Date: 20081003

Docket: T-875-06

Citation: 2008 FC 1094

Ottawa, Ontario, October 3, 2008

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA

Appellant

and

THE ADMINISTRATOR OF THE
SHIP-SOURCE OIL POLLUTION FUND

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a statutory appeal from a decision of the Administrator of the Ship-source Oil Pollution Fund (the Administrator) pursuant to subsection 87(2) of the *Marine Liability Act*, 2001, c-6 (the MLA). The appeal concerns the adequacy of an offer of compensation offered to Transport Canada by the Administrator in the amount of $20,000 for the cleanup and disposal of the wooden tug boat "Mary Mackin" in February 2005.

I. Factual Background

[2] The "Mary Mackin" (the Vessel) was a wooden tugboat constructed in the 1940s and reworked in the 1960s. The Vessel had been retired from active service since the early 1980s.

[3] The ownership of the Vessel is in dispute. The Appellant submits that the tugboat was owned by a private individual named Ronald Cook. The *amicus curiae* appointed by the Court, J. William Perrett, states that the registered owner was Blue Whale Yacht Charter and Sales Ltd., but the company was dissolved by the BC Registrar of Companies in 1989. The Administrator alleges that the registered owner was Blue Whale Yacht Charter and Sales Ltd. and the president of that company was Mr. Cook.

[4] On March 10, 1997, the Vessel was taken in tow by the Canadian Coast Guard after it was found drifting unsafely toward a dock in Saanichton, British Columbia. The Receiver of Wrecks ordered the Vessel removed pursuant to section 16 of the *Navigable Waters Protection Act*, R.S. 1985, c. N-22 (the NWPA) and the Vessel was delivered to the Institute of Ocean Sciences (IOS), a federal government facility in Patricia Bay, British Columbia. The Vessel was collected by Mr. Cook on April 14, 1997 and moved to Bazan Bay near James Island.

[5] On February 12, 1998, the Vessel appeared to be unmanned, adrift and endangering a ferry dock in Sidney, British Columbia. Since the Vessel had no anchoring capabilities, it was towed to the IOS facility, where it was tied alongside another vessel.

[6] On February 16, 1998, the Vessel was detained by Transport Canada under subsection 310(1) of the then *Canada Shipping Act*, R.S., c. S-9, s.1. This was apparently done to prevent Mr. Cook from attempting to remove the Vessel in an unsafe manner, by requiring him to provide a plan for its safe removal from the IOS facility.

[7] The Appellant states that Mr. Cook was contacted to collect what was allegedly his tugboat. In response, Mr. Cook apparently intended to recover the Vessel as soon as he could.

[8] From the time it was taken to the IOS facility, the Vessel had to be pumped daily in order to stay afloat. Approximately 7,000 gallons of water were being pumped per day by IOS personnel, at a cost of $432 per week.

[9] A survey by Meadows Marine Surveyors Ltd. (Meadows) in April 1998, reported the presence of 10,000 gallons of tankage aboard the Vessel and that the fuel tanks were corroding. The surveyor stated that "there is no value remaining in the vessel and its equipment."

[10] Another survey completed around the same time by J.R. Down noted that while the fuel tanks were not sounded, he was struck by the quantity of old oil present within the engine room and the bilges.

[11] On October 31, 1998, James Naylor, the acting Superintendent of Transport Canada's Navigable Waters Protection Program and representative of the Receiver of Wrecks at the time, decided that the Vessel should be beached to prevent her from sinking.

[12] On November 5, 1998, the Vessel was boarded by G. Kosanovich of Transport Canada, his solicitor, and the surveyor Maurice Gagne of Horseshoe Bay Marine Group (Horseshoe Bay). The report by Horseshoe Bay noted that the Vessel was in danger of breaking up and that there was a "strong smell of fuel coming from the engine room …".

[13] Noting that there was a potential pollution hazard, Horseshoe Bay recommended placing a containment boom around the Vessel and relocating it to the boat ramp of the ISO facility. The report also recommended removing the contaminants and then demolishing the Vessel, at an estimated total cost of $120,000 for the project.

[14] After the Vessel had been beached, the Appellant advised Mr. Cook that the Vessel had been detained pursuant to the then *Canada Shipping Act* and could not be moved until released from detention.

[15] On November 17, 1999, Captain Donald Mackenzie, while carrying out a further survey of the Vessel to study the possibility of moving it from its present location, found a considerable amount of water inside the Vessel. He also noticed oil on the water inside the Vessel, but not outside the hull.

[16] Upon observing oil on the surface of the water inside the Vessel, Captain Mackenzie contacted Mr. Cook, who advised him that the Vessel's aft fuel tank had been used as a slop tank for used oil and contaminated fuel for several years.

[17] Captain Mackenzie believed that the Vessel was not hogged, sagged or twisted and therefore could be refloated. He estimated the cost of raising the Vessel, patching it and pumping out the fuel tanks at $26,867.50 not including tank truck rental, fluid disposal costs and any clean up costs.

[18] On February 20, 2004, more than five years after the Appellant had beached the Vessel, the Receiver of Wrecks wrote to Mr. Cook ordering the removal of the Vessel by April 30, 2004. This was not done.

[19] The Appellant states that Mr. Cook was extradited and incarcerated in the United States from 2002 until September 2004, but that he intended on retrieving the Vessel upon his release from custody. The Appellant claims that correspondence still continued between the Crown and Mr. Cook during his incarceration.

[20] On July 27, 2004, the Vessel caught fire and was severely damaged. Bob Gowe, acting Superintendent of the Navigable Waters Protection Program at the time, determined that, in the interests of public and maritime safety, imminent action to remove and dispose of the Vessel was necessary in accordance with section 16 of the NWPA.

[21] On August 16, 2004, Saltair Marine Services Ltd. (Saltair) estimated the cost of disposal of the Vessel to be $55,080. This was the lowest of three bids that were tendered and was accepted by Transport Canada. That bid assumed the Vessel to be clean of petroleum products.

[22] On December 22, 2004, Saltair submitted a bid to destroy the Vessel for $59,580. The request for tender said nothing about the contaminants on board.

[23] On January 6, 2005, an environmental screening report, which was required in advance of the destruction of the Vessel, concluded that "the project is not likely to cause significant adverse environmental effects." The report said nothing about the oil in the tanks aboard the Vessel. A copy of that report was provided to Saltair.

[24] During the course of the dismantling of the Vessel by Saltair, a substantial amount of oil was found aboard the tugboat. One 31,500 litre fuel tank was removed and over 1,000 litres of engine oil and a large quantity of oil soaked mud was found on the Vessel. Oil and fuel was also found in the piping system under the mud level inside the Vessel, which was not characteristic of Vessels of that era and type, but this tugboat had been reworked in the 1960s.

[25] As a result of discovering the pollutants, the plans for the demolition of the Vessel had to be redrawn, because the initial plan to lighten the hull to transport it for final demolition elsewhere

became impractical. Work was suspended on January 27, 2005 and Saltair presented an account to Transport Canada for expenditures to January 28, 2005 of $70,283.36.

[26] Demolition and clean up began again on February 3, 2005 and continued until onsite work was completed on February 15, 2005. Final waste disposal was completed on February 16, 2005.

[27] The total cost of cleaning and destroying the Vessel is stated at $223,543.88.

[28] On July 27, 2005, Transport Canada made an application for compensation from the Administrator in the amount of $223,543.88 in relation to the efforts "it took to prevent, minimize and remedy oil pollution from the Vessel."

[29] The Ship-source Oil Pollution Fund (the Fund) was established in 1989 under the then *Canada Shipping Act* and is now governed by the *Marine Liability Act* (MLA). As required by section 86 of the MLA, the Administrator investigated and assessed the claim and made an offer of compensation to the Appellant on March 21, 2006, in the amount of $20,000 on the basis that Transport Canada had been negligent in the manner in which it dealt with the pollution. By failing to remove the contaminants in the Vessel prior to its beaching in 1998, the Vessel subsequently filled with mud and eventually burned. The Administrator stated that had Transport Canada acted properly, it would only have had to spend $20,000.

[30] On May 6, 2006, Transport Canada contacted the Administrator to ask if he would disclose the report of the surveyor he retained upon which he relied to arrive at the amount of $20,000. The Administrator denied the request, saying that it was not his "usual practice".

[31] On May 23, 2006, the Crown filed a Notice of Appeal to the Federal Court pursuant to subsection 87(2) of the MLA.

[32] After the filing of the Crown's Notice of Appeal, the Administrator invoked that he was not properly named as a Respondent by the Crown because he rendered the decision under appeal. On June 19, 2007, Justice Martineau ordered that the Administrator continue "out of necessity" to be named as Respondent on the appeal since the Crown was unwilling to act as both Applicant and Respondent to its appeal. Justice Martineau also ordered that an independent counsel be appointed as an *amicus curiae* since "the Court should have the benefit of having contradictory submissions with respect to the issues debated in the appeal". On August 1, 2007, based on the joint submissions of the parties, Justice Martineau ordered that J. William Perrett be appointed to act as *amicus curiae* "to assist the Court in respect of the grounds of appeal" raised in the Crown's Notice of Appeal.

II. Issues

[33] The following questions have been raised by the Appellant:

1. What is the scope of an appeal made pursuant to subsection 87(2) of the MLA?
2. What is the appropriate standard of review for the Administrator's decision?
3. Did the Administrator err in holding that the Crown was negligent?

4. Did the Administrator's decision breach the rules of procedural fairness and evidence by relying on an undisclosed expert report?
5. If so, what is the appropriate remedy?
6. Should costs be awarded to the Crown in respect of the appeal and the *amicus curiae*'s fees and disbursements?

III. Relevant Legislation

[34] The relevant legislation is included in the Annex "A" at the end of these reasons.

IV. Analysis

[35] The Respondent has provided comments on issues 1 and 2: the scope of the appeal and the standard of review. The *amicus curiae* has decided to comment on issues 3, 4 and 5: the Crown's negligence, breach of the rules of procedural fairness and the appropriate remedy.

A. *What is the appropriate standard of review of the Administrator's decision?*

[36] For the sake of clarity in the analysis, I shall first address the issue of the appropriate standard of review, which will permit a correct analysis of the scope of the appeal.

[37] In the recent decision of *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, the Supreme Court of Canada concluded that there are only two standards of review: correctness and reasonableness. The Court described the new standard of reasonableness at paragraph 47:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. …

[38] The Appellant properly states that although the case at bar constitutes a statutory appeal rather than a judicial review application, a standard of review analysis should still be undertaken, since the jurisprudence does not seem to clearly determine the degree of deference to be accorded in this particular situation.

[39] The Appellant submits that the appropriate standard of review is that of correctness, whereas the Respondent trusts that reasonableness is the appropriate choice. For the reasons below, I am of the opinion that the decision of the Administrator should be reviewed under the standard of reasonableness.

(1) Statutory right of appeal and privative clause

[40] There is a statutory right of appeal of the Administrator's decision pursuant to subsection 87(2) of the MLA. Furthermore, the decision of the Administrator to offer compensation pursuant to section 86 is not protected by a privative clause.

[41] The Appellant argues that the presence of an appeal as of right and the absence of a privative clause illustrate the intention of Parliament to expose the Administrator's decisions to searching court scrutiny and oversight. The Respondent states that the absence of a privative clause is a neutral factor in this situation.

[42] I agree with the Respondent that the absence of a privative clause "does not imply a high standard of scrutiny" and the silence of the statute on the question of review constitutes a neutral factor (see *Dr. Q v. College of Physicians and Surgeons of British Columbia*, 2003 SCC 19, [2003] 1 S.C.R. 226 at paragraph 27 citing *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982 at paragraph 30).

(2) Expertise of the Administrator

[43] The question to be decided by the Administrator is the adequacy of the offer of compensation to be made to for the expenses incurred to "prevent, repair, remedy or minimize oil pollution damage from the ship…" (section 51 of the MLA) as well as the evaluation of possible negligence of the Crown in assessing the appropriate compensation.

[44] Although the provisions of the MLA do not require that the Administrator possess any expert qualifications or particular experience, the role he routinely plays contributes to developing a particular expertise. As stated in *Dr. Q*, above, at paragraph 29:

> … an administrative body might be so habitually called upon to make findings of fact in a distinctive legislative context that it can be said to have gained a measure of relative institutional expertise.

[45] The Appellant's claim that the Federal Court, sitting in this case as the Admiralty Court, possesses all the necessary expertise to assess whether an individual was negligent in a maritime matter does not consider the entire issue and inappropriately dismisses the Administrator's discretionary expertise in investigating and assessing a situation and making an offer of compensation.

[46] The Administrator has developed an expertise in the area of maritime oil pollution and the investigation of facts which lead to appropriate offers of compensation. The fact that he can call upon professional, technical and other advice and assistance in the performance of his duties, pursuant to section 81 of the MLA, does not diminish his expertise. Therefore, I think that this factor attracts deference.

(3) Purpose of the statute

[47] Section 51 and subsection 86(3) of the MLA describe the role of the statute to evaluate the appropriate offer of compensation by considering various factors, such as the negligence of the claimant.

[48] The Appellant has shown that the functions of the Administrator in investigating and assessing claims are clearly defined in the statute. The Respondent replies that potential scope of the decisions of the Administrator is extensive and has great impact.

[49] Although the scope of the functions of the Administrator is rather limited, the ability of the Administrator to investigate and assess claims is far-reaching, notably the Administrator's duty to make offers of compensation "for whatever portion of the claim the Administrator finds to be established." This factor points toward showing more deference toward the Administrator's decision.

(4) Nature of the problem

[50] The Appellant submits that since its argument on the appeal is that the Administrator erred by applying the incorrect standard of care in his negligence analysis, this represents an extricable and pure question of law. According to the Respondent, this is a decision involving mixed fact and law, therefore, the reasonableness standard "must apply to the review of questions where the legal and factual issues are intertwined and cannot be readily separated" (*Dunsmuir*, above, at paragraph 53).

[51] In the case at bar, although there is no privative clause, the expertise of the Administrator in applying the discrete and administrative compensation regime of the Fund is indisputable. The Administrator regularly completes investigations and draws conclusions to offer appropriate compensation, pursuant to its mandate under the MLA.

[52] Moreover, the nature of the legal question at issue is not one that is of central importance to the legal system and outside the specialized expertise of the Administrator. Deference is also applicable here.

[53] As stated in *Dunsmuir*, above, for a decision to be reasonable there must be justification, transparency and intelligibility within the decision making process. The decision must fall within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law.

B. *What is the scope of the appeal?*

[54] The MLA is silent upon the scope and form of the appeal. The Appellant submits that the fact that this is a statutory appeal and not a judicial review application is important because the jurisdiction of a court on appeal is much broader than the jurisdiction of a court hearing a judicial review application. The Appellant considers that every statutory appeal is actually a "re-hearing" of the decision under appeal whereby the matter is removed from the lower tribunal and put to the court "for the purpose of testing the soundness of the decision" at issue (see *Srivastava v. Canada (Minister of Manpower and Immigration)*, [1973] F.C. 138 (F.C.A.) at paragraph 21).

[55] In reply, the Respondent cites a number of cases concerning the Ontario Securities Commission in proposing that an appeal of an administrative decision does not equate to a trial *de novo*, even when the statute is silent (*Re C.T.C. Dealer Holdings Ltd. et al. and Ontario Securities Commission et al.*, 37 D.L.R. (4th) 94, (1987) 59 O.R. (2d) 79 (Ont. H.C.); *Royal Trustco Ltd. et al. and Ontario Securities Commission*, 148 D.L.R. (3d) 301, (1983) 42 O.R. (2d) 147 (Ont. H.C.); *Denison Mines Ltd. and Ontario Securities Commission*, 122 D.L.R. (3d) 98, (1980) 32 O.R. (2d) 469, 122 D.L.R. (3d) 98 (Ont. H.C.). The grounds of statutory appeal are variable and "Where there is an appeal, […] its nature must be determined by reference to the statute that creates it" (*Srivastava*, above, at paragraph 20). The objective of the appeal in the case at bar is that the Court

must only consider whether each part of the claim is for pollution prevention or remediation costs as defined in subsection 85(1) and whether part of the claimed amounts arose due to the negligence of the Appellant.

[56] In *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722, the Court stated at paragraphs 31 and 32 that:

> … In principle, a court is entitled, on appeal, to disagree with the reasoning of the lower tribunal.
>
> However, within the context of a statutory appeal from an administrative tribunal, additional consideration must be given to the principle of specialization of duties. …

Considering the expertise of the Administrator, deference must be shown in this case and the Court must not substitute its decision to the Administrator's unless an unreasonable conclusion has been demonstrated.

C. *Negligence of the Crown*

(1) Reasonable shipowner standard

[57] The Appellant submits that the error of law committed by the Administrator is the assessment of the Crown's conduct in accordance with a "reasonable shipowner" standard because the Crown is not the owner of the Vessel. Rather, the Minister of Transport was a public regulator exercising a statutory discretion under the section 16 of the NWPA in respect of a privately owned Vessel in order to prevent it from becoming an obstruction to navigation.

[58] According to the Appellant, the Minister's delegates exercised their statutory discretion in a reasonable manner in declining to demolish and remove the privately owned Vessel until it posed a clear and imminent danger to navigation. The statutory duty to remove the oil from the Vessel pursuant to section 51 of the MLA rested on the owner of the ship and not on the Crown as public regulator.

[59] The *amicus curiae*, on the other hand, submits that the MLA does not place such a statutory obligation on the owner but instead, provides that the owner is liable for costs incurred by other parties "to prevent, repair, remedy or minimize oil pollution damage from the ship…" Under the *Canada Shipping Act*, "Steamship Inspectors" and "Pollution Prevention Officers" are appointed to administer the regulations enacted under the Act. The *amicus curiae* states these Inspectors and Prevention Officers have the required knowledge and expertise to ensure that ships are safe, meaning that Transport Canada, as a specialized regulator, possesses at least all of the knowledge and expertise, if not more, of a "reasonable shipowner.

[60] The *amicus curiae* further adds that during the time the Appellant had possession of the Vessel between February 12, 1998 until October 31, 1998, there was sufficient information available from its own records and independent surveyors to know that there was fuel and oil on board the Vessel and that a determination of the amount of fuel and oil on board was required. In particular, since personnel pumped 7,000 gallons of water per day from the Vessel, the Appellant should have known or determined that there was fuel and contaminants on board, making the Vessel unsafe (see reports by Meadows, April 1998 and Horseshoe Bay, November 1998).

2. Crown Liability and Proceedings Act; Owner as *bona vacantia*; gratuitous bailment

[61] The Court need not address the Appellant's argument on the "reasonable shipowner" standard and the *amicus curiae's* arguments on the issues mentioned in the above heading because it finds that the lengthy delay before sending out the Removal Order and disposing of the contaminants on board the Vessel by the Appellant was unreasonable in the circumstances. The Appellant was negligent in waiting five years before responding to its statutory obligations under the MLA. This is especially true since Mr. Cook's intention to retrieve the Vessel was not clear and the Appellant knew or should have known there was fuel and oil on board the Vessel.

[62] The Appellant had the knowledge, expertise and statutory powers (subsection 678(1) of the *Canada Shipping Act*) to destroy the vessel and its content long before it did to prevent pollution damage from the vessel. Their delay in exercising its statutory powers in a timely fashion increased the Appellant's claim in an unnecessarily way.

D. *Did the Administrator's decision breach procedural fairness and the rules of evidence?*

[63] As stated in *Cardinal v. Kent Institution*, [1985] 2 S.C.R. 643 at paragraph 14, there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of legislative nature and which affects the rights, privileges or interests of an individual. In *Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, the Court stated that the duty of fairness is flexible and variable and depends on an appreciation of the context of the particular statute and the rights affected.

[64] The Appellant states that in assessing the Crown's claim for compensation and making an offer pursuant to that assessment, the Administrator owed a duty to the Crown to be procedurally fair. The decision was administrative in nature and affected the rights, privileges or interests of Her Majesty the Queen in the form of the right to compensation from the Fund pursuant to sections 85 and 86 of the MLA in respect of measures taken to prevent, repair, remedy or minimize oil pollution damage from a ship.

[65] The *amicus curiae* admits that the Administrator owed the Appellant a duty of fairness in the consideration of the Appellant's claim, but submits that such a duty of fairness did not extend to or encompass the disclosure of the results of his own investigation or the "professional, technical and other advice and assistance" that the Administrator obtained pursuant to section 81 of the MLA.

[66] The Appellant rightly submits that the right to procedural fairness means little or nothing if an affected party is not entitled to know, at a minimum, the gist of the proofs and the arguments submitted contrary to its position (see *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105 at paragraph 36; *Payne v. Ontario Human Rights Commission*, 192 D.L.R. (4th) 315 (Ont. C.A.) at paragraph 156). Even if the Administrator followed a practice of not disclosing the results of his investigation and providing a claimant the opportunity to respond, I find that in this case it was unreasonable to do so.

[67] The Appellant adds that the breach of procedural fairness concerning the undisclosed evidence relied upon by a decision-maker is amplified when the evidence is claimed to be expert evidence because the reliance upon undisclosed expert evidence amounts to the taking of judicial notice (or official notice) of matters that, by their very nature, are neither notorious nor capable of immediate and accurate demonstration (see *R. v. Find*, [2001] 1 S.C.R. 863 at paragraphs 48 and 49). The *amicus curiae* submits that the company, J.A. Murdoch & Company Ltd. (Murdoch), hired by the Administrator did not give expert advice, but merely provided advice and assistance so that he could carry out his investigative duties.

[68] I find that the Administrator should have disclosed the Murdoch report to the Appellant before rendering its final decision. There would have been no prejudice to the Administrator if he had done so. The Appellant should have had the opportunity to comment or to respond to the Murdoch's report because it affected its claim (see *Tariku v. Canada (Minister of Citizenship and Immigration)*, 2007 FC 474, 67 Imm. L.R. (3d) 124).

E. *What is the appropriate remedy?*

[69] The Court is not in a position to evaluate the reasonableness or adequacy of the offer from the Administrator without having the benefit of the Appellant's submissions on the Murdoch report.

[70] Therefore, the appeal shall be allowed. The decision shall be quashed. The Administrator shall give the Appellant the opportunity to comment or to provide its arguments on the Murdoch report regarding the reduction of its claim due to the Minister's delay in exercising his statutory

powers. The Administrator shall make an offer of compensation to the Appellant after having considered the Appellant's arguments.

[71] I remain seized with this file.

V. Costs

[72] In its discretion, the Court will not grant costs.

JUDGMENT

THIS COURT ORDERS that:

1. The appeal be allowed. The Administrator of the Ship-source Oil Pollution Fund decision dated March 21, 2006 is quashed.

2. The Administrator of the Ship-source Oil Pollution Fund shall give the Appellant the opportunity to comment or to provide its arguments on the Murdoch report regarding the reduction of its claim due to the Minister's delay in exercising his statutory powers. The Appellant shall provide its comments or arguments to the Administrator no later than 30 days from the date of this judgment.

3. The Administrator of the Ship-source Oil Pollution Fund shall send an offer of compensation to the Appellant after having considered the Appellant's comments and arguments no later than 30 days after the delay mentioned in paragraph 2 above.

4. If the Appellant is unsatisfied with the offer made by the Administrator, it may ask the Judicial Administrator to set a date for a special sitting in Vancouver. Before doing so, the parties shall, on consent, set a schedule for the remaining steps to be completed before the hearing. Upon failure to do so, one of the parties may ask for a teleconference with the Court to establish such a schedule.

5. No costs are awarded.

"Michel Beaudry"

Judge

ANNEX "A"

RELEVANT LEGISLATION

Marine Liability Act: Liability for pollution and related costs

51. (1) Subject to the other provisions of this Part, the owner of a ship is liable

(a) for oil pollution damage from the ship;
(…)

51. (1) Sous réserve des autres dispositions de la présente partie, le propriétaire d'un navire est responsable :

a) des dommages dus à la pollution par les hydrocarbures causée par le navire;
(…)

Marine Liability Act: Claims filed with the Administrator

85. (1) In addition to any right against the Ship-source Oil Pollution Fund under section 84, a person who has suffered loss or damage or incurred costs or expenses referred to in subsection 51(1) in respect of actual or anticipated oil pollution damage may file a claim with the Administrator for the loss, damage, costs or expenses.

85. (1) En plus des droits qu'elle peut exercer contre la Caisse d'indemnisation en vertu de l'article 84, toute personne qui a subi des pertes ou des dommages ou qui a engagé des frais mentionnés au paragraphe 51(1) à cause de dommages — réels ou prévus — dus à la pollution par les hydrocarbures peut présenter à l'administrateur une demande en recouvrement de créance à l'égard de ces dommages, pertes et frais.

(2) Unless the Admiralty Court fixes a shorter period under paragraph 92(a), a claim under subsection (1) must be made

(a) within two years after the day on which oil pollution damage occurred and five years after the occurrence that caused that damage, or

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

(2) Sous réserve du pouvoir donné à la Cour d'amirauté à l'alinéa 92a), la demande de recouvrement présentée en vertu du paragraphe (1) doit être faite :

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

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

Marine Liability Act: Duties of Administrator

86. (1) On receipt of a claim under section 85, the Administrator shall

(a) investigate and assess the claim; and

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

(2) For the purpose of investigating and assessing a claim, the Administrator has the powers of a commissioner under Part I of the Inquiries Act.

(3) In investigating and assessing a claim, the Administrator may consider only

(a) whether the claim is for loss, damage, costs or expenses referred to in subsection 85(1); and

(b) whether the claim resulted wholly or partially from

(i) an act done or omitted to be done by the claimant with intent to cause damage, or

(ii) the negligence of the claimant.

(4) A claimant is not required to satisfy the Administrator that the occurrence was caused by a ship, but the Administrator shall dismiss a claim if satisfied on the evidence that the occurrence was not caused by a ship.

(5) The Administrator shall reduce or nullify any amount that the Administrator would have otherwise assessed in proportion to the degree to which the Administrator is satisfied that the claim resulted from

86. (1) Sur réception d'une demande en recouvrement de créance présentée en vertu de l'article 85, l'administrateur :

a) enquête sur la créance et l'évalue;

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

(2) Aux fins d'enquête et d'évaluation, l'administrateur a les pouvoirs d'un commissaire nommé en vertu de la partie I de la Loi sur les enquêtes.

(3) Dans le cadre de l'enquête et de l'évaluation, l'administrateur ne prend en considération que la question de savoir :

a) si la créance est visée par le paragraphe 85(1);

b) si la créance résulte, en tout ou en partie :

(i) soit d'une action ou omission du demandeur visant à causer un dommage,

(ii) soit de sa négligence.

(4) Bien que le demandeur ne soit pas tenu de démontrer que l'événement a été causé par un navire, l'administrateur rejette la demande si la preuve le convainc autrement.

(5) L'administrateur réduit proportionnellement ou éteint la créance s'il est convaincu que l'événement à l'origine de celle-ci est attribuable :

(a) an act done or omitted to be done by the claimant with intent to cause damage; or

a) soit à une action ou omission du demandeur visant à causer un dommage;

(b) the negligence of the claimant.

b) soit à sa négligence.

Marine Liability Act: Offer of compensation

87. (2) A claimant may, within 60 days after receiving an offer of compensation from the Administrator or a notification that the Administrator has disallowed the claim, appeal the adequacy of the offer or the disallowance of the claim to the Admiralty Court, but in an appeal from the disallowance of a claim that Court may consider only the matters described in paragraphs 86(3)(a) and (b).

87. (2) Le demandeur peut, dans les soixante jours suivant la réception de l'offre d'indemnité ou de l'avis de rejet de sa demande, interjeter appel devant la Cour d'amirauté; dans le cas d'un appel du rejet de la demande, la Cour d'amirauté ne prend en considération que les faits mentionnés aux alinéas 86(3)a) et *b)*.

Navigable Waters Protection Act: Powers of the Minister

16. If, in the opinion of the Minister,

16. Le ministre peut faire enlever ou détruire, selon ses instructions, les épaves ou tout autre objet résultant du naufrage d'un bateau qui a sombré, s'est échoué ou s'est jeté à la côte et qui constituent un obstacle ou causent une obstruction qui subsiste pendant plus de vingt-quatre heures s'il estime se trouver dans l'une ou l'autre des situations suivantes :

(a) the navigation of any navigable water over which Parliament has jurisdiction is obstructed, impeded or rendered more difficult or dangerous by reason of the wreck, sinking, partial sinking, lying ashore or grounding of any vessel or part thereof or other thing,

a) la navigation dans des eaux navigables de compétence fédérale est obstruée, gênée ou rendue plus difficile ou dangereuse par le fait du bateau, de ses épaves ou de tout autre objet;

(b) by reason of the situation of any wreck, vessel or part thereof or other thing so lying, sunk, partially sunk, ashore or grounded, the navigation of any such navigable water is likely to be obstructed, impeded or rendered more difficult or dangerous, or

b) par suite de la position d'un débris ou du bateau ou de ses épaves ou de tout autre objet, la navigation dans des eaux navigables de compétence fédérale sera vraisemblablement obstruée, gênée ou rendue plus difficile ou dangereuse;

(c) any vessel or part thereof, wreck or other thing cast ashore, stranded or left on any property belonging to Her Majesty in right of Canada is an obstacle or obstruction to such use of that property as may be required for the public purposes of Canada,

c) le bateau, ses épaves, débris ou tout autre objet jetés à la côte, échoués ou laissés en un lieu appartenant à Sa Majesté du chef du Canada font obstacle ou obstruction à l'utilisation du lieu à des fins publiques fédérales.

the Minister may cause the wreck, vessel or part thereof or other thing to be removed or destroyed, in such manner and by such means as the Minister thinks fit, if the obstruction, obstacle, impediment, difficulty or danger continues for more than twenty-four hours.

Canada Shipping Act, R.S., c. 6 (3rd Supp.), s. 84

678. (1) Where the Minister believes on reasonable grounds that a ship has discharged, is discharging or is likely to discharge a pollutant, the Minister may

678. (1) Le ministre peut, s'il a des motifs raisonnables de croire qu'un rejet de polluant ou un risque de rejet est attribuable à un navire :

(a) take such measures as the Minister deems necessary to repair, remedy, minimize or prevent pollution damage from that ship, including the removal or destruction of the ship and its contents, and may sell or otherwise dispose of the ship and its contents;

a) prendre les mesures qu'il estime nécessaires pour prévenir, contrer, réparer ou réduire au minimum les dommages, voire enlever ou détruire le navire et son contenu, et disposer du navire et de son contenu;

(b) monitor the measures taken by any person to repair, remedy, minimize or prevent pollution damage from the ship; or

b) surveiller l'application de toute mesure prise par toute personne en vue de prévenir, contrer, réparer ou réduire au minimum les dommages;

(c) where the Minister considers it necessary to do so, direct any person to take measures referred to in paragraph (b), or prohibit any person from taking such measures.

c) s'il l'estime nécessaire, ordonner à toute personne de prendre les mesures visées à l'alinéa b) ou lui interdire de les prendre.

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	T-875-06
STYLE OF CAUSE:	**HER MAJESTY THE QUEEN IN RIGHT OF CANADA and THE ADMINISTRATOR OF THE SHIP-SOURCE OIL POLLUTION FUND**
PLACE OF HEARING:	Vancouver, British Columbia
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APPEARANCES:

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