regulations; that is the responsibility of BC Ferries and that is why Transport Canada expressly referred to the company's obligation of ensuring that the effectiveness of the vessels' muster lists continue to meet the requirements of the regulations when it issued the C Licence to BC Ferries. The challenge lies, I think, in trying to layer and match up the phases of the Muster List with the tasks set out in subparagraph 207(4)(d)(i) to (v) of the MPR. It is difficult to do so because the Muster List also

serves another purpose; the Muster List is also meant to reflect the evolution of emergency response, setting out the duties of the crew during each phase of an emergency situation, including the implementation of the evacuation plan (subsection 207(5)) as well as the management of a post-abandonment situation (subsection 207(6) of the MPR). These phases are sequential. There is a temporal aspect to the Muster List, reflecting the need to first identify and assess an emergency, and then address and mitigate the risk; the situation may warrant the need to thereafter prepare for the evacuation of the passengers and crew and, if the situation has not stabilized, implement the evacuation plan required under the LSER. It would make little sense to assess initial response to an emergency while at the same time abandoning the ship altogether; one needs to understand the nature of the emergency before deciding how to respond, and each member of the crew must understand what she or he must do during each of the phases. If, for example, a fire were to start in one of the few spaces not fitted with an automated sprinkler and fire protection system—such as the passenger lounge, crew change rooms or offices, which are considered low or nil risk for fire—it may possibly be contained and put out by the crew member operating a hand-held fire extinguisher; the matter may never escalate to the point where the chief engineer must operate the vessel's pumping and emergency power system (subparagraph 207(4)(d)(iii) of the MPR) or where the master rings the general alarm thus triggering the requirement to prepare for the launching of the survival craft (assuming preparation was needed) under subparagraph 207(4)(d)(ii) of the MPR. The crew would then not need to shift duties from the emergency stations phase on the Muster List to their duties under the prepare evacuation stations phase, which calls for the deployment of the MES.

[70] On the other hand, paragraph 207(4)(d) of the MPR represents a snapshot in time, requiring evidence that the minimum complement would be able to carry out simultaneously the five tasks set out in subparagraphs 207(4)(d)(i) to (v). As indicated earlier, I must admit that paragraph 207(4)(d) of the MPR seems somewhat outdated and does not seem to easily factor in advances in firefighting philosophy and systems or in modern survival craft. Leaving aside the need for regulatory modernization, in reviewing the A Matrix in conjunction with the tabletop exercise—a frame by frame account of the running of evacuation and safety drills through the phases of the emergency response reflected in the Muster List—I do not find the SMT's determination to be unreasonable under the circumstances: the master, in command and as OOW, remains on the bridge and is in communication with the person directing and controlling the passengers (subparagraph 207(4)(d)(v)); the chief engineer is the additional person on the bridge and undertakes the operation of the firefighting equipment, prepares for activating the MES and operates the vessel's pumping and emergency power systems (subparagraphs 207(4)(d)(i)(ii) and (iii)); with the mate in charge on scene and the rating and deckhand undertaking passenger control (subparagraph 207(4)(d)(iv)).

[71] That said, the Muster List does in fact support compliance of the MSM level of the C Licence with the requirements of the MPR. Focusing on the emergency stations phase of the Muster List:

i. subparagraph 207(4)(d)(i) – The fire is being dealt with by the automated fitted firefighting systems which are activated automatically or from the bridge by the chief engineer. This of course assumes that the fire has not been extinguished by the mate who would have been first on scene during the initial response phase.

Notes 8 and 9 of the Muster List make it clear that the mate and rating are performing primary fire party duties and any special duties assigned with respect to firefighting equipment and installations. The evidence of BC Ferries shows that the mate and the rating are in charge of firefighting, however, the system places less emphasis on the crew having to fight a fire on board, thus freeing them up to undertake other tasks such as initial response and assessment, determining that the firefighting equipment has been activated, and passenger control as necessary. The Union argues that there are certain areas of the vessel not equipped with fixed firefighting equipment, areas which are considered low to no risk for fire. If a small fire was to occur, say in the passenger lounge, a portable fire extinguisher may be used by the mate upon her or his initial attendance on scene, in which case the likelihood of the matter escalating to having to abandon the vessel remains very remote;

ii. subparagraph 207(4)(d)(ii) – I accept that there is a distinction between "preparing" for launching and the "launching" of the survival craft. It should be kept in mind that the subparagraph refers to preparing for launch in accordance with the LSER. The only provisions of the LSER dealing with preparation of the survival craft relate to the need to provide adequate lighting in the area of preparation (subsection 139(2)), the preparation of a survival craft in one area not interfering with the corresponding requirements at other survival craft stations (subsection 143(4)), and the manner in which the survival craft is stowed (paragraph 143(5)(c)). Here, the MES is automated, and consequently, I accept that no preparation "in accordance with the LSER" is needed prior to its

deployment in the same way, for example, as was the case in the past, when life boats needed to be unsecured and placed in position for launching by the crew. Here, launching takes place during the prepare for evacuation stations phase of the Muster List, without previous preparation being needed. And it is clear from the tabletop exercise that deployment takes place at the muster station rather than from the bridge so that the chief engineer is also by then in position to marshal passengers down the slide and into the life raft (as per the tabletop exercise). Also, and as I set out below, I do not agree with the Union that the rescue boat is part of the survival craft that must be prepared for launch under this requirement. We see, from the Muster List, BC Ferries dealing with the deployment of the rescue boat in the prepare evacuation stations phase, thus reasonably under subsection 207(5) rather than subsection 207(4) of the MPR;

iii. subparagraph 207(4)(d)(iii) – The Union has conceded that the operation of the vessel's pumping and emergency power system is undertaken by the chief engineer who is at the console on the bridge. I have not been shown that the chief engineer cannot undertake this task along with deploying the MES and operating the fixed fire systems;

iv. subparagraph 207(4)(d)(iv) – Directing and controlling the passengers is undertaken by the rating, assisted by the deckhand; and

v. subparagraph 207(4)(d)(v) – The Union also concedes that communication with the rating who is undertaking passenger control can be handled by the master.

[72] Page 8 of the SMD application form outlines the evidence that the MSM level is sufficient to deal with emergency situations, including the evacuation of passengers. The SMT would have reviewed the evidence and the process, which, as stated by BC Ferries, used a risk-based approach to determine the MSM level. I have not been shown where the failure to comply with subsection 207(4) takes place and thus have not been persuaded by the Union that paragraph 207(4)(d) of the MPR is not being complied with during vessel operation under the C Licence.

(3) Was the determination of sufficient crew to undertake certain required tasks unreasonable?

(a) *Firefighting*

[73] The Union contrasts the Island Class ferries' Fire Response Plan [FRP]—a VSM document—with the Muster List and argues that it was unreasonable for Transport Canada to determine, as evidenced by the A Matrix, that it only takes one person to fight a fire, while the FRP and the Muster List have three people fighting the fire. In short, the Union argues that Transport Canada and BC Ferries have a different understanding regarding firefighting. I do not agree.

[74] I should first make it clear that the determination by the SMT requiring one additional person in relation to the task of operating and using the fire-extinguishing equipment and systems (subparagraph 207(4)(d)(i) of the MPR) does not mean, as the Union is suggesting, that only one person is always "fighting the fire". The Island Class ferries are fitted with fixed firefighting systems that can be activated remotely from the bridge or the engineering control

station, as detailed earlier. What the A Matrix confirms is the determination by the SMT that one additional crew member is to be added to the complement so as to allow for the operation and use of the fire-extinguishing equipment and systems simultaneous with the other tasks set out in paragraph 207(4)(d) of the MPR. That does not mean that only one person is always fighting the fire. Moreover, the Muster List does not have, as argued by the Union, three people responding to the fire; in the emergency response phase, only the mate is on scene responding as required. As set out earlier, the system is concerned less with the crew fighting the fire, thus leaving the mate to assess and react to the fire—possibly with a quick intervention with a fire extinguisher to put out a small fire—and for passenger control in the area as needed. The master is on the bridge, in command, the deckhand is assisting the master, the rating is being directed by the mate in either assisting the mate with primary firefighting duties or sweeping the passengers, and the chief engineer is on the bridge deploying, to the extent even required, the automated and fitted fire response systems.

[75] I understand that the system aboard the Island Class ferries, unlike with older vessels, is not set up so that the safety functions must be performed manually; the crew aboard the Island Class ferries need not actually attack a fire themselves, meaning that they are available to perform other safety duties. As stated earlier, the evidence of BC Ferries shows that the "overriding policy with respect to fire response is preservation of life over the asset, and it is for this reason that requiring crew to fight the fire themselves has become outdated", as reflected by the Muster List. The role of the mate and rating is to assess and coordinate the fire response commencing at the initial response phase; the use of a portable extinguisher is always available upon attendance and first detection where appropriate. Unlike the FRP, the details of the

technological advancements in fire response, the MSM Risk Assessment Report and the tabletop exercise were before the SMT, and I must assume considered by the five panel members at the time the decision was made to issue the Class C Licence.

[76] The Union also argues that the Muster List calls for the mate to be the on-scene response to a fire, assisted by a rating to muster the passengers while fighting the fire and conducting firefighting operations. These functions, argues the Union, cannot all be completed at the same time and in a safe and timely manner. However, the Muster List indicates that during the emergency response phase, the rating is to proceed as directed by the mate, either assisting the mate on scene as part of the duties of the fire party or sweeping passengers from the decks. In any event, I have not been persuaded by this argument as it is predicated on multiple crew members always being required to attack the fire. That is not the case, and the Union is simply not addressing the fact that the Island Class ferries are equipped with automated firefighting systems which may be remotely activated. On that issue, the Muster List also assigns firefighting duties to the chief engineer as indicative of her or his role in handling the automated firefighting equipment from the bridge.

[77] The Union then argues that the Muster List calls for the chief engineer to close all doors and openings on the vessel, such as watertight doors, fire doors, valves and skylights, many of which are manual, while also being on the bridge to operate the remote firefighting system and while also forming part of the fire response team. The Union may be misreading the documents. In fact, the functions of closing watertight doors on the vessel, running the fixed firefighting systems, as well as shutting down ventilation and pumps are controlled remotely from the bridge

and do not require manual operations by the crew, thus I do not see it as unreasonable that the chief engineer attend to those functions.

[78] I have not been convinced that the manner in which firefighting is addressed in the Muster List is unreasonable or that it obstructs or is inconsistent with the simultaneous carrying out of the tasks set out in paragraph 207(4)(d) of the MPR. The Muster List, in the context of a fire, corresponds with the A Matrix, which satisfies the MPR.

(b) *Passenger Control*

[79] The section of the A Matrix that deals with directing and controlling the passengers provides a table with a series of factual assertions leading to a formula to calculate the number of crew required to allow for compliance with subparagraph 207(4)(d)(iv) of the MPR. The section includes two parts: the first provides for one crew member to account for each compartment normally occupied by passengers—compartments include lounges, open decks, car decks or vertical fire zones on passenger cabin decks—and one crew member for sweeping and searching for every three decks "accessible but not normally occupied by passengers". The SMT allocated one crew in this part. The second part provides for one crew for each muster station (here only one muster station is engaged as we have under 150 passengers on board) and one crew for every 150 passengers in excess of 150 passengers at each muster station. The SMT again allocated one crew in this part. The highest number amongst the two parts is the number assigned to this section of the A Matrix—here one crew member assigned to direct and control passengers. This may also explain why six crew (rather than the five initially proposed by BC Ferries) was assessed under the B Licence.

[80] The Union takes issue with the SMT's completion of the first part of this section. It argues that the Island Class ferries have four compartments "normally accessible to passengers": the main vehicle deck, the passenger lounge, the galley vehicle deck and the passenger sun deck, and that therefore, allocating only one crew member under the first part of the section in the A Matrix dealing with passenger control is unreasonable. The Union adds that even on the basis of BC Ferries' evidence of there being only two decks accessible to passengers, this would amount to an unreasonable misapprehension of the evidence on the part of the SMT. However, compartments that are "normally accessible" to passengers are not necessarily "normally occupied" by passengers, and the section of the A Matrix involves the latter. The A Matrix also confirms that the SMT came to its determination based upon the "assessments and explanations provided on the application form". I have not been shown by the Union that in the context of the C Licence, the allocation of one crew member was unreasonable. I accept that on this issue, the configuration of the A Matrix is not clear and, as admitted by Transport Canada before me, the A Matrix is an administrative tool that still requires more refining. The Muster List provides for the sweeping of passengers from both the lounge and the sun deck—both compartments—during the emergency stations phase. Consequently, I am not prepared to cherry-pick what may be a possible anomaly in the completion of the A Matrix as determinative in the assessment of the reasonableness of the decision to issue the C Licence.

[81] The Union also argues that a single person cannot conduct passenger control because there are four decks on the vessels; it argues that passenger control is not simply a question of gathering passengers in the passenger lounge (muster station or assembly areas) during an emergency, but also includes ensuring that passengers do not leave the area and wander off and

that passengers needing assistance can obtain it. The Union further argues that the capacity of the muster stations is insufficient to accommodate the passengers of the Island Class vessels in the event of an emergency—the Union asserts that the passenger lounge, as the assembly area for passengers, is not able to accommodate more than 100 people, yet 140 passengers are expected to assemble there.

[82] It is not clear why the Union asserts that the passenger lounge area cannot accommodate more than 100 passengers; there are two available muster stations on the Island Class ferries, each with a capacity of 225 persons, although only one is being used under the C Licence. Also, the LSER require "a clear area of at least 1 $m^2$ for every four passengers assigned to that station for marshalling and instruction" (LSER at paragraph 133(b)). For 145 passengers, this would mean a muster station of 36 square metres. The evidence shows that the muster stations aboard the Island Class ferries are at least 93.5 square metres, therefore large enough to meet the requirements of the LSER. The Union argues that the passenger lounge is not a "clear area" and thus cannot act as a passenger assembly area. I find the record on this issue insufficient and thus the Union has not convinced me of their point. In any event, as indicated earlier, the A Matrix confirms that the SMT was satisfied by way of the assessments and explanations provided by BC Ferries that the crew assigned on the Muster List was able to direct and control the 145 passengers on-board. Given that there is only one assembly area for up to 145 passengers and that the passengers may be directed via the vessel's intercom system, I have no reason to believe that adding only one additional crew member to the complement to allow for the proper directing and controlling of the passengers, including sweeping and searching, was unreasonable. As was the case with firefighting, the fact that the SMT has allocated only one person for

passenger control does not mean that during the multiple phases of an emergency response, only one person is undertaking that function at any one time. Looking at the Muster List, the duties for passenger control begin with the public address announcement on the ship's loudspeaker advising passengers of the emergency during the initial response phase. During the emergency stations phase, the directing and controlling of passengers is undertaken by the rating, with possible assistance if needed from the deckhand, and with passenger sweeping operations starting on the sun deck. Moving to the prepare evacuation stations phase, the rating and deckhand shift to the rescue boat, while passenger control—the passengers now being at the assembly area—shifts to the mate, with a secondary passenger sweep of the decks by the engineer. We see, from the Muster List, the complement of five crew shifting their duties, including passenger control, in accordance with the evolution of the emergency.

[83] The Union argues that the Vessel Passenger Control Procedure [VPCP]—part of the VSM documents—provides for assistance to passengers during emergencies at two assembly points on deck 2, including assisting disabled passengers, communications, head count, and life jacket distribution, however, under the Muster List, there is only one assembly point for passengers and the chief engineer and mate share passenger control duties at this assembly point on deck 2 while also launching the rescue boat on deck 4 and conducting a passenger sweep of the vessel on deck 4. Putting aside that the VPCP was prepared with the assumption that more than five crew would be on board under the A and B Licences and that it is in the process of being updated to accommodate for the C Licence, the Union's argument is predicated on all of the tasks during the various phases of an emergency situation being conducted at the same time, which is incorrect. The Muster List envisages crew members performing different safety duties

during each phase, and the response required depends on the nature of the emergency. It seems to me that the VPCP will reflect the parameters of the C Licence and, with only 145 passengers on board, passenger control may be undertaken at a single assembly point. This aligns with the fact that there are two MES aboard the Island Class ferries, both of which are equipped for a total of 150 people. In addition, as we move from one phase of an emergency to the next, different tasks have already taken place and need not be repeated—the task of monitoring and controlling the passengers in the preparation for evacuation phase assumes that the assembly of passengers has already taken place during the previous emergency stations phase.

(c) Preparation for Launching the Survival Craft

[84] An MES is defined in the FBDR as being "an appliance for the rapid transfer of persons from the embarkation deck of a vessel to a floating survival craft" and in the LSER as "life saving equipment that consists of one or more inflatable life rafts, a slide or chute as a means of embarkation into the inflatable life rafts and, in the case of a system with more than one life raft, an inflatable rescue platform." It follows that the "survival craft" is the "inflatable life raft" that is part of the MES.

[85] As stated earlier, the template for the A Matrix used by the SMT to assess BC Ferries' application for a Class C SMD crosses out the box used when considering the preparation for launch of the survival craft (subparagraph 207(4)(d)(ii)), something which the Union says is unreasonable as there is no explanation provided that would account for it as this task must be undertaken simultaneously with the remaining tasks set out in paragraph 207(4)(d) of the MPR. In fact, adds the Union, the matrix used under Application Form B and the old matrix used under

the previous MSM assessment process does not have the box crossed out, meaning that Transport Canada would have to consider the task of preparing for the launching the survival craft in determining MSM levels.

[86] First of all, although we can speculate as to why the template of the A Matrix has the box relating to the preparation for launch of the survival craft crossed out, I am not convinced that somehow Transport Canada or the SMT fettered its discretion by using the A Matrix when considering the need to prepare for launching the survival craft and compliance with the MPR. There is nothing in the evidence to suggest that the SMT would abdicate its decision-making process because a box on an assessment tool is crossed out, and although it remains somewhat of a mystery, assuming of course that the template does have the box crossed out, the fact that the issue is treated in the A Matrix in less detail may be explained by the specialized knowledge of the decision-makers in this case (*Vavilov* at paras 91 and 93). In any event, and putting aside any comparison with other matrices, which I find irrelevant, the issue may be somewhat of a red herring as I accept Transport Canada's assertion that there is no need to account for crew for this particular task because the MES requires no preparation for launching; this is the result of automation, the details of which the SMT would have had access to. The actual launching or deployment of the survival craft takes place during the evacuation stage of the response and under the scenario outlined in subsection 207(5) of the MPR.

[87] That said, the Union argues that the MES is limited to the combination of a slide and raft that self-inflates upon activation and that even if we accept BC Ferries' assertion that because the MES is remotely activated it does not require "preparation for launch",

subparagraph 207(4)(d)(ii) of the MPR speaks not of the preparing for launch of the "evacuation system", but rather of the "survival craft". Here, argues the Union, the "survival craft" is not only the inflatable raft, but also the rescue boat, which acts as the power unit, the "tug" to tow the inflatable life raft with the passengers away from the Island Class ferries, which may be on fire at the time. Preparing for the launch of the rescue boat involves a process of the crew having to suit up and undertake briefing sessions, a process much more involved than simply pressing a button on a console on the bridge to activate the MES, and is only provided for on the Muster List in the prepare evacuations stations phase; accordingly, it cannot be undertaken simultaneously with the other tasks in paragraph 207(4)(d) of the MPR.

[88] I have not been convinced by the Union that the notion of "survival craft" in subparagraph 207(4)(d)(ii) should include not only the MES, but also the rescue boat. I appreciate that the evacuation plan provides for a two-craft solution where the rescue boat becomes the power unit for the inflatable raft, however, I have not been shown that the LSER include separate power units in the definition of survival crafts. In fact, the definition of "survival craft" in the LSER is either "a lifeboat, a rescue boat, an emergency boat, a suitable boat, a buoyant apparatus, a life raft or an inflatable rescue platform" (emphasis added). A rescue boat can be a survival craft, but only where it is used similarly with the other types of crafts in the definition, i.e., as the craft which carries the passengers. In the case of the Island Class ferries, it is acting as the "tug" for the survival craft. Such an interpretation is supported by the definition of "rescue boat" in the LSER, which is "a vessel designed to be used for rescuing persons in distress and marshalling survival craft." Here, the rescue boat is "marshalling" the survival craft and is not being used as a survival craft.

[89] In addition, I note that Appendix B2 entitled “Regulated Equipment” submitted with the Class A and B applications—submitted by BC Ferries and considered by the SMT in the application for the Class C SMD—mentions the following: “The Bridge has an ERRS System installed to facilitate the remote launching [of the survival crafts]”. I agree with the Union that one cannot have a non-powered life raft with passengers aboard which cannot move away from what may be a burning vessel and is drifting in open waters and that the rescue boat is a necessary part of the overall effectiveness of the inflatable life raft as a survival craft. This may be another area where the regulations need updating, however, I have not been shown that the LSER include as the survival craft anything other than the inflatable life raft that forms part of the MES to be prepared for launching under subparagraph 207(4)(d)(ii) of the MPR. As a result, I see nothing unreasonable with the A Matrix crossing off the section relating to subparagraph 207(4)(d)(ii) of the MPR and not requiring an additional crew member to account for the task of preparing for the launch of the survival craft where vessels are equipped with an MES.

[90] I have also not been convinced that compliance with the regulations could not be confirmed by the SMT from the documentation on file, necessitating the exercise of discretion to direct that an evacuation and safety drill be undertaken on board and the safety policies and procedures be finalized and filed prior to the issuance of the C Licence. The assessment process for the determination of minimum safe manning aboard vessels requires an in-depth understanding and knowledge of a number of moving parts, including the vast array of technology aboard vessels and its limits, how crew are trained and operate aboard vessels, what vessels do and how everything and everybody, working together, responds to emergencies—

which admittedly do happen in marine operations. This highly technical exercise requires a hands-on approach to minimum complement assessment and determination, and proceeding simply with trying to layer the Muster List over the A Matrix and then over subsection 207(4) of the MPR, while referencing safety policies and procedures yet without cross-referencing the MSM Risk Assessment Report and the tabletop exercise, is an exercise not for the faint of heart. I understand, however, that without reasons for the decision to issue the C Licence, this is all we have for the purposes of judicial review.

(4) Was it unreasonable for Transport Canada to decide that a five-person crew could perform the evacuation procedures required by the LSER as set out in subsection 207(5) of the MPR?

[91] The Union argues that the documentation submitted by BC Ferries does not satisfy the statutory requirements of an evacuation plan. It points to comments made in various marine incident reports by the TSB regarding specific muster lists on other vessels and the decision by Transport Canada not to require a live safety drill as part of the MSM determination process.

(a) Muster List

[92] Subsection 207(5) of the MPR requires that a passenger-carrying vessel has sufficient crew to implement an evacuation procedure that is compliant with the LSER. The only other statutory requirement relating to evacuation plans is section 111 of the LSER, which specifies that the evacuation procedure must provide for evacuation within 30 minutes after the abandon-ship signal is given.

[93] The Union argues that the Muster List and supporting documents submitted by BC Ferries do not satisfy the requirement for an evacuation plan under subsection 207(5) of the MPR. The Union submits that the Muster Lists are not an evacuation procedure and do not provide any basis for Transport Canada to be able to determine whether the vessel can be evacuated in under half an hour. More specifically, the Union submits that the Muster Lists for evacuation are not adequate because they do not contain direction on:

i. how and by whom all spaces of the vessel would be initially searched and cleared of passengers;

ii. how to quickly arrive at an accurate head count at the muster station;

iii. how the need to assist people with injuries or disabilities would be addressed; and

iv. how and by whom any missing passengers would be located and rescued.

[94] For this argument, the Union relies heavily on reports of the TSB, which has exclusive jurisdiction to inquire into transportation accidents and investigations pursuant to subsection 14(3) of the *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3. I appreciate that the TSB reports were submitted to provide the Court with background on the importance of having sufficient crew during evacuation situations and the possible consequences when such is not the case. I also agree with the Union that subsection 207(5) of the MPR is limited in terms of requirements. However, I am not convinced that the SMT failed to properly assess the plan put forward by BC Ferries. The SMD applications included detailed information regarding the allocation of crew during evacuation and the tasks

that each would undertake. Further, leaving aside for now the issue of whether it was unreasonable to stop using live drills in the presence of marine safety inspectors for the purposes of the determination of the MSM level, the evidence of BC Ferries shows that crew members (although maybe not necessarily Union executives) did participate in "time-based performance drills . . . to assess the execution of safety functions with different crew levels" and provided input in the risk assessment phase, which then fed into the preparation of the MSM Risk Assessment Report demonstrating, as seen from the tabletop exercise submitted by BC Ferries, that the Island Class ferries could be evacuated in less than 20 minutes from the abandon-ship signal. On the basis of this documentation, the SMT found that a five-person crew satisfies the requirement for the implementation of an evacuation plan under subsection 207(5) of the MPR. I see nothing unreasonable with such a finding.

(b) Evacuation Drills

[95] The Union challenges Transport Canada's decision to not systematically require evacuation and safety drills under the new MSM assessment process and submits that in the circumstances of this case, it was unreasonable for Transport Canada to have issued the C Licence without the benefit of live drills so as to assess whether the crew levels were sufficient to perform an evacuation procedure. More specifically, the Union argues that considering the deficient record before the SMT and the apparent inconsistencies between the A Matrix and the Muster Lists provided by BC Ferries, the SMT should have directed that a live drill be performed. The Union relies again on reports from the TSB to support the proposition that drills are an important part of MSM level determination.

[96] Considering my previous conclusions, it is not necessary to address this issue. First, I do not share the Union's point of view on the purported inconsistencies that it has raised. In addition, I have not been convinced that the Muster List and other documentation submitted by BC Ferries leave a reasonable level of doubt as to the proper assessment of MSM levels so as to render unreasonable the failure by Transport Canada to direct that live evacuation and safety drills as part of the assessment process be undertaken before a marine safety inspector, thereby rendering the decision to issue the SMD also unreasonable.

[97] In the end, I appreciate the Union's plea and am mindful of the consequences of vessels being understaffed; I cannot disagree with the Union when it argues that there have been too many incidents where one or two additional crew may have resulted in better outcomes during marine emergencies and that the TSB reports are replete with recommendations on safe manning requirements, in particular as regards clear, complete and safe evacuation procedures. However, as is the case with the issue of shifting areas of marine regulatory oversight to classification societies, the principles underlying the determination of minimum safe manning and how those principles are reflected in the regulations are matters of policy and are better left to government with input from marine industry stakeholders and the public. As stated earlier, the Union has not sought judicial review of the new MSM assessment process. The role of the Court in the present context is limited to judicial oversight of administrative decisions in line with existing statutory and regulatory requirements, with little opportunity to address the larger policy considerations that underscore the appropriateness of such decisions. Transport Canada continues to have the discretion and ability to direct that evacuation and safety drills be undertaken when assessing MSM levels. I cannot say how the elimination of live drills in front of the marine safety inspector

in favour of tabletop exercises and "validation through muster lists" moves the marine safety imperative forward, however, in this case, I have not been convinced that the failure to conduct such drills rendered the decision to issue the C Licence unreasonable under the circumstances. Safety drills are still being undertaken in compliance with the vessels' SMS, just not necessarily with a Transport Canada marine safety inspector present.

[98] On the whole, I have not been shown by the Union where Transport Canada did not comply with its statutory duties and I have not been convinced that the MSM levels determined in accordance with the A Matrix do not comply with the MPR. Therefore, I see nothing unreasonable with the decision of Transport Canada to issue the C Licence. The Union's application for judicial review will therefore be dismissed.

## V. Costs

[99] As for costs, the Minister and the Union have reached an agreement: costs should be set at $2,000 per day for the first two days, with an additional $1,000 for costs if the matter went a third day, plus reasonable disbursements and applicable taxes. As regards BC Ferries, the Union proposes that since the corporation played a lesser role in these proceedings, costs between them should be limited to $1,000 per day plus reasonable disbursements and applicable taxes. The hearing lasted three days. BC Ferries takes issue with any suggestion that it played a lesser role and, if successful, is prepared to accept $8,000 in costs. The issue of costs is discretionary. I accept that BC Ferries has put together a considerable evidentiary record, however at the hearing, its submissions were limited only to the issue of the appropriate standard of review, supplementing Transport Canada's submissions that had already been made. During the hearing,

the heavy lifting as regards the defence of Transport Canada's decision to issue the C Licence was taken up by Transport Canada. Under the circumstances, I am not prepared to award BC Ferries the costs that it seeks. Rather, I consider the agreement entered into between the Minister and the Union is also appropriate, under the circumstances, with respect to what BC Ferries would be entitled.

**JUDGMENT in T-655-20**

**THIS COURT'S JUDGMENT is as follows**:

1. The application for judicial review is dismissed.

2. Costs in the amount of $5,000, all inclusive, will be paid by the applicant to each of the respondents.

"Peter G. Pamel"
Judge

**ANNEX**

*Marine Personnel Regulations*, SOR/2007-115

| **Safe Manning Requirements** | **Exigences relatives aux effectifs de sécurité** |
|---|---|
| 202(1) The authorized representative of a Safety Convention vessel shall ensure that the vessel meets the safe manning requirements established for the vessel by the Administration in accordance with IMO Resolution A.890(21), Principles of Safe Manning, or any other resolution that replaces it. | 202(1) Le représentant autorisé d'un bâtiment assujetti à la Convention sur la sécurité veille à ce que ce bâtiment soit conforme aux exigences relatives aux effectifs de sécurité, établies par l'Administration pour ce bâtiment conformément à la résolution A.890(21) de l'OMI, intitulée Principes à observer pour déterminer les effectifs de sécurité, ou à toute autre résolution qui la remplace. |
| (2) If one of the safe manning requirements established in accordance with subsection (1) sets out that a person shall hold a certificate, the certificate shall be | (2) Si l'une des exigences relatives aux effectifs de sécurité établies conformément au paragraphe (1) prévoit qu'une personne doit être titulaire d'un brevet ou d'un certificat de compétence, le brevet ou le certificat doit : |
| (a) issued or endorsed by the Administration; and | a) être délivré par l'Administration ou être assorti d'un visa délivré par celle-ci; |
| (b) endorsed as meeting the requirements of the STCW Convention. | b) être assorti d'un visa attestant sa conformité aux exigences de la Convention STCW. |
| (3) The authorized representative of a Canadian vessel shall apply to the | (3) Le représentant autorisé d'un bâtiment canadien doit demander au ministre et celui- |

Minister for the following document and the Minister shall issue the document following that application:

ci délivre, suite à cette demande :

(a) in the case of a Safety Convention vessel, a Safe Manning Document that complies with IMO Resolution A.890(21), Principles of Safe Manning, or any other resolution that replaces it; and

a) dans le cas d'un bâtiment assujetti à la Convention sur la sécurité, un document spécifiant les effectifs de sécurité qui est conforme à la résolution A.890(21) de l'OMI, intitulée Principes à observer pour déterminer les effectifs de sécurité, ou de toute autre résolution qui la remplace;

(b) in the case of a vessel that is not a Safety Convention vessel and that is required to carry an inspection certificate, a Safe Manning Document, valid for a maximum of 5 years after the day of its issuance, that specifies

b) dans le cas de tout bâtiment autre qu'un bâtiment qui est assujetti à la Convention sur la sécurité et qui est tenu de transporter un certificat d'inspection, un document spécifiant les effectifs de sécurité, valide pour une période d'au plus cinq ans après la date de sa délivrance, dans lequel figurent les exigences suivantes :

(i) the minimum number of members of the complement,

(i) le nombre minimal de membres de l'effectif,

(ii) the certificates required to be held by the members of the complement,

(ii) les brevets ou certificats de compétence dont doivent être titulaires les membres de l'effectif,

(iii) any endorsements, conditions or limitations on the certificates referred to in subparagraph (ii),

(iii) le cas échéant, les visas, conditions ou restrictions figurant sur les brevets ou certificats de compétence visés au sous-alinéa (ii),

(iv) the voyages that the vessel is authorized to engage on, and

(iv) la description des voyages que le bâtiment est autorisé à effectuer,

(v) if applicable, the number of passengers that the vessel is authorized to have on board.

(v) le cas échéant, le nombre de passagers que le bâtiment est autorisé à transporter.

(4) Paragraph (3)(b) does not apply until the later of

(4) L'alinéa (3)b) ne s'applique qu'à compter de la date du dernier des événements suivants à survenir :

(a) the date of the next periodical inspection of the vessel, and

a) la première inspection périodique du bâtiment;

(b) 1 year after the day on which this section comes into force.

b) un an après l'entrée en vigueur du présent article.

(5) The authorized representative of a Canadian Safety Convention vessel or a vessel that is required to carry an inspection certificate shall ensure that the Safe Manning Document issued by the Minister for that vessel under subsection (3) is carried on board.

(5) Le représentant autorisé d'un bâtiment canadien qui est assujetti à la Convention sur la sécurité ou d'un bâtiment qui est tenu de transporter un certificat d'inspection veille à ce que soit à bord le document spécifiant les effectifs de sécurité qui a été délivré par le ministre pour ce bâtiment en vertu du paragraphe (3).

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[…]

**Minimum Complement**

**Effectif minimal**

207(1) The authorized representative of a vessel shall ensure that the minimum complement of the vessel meets the requirements of this section.

207(1) Le représentant autorisé d'un bâtiment veille à ce que l'effectif minimal de ce bâtiment soit conforme aux exigences du présent article.

(2) A person performing the duties of a position listed on the Safe Manning Document may be assigned to various duties in order to meet the requirements of more than one provision of this section.

(2) Toute personne exerçant les fonctions d'un poste énuméré dans le document spécifiant les effectifs de sécurité peut être assignée à diverses fonctions de façon à satisfaire aux exigences de plus d'une disposition du présent article.

(3) The minimum complement of a vessel shall be sufficient in number to ensure compliance with the requirements set out in sections 320 to 322 and shall consist of

(3) L'effectif minimal d'un bâtiment doit être suffisant en nombre pour satisfaire aux exigences prévues aux articles 320 à 322 et être composé des personnes suivantes :

(a) the master;

a) le capitaine;

(b) if required by paragraph 212(4)(b), the chief mate;

b) si requis par l'alinéa 212(4)b), un premier officier de pont;

(c) a person in charge of the machinery, except if the vessel

c) une personne chargée des machines du bâtiment, sauf dans le cas des bâtiments suivants :

(i) is a passenger-carrying vessel and has a propulsive power of not more than 75 kW,

(i) les bâtiments qui sont des bâtiments transportant des passagers et dont la puissance de propulsion est d'au plus 75 kW,

(ii) is not a passenger-carrying vessel and has a propulsive power of not more than 750 kW, or

(ii) les bâtiments qui ne sont pas des bâtiments transportant des passagers et dont la puissance de propulsion est d'au plus 750 kW,

(iii) is exempted under section 217 from the application of sections 218 to 226;

(iii) les bâtiments exemptés de l'application des articles 218 à 226 en vertu de l'article 217;

(d) the persons required to keep

d) les personnes qui sont tenues d'effectuer les activités suivantes :

(i) the deck watch as set out in sections 213 to 216,

(i) le quart à la passerelle tel qu'il est prévu aux articles 213 à 216,

(ii) the engineering watch as set out in sections 223 to 225, and

(ii) le quart dans la salle des machines tel qu'il est prévu aux articles 223 à 225,

(iii) the radio watch as set out in sections 266 and 267;

(iii) la veille radioélectrique telle qu'elle est prévue aux articles 266 et 267;

(e) if the *Vessel Fire Safety Regulations* require that the vessel be provided with a fire patrol, a sufficient number of persons to ensure compliance with those Regulations;

e) si le *Règlement sur la sécurité contre l'incendie des bâtiments* exige que le bâtiment ait un service de ronde d'incendie, un nombre suffisant de personnes pour satisfaire aux exigences de ce règlement;

(f) if the vessel is not a fishing vessel and is engaged on a voyage of a duration of more than three days that is an unlimited voyage or a near coastal voyage, Class 1, a person designated to take charge of medical care on board the vessel who is

f) si le bâtiment n'est pas un bâtiment de pêche et s'il effectue un voyage d'une durée de plus de trois jours qui est un voyage illimité ou un voyage à proximité du littoral, classe 1, une personne désignée pour assumer la responsabilité des soins médicaux à bord du bâtiment, laquelle est :

(i) a physician, if the vessel is carrying 100 or more crew members, or

(i) un médecin, lorsque le bâtiment transporte au moins 100 membres d'équipage,

(ii) qualified in accordance with paragraph 205(8)(b) if the vessel is carrying less than 100 crew members;

(ii) une personne qualifiée conformément à l'alinéa 205(8)b), lorsque le bâtiment transporte moins de 100 membres d'équipage;

(g) a person designated to provide first aid on board the vessel, that person being qualified in accordance with subsection 205(9);

g) une personne désignée pour prodiguer les premiers soins à bord du bâtiment, laquelle est qualifiée conformément au paragraphe 205(9);

(h) for each fast rescue boat on board the vessel, two teams of

h) pour chaque canot de secours rapide à bord, deux équipes composées des personnes suivantes :

(i) two persons holding a Proficiency in Fast Rescue Boats certificate or endorsement, if the vessel is engaged on a near coastal voyage, Class 2 or a sheltered waters voyage, and

(i) deux personnes titulaires du brevet ou du visa d'aptitude à l'exploitation des canots de secours rapides, lorsque le bâtiment effectue un voyage à proximité du littoral, classe 2 ou un voyage en eaux abritées,

(ii) three persons holding a Proficiency in Fast Rescue Boats certificate or endorsement, if the vessel is engaged on an unlimited voyage or a near coastal voyage, Class 1; and

(ii) trois personnes titulaires du brevet ou du visa d'aptitude à l'exploitation des canots de secours rapides, lorsque le bâtiment effectue un voyage illimité ou un voyage à proximité du littoral, classe 1;

(i) any additional persons who may be required on board by the ordinary practice of seamen for normal safe operation of the vessel, including docking, anchoring and fuelling.

i) toute personne supplémentaire dont la présence à bord peut être nécessaire, selon la pratique ordinaire des marins, à l'exploitation normale et sécuritaire du bâtiment, notamment à l'accostage, à l'ancrage et à l'avitaillement.

(4) The minimum complement of a vessel, in order to deal with an emergency situation, shall consist of

(4) L'effectif minimal d'un bâtiment est composé des personnes suivantes pour répondre à une situation d'urgence :

(a) a master;

a) un capitaine;

(b) the persons required to keep

b) les personnes qui sont tenues d'effectuer les activités suivantes :

(i) the deck watch as set out in sections 214 to 216, but the additional person on board a vessel of less than 300 gross tonnage and the second additional person on board a vessel of less than 3 000 gross tonnage may also be assigned to other duties,

(i) le quart à la passerelle tel qu'il est prévu aux articles 214 à 216, mais la personne supplémentaire à bord d'un bâtiment d'une jauge brute de moins de 300 et la deuxième personne supplémentaire à bord d'un bâtiment d'une jauge brute de moins de 3 000 peuvent également être affectées à d'autres tâches,

(ii) the engineering watch as set out in sections 224 and 225, and

(ii) le quart dans la salle des machines tel qu'il est prévu aux articles 224 et 225,

(iii) the radio watch as set out in section 266;

(iii) la veille radioélectrique telle qu'elle est prévue à l'article 266;

(c) the principal communicator as set out in section 267; and

c) le préposé principal aux transmissions tel qu'il est prévu à l'article 267;

(d) the persons needed to simultaneously carry out the following tasks:

d) les personnes nécessaires pour effectuer simultanément les tâches suivantes :

(i) operate and use the fire extinguishing equipment and systems required by or approved under the *Vessel Fire Safety Regulations* to fight a fire at any one location on the vessel,

(i) faire fonctionner et utiliser l'équipement et les systèmes d'extinction d'incendie exigés par le *Règlement sur la sécurité contre l'incendie des bâtiments* ou approuvés en vertu de ce règlement afin de lutter contre un incendie à tout endroit à bord du bâtiment,

(ii) prepare for launching the survival craft carried in accordance with the *Life*

(ii) parer pour la mise à l'eau des bateaux de sauvetage qui sont à bord conformément au

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| *Saving Equipment Regulations*, | *Règlement sur l'équipement de sauvetage*, |
| (iii) operate the vessel's pumping and emergency power system, | (iii) faire fonctionner le système de pompage et d'alimentation en électricité de secours, |
| (iv) direct and control the passengers who are on board, and | (iv) diriger et encadrer les passagers qui sont à bord, |
| (v) provide communication between the person in immediate charge of the vessel and the persons directing and controlling the passengers. | (v) assurer la communication entre la personne directement responsable du bâtiment et les personnes chargées de diriger et d'encadrer les passagers. |
| (5) The minimum complement of a vessel shall consist of a sufficient number of persons to carry out an evacuation and, in the case of a passenger-carrying vessel, to implement the evacuation plan required by the *Life Saving Equipment Regulations*. | (5) L'effectif minimal d'un bâtiment est composé des personnes en nombre suffisant pour effectuer l'évacuation et, dans le cas d'un bâtiment transportant des passagers, pour mettre en œuvre le plan d'évacuation exigé par le *Règlement sur l'équipement de sauvetage*. |
| (6) Subject to subsection (7), the minimum complement of a vessel, in order to deal with a post-abandonment situation, shall consist of a sufficient number of certificated persons to meet the requirements of sections 208 to 210. | (6) Sous réserve du paragraphe (7), l'effectif minimal d'un bâtiment est composé, pour faire face à la situation après l'abandon du bâtiment, des personnes brevetées en nombre suffisant pour satisfaire aux exigences des articles 208 à 210. |
| (7) In order to deal with an evacuation situation or a post-abandonment situation, the master may, despite subsection 209(2), assign one team for each fast rescue boat | (7) Afin de faire face à une situation d'évacuation ou à une situation survenant après l'abandon du bâtiment, le capitaine peut, malgré le paragraphe 209(2), au lieu des |

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| carried on board instead of the two teams required by that subsection. | deux équipes exigées par ce paragraphe assigner une équipe à chacun des canots de secours rapides qui se trouvent à bord. |

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-655-20 |
| **STYLE OF CAUSE:** | BRITISH COLUMBIA FERRY AND MARINE WORKERS' UNION v CANADA (MINISTER OF TRANSPORT) AND BRITISH COLUMBIA FERRY SERVICES INC. |
| **PLACE OF HEARING:** | HELD BY VIDEOCONFERENCE |
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