Federal Court of Appeal  Cour d'appel fédérale

Date: 20190416

Docket: A-122-18

Citation: 2019 FCA 83

[ENGLISH TRANSLATION]

CORAM: **BOIVIN J.A.**
DE MONTIGNY J.A.
RIVOALEN J.A.

BETWEEN:

LAURENTIAN PILOTAGE AUTHORITY

Appellant

and

CORPORATION DES PILOTES DU SAINT-LAURENT CENTRAL INC.

Respondent

Heard at Montréal, Quebec, on February 21, 2019.

Judgment delivered at Ottawa, Ontario on April 16, 2019.

REASONS FOR JUDGMENT: DE MONTIGNY J.A.

CONCURRED IN BY: BOIVIN J.A.
RIVOALEN J.A.

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REASONS FOR JUDGMENT

DE MONTIGNY J.A.

[1] The Laurentian Pilotage Authority [the Authority or the Appellant] is appealing from a judgment of Justice Grammond of the Federal Court [the judge] on March 23, 2018, granting the application from the Corporation des pilotes du Saint-Laurent Central Inc. [the Corporation or the Respondent] for judicial review of the Appellant's suspension of the pilotage licences of two of its members, captains Donald Morin and Michel Simard.

[2] The issue at the heart of this appeal is whether the Authority could reasonably use the disciplinary power bestowed upon it by the *Pilotage Act*, RSC (1985), c. P-14 [the Act] to sanction the captains in a situation in which the latter allegedly refused to provide their services without compromising the safety of navigation.

[3] For the reasons that follow, I am of the view that this appeal should be dismissed.

I. Legal and factual context

[4] Originally adopted in 1971, the Act introduced sweeping reforms as to the oversight of the marine shipping sector in Canada. Four regional pilotage authorities were established at that time: the Pacific, Atlantic, Laurentian and Great Lakes. Section 18 of the Act defines the objects of these authorities as follows:

18. The objects of an Authority are to establish, operate, maintain and administer in the interests of safety an efficient pilotage service within the region set out in respect of the Authority in the schedule.	18. Une Administration a pour mission de mettre sur pied, de faire fonctionner, d'entretenir et de gérer, pour la sécurité de la navigation, un service de pilotage efficace dans la région décrite à l'annexe au regard de cette Administration.

[5] To assist in carrying out these objects, each authority is granted broad regulation-making powers with respect to pilotage (section 20 of the Act), notably power to establish compulsory pilotage areas in its respective region and to define the conditions governing the issue of licences and pilotage certificates. It is also responsible for issuing licences and pilotage certificates that meet various regulatory requirements (section 22 of the Act). Additionally, it is granted power to

suspend and revoke licences. Paragraph 27(1)(*c*) of the Act, at the centre of this dispute, provides in this regard that:

27 (1) The Chairperson of an Authority may suspend a licence or pilotage certificate for a period not exceeding fifteen days where the Chairperson has reason to believe that the licensed pilot or the holder of the pilotage certificate	27 (1) Le président de l'Administration peut suspendre un brevet ou un certificat de pilotage pour une période maximale de quinze jours lorsqu'il a des raisons de croire que son détenteur :
…	…
(c) has been negligent in the duty of the licensed pilot or holder of the pilotage certificate; or	c) a été négligent dans l'exercice de ses fonctions;
…	…

[6] The Authority's objects also include providing pilotage services directly to vessels that may require them. To this end, section 15 of the Act grants each Authority the power to hire pilots directly (15(1)) or, where a majority of pilots in a region have formed a body corporate, to contract with that body corporate (15(2)). In accordance with the latter provision, the Authority entered into a contract for services with the Corporation. This relationship is governed by various provisions of the Act, notably with regard to renewing contracts for services (15.1 and 15.2). Section 15.3 of the Act further provides that:

15.3 A body corporate with which an Authority has contracted for services under subsection 15(2) and the members and shareholders of the body corporate are prohibited from refusing to provide pilotage services while a contract for services is in effect or being negotiated.	15.3 Il est interdit à la personne morale qui a conclu un contrat de louage de services en vertu du paragraphe 15(2) de même qu'à ses membres ou actionnaires de refuser de fournir des services de pilotage pendant la durée de validité d'un contrat ou au cours des négociations en vue du renouvellement d'un contrat.

[7] According to section 48.1, a person who contravenes this provision is "liable to a fine of not more than $10,000 for each day on which the offence is committed or continued."

[8] Meanwhile, navigation itself is governed by a series of standards documented primarily in Notices to Mariners or Notices to Shipping issued by the Canadian Coast Guard. Notice to Mariners 27A takes on particular importance for the purposes of the present dispute. This Notice sets out specific navigation guidelines for the section between Québec City and Montréal, providing notably that "[a]ny time, wide beam vessels and long vessels will have to favor day transit in the section Quebec-Montreal" (Appeal Book, vol. 1 at p. 209). Section 7 of the *Collision Regulations*, C.R.C., c. 1416, adopted under the authority of the *Canada Shipping Act, 2001*, SC 2001, c. 26, provides that pilots shall navigate with particular caution where navigation may be difficult or hazardous and, for that purpose, shall comply with any instructions contained in Notices to Shipping.

[9] The facts at the origin of the present appeal are based on this context. On November 24, 2016, representatives of the Authority, the Corporation, the Coast Guard, the Ministère des Transports and the Montreal Port Authority met to discuss certain dissatisfaction expressed concerning the restrictions imposed by Notice to Mariners 27A. In the light of the experience gained with the frequent passage of what are referred to as "post-Panamax" vessels belonging to the transportation company Hapag-Lloyd, the participants agreed that it would be appropriate to authorize these vessels to transit at night as long as two pilots were on board and other safety measures were followed.

[10] On November 26, 2016, two days after the special meeting, one of Hapag-Lloyd's four vessels took advantage of the above-mentioned agreement to continue its passage between Montréal and Québec City without having to anchor despite arriving at night. On November 27, 2016, the president of the Corporation emailed the meeting participants to clarify his expectations concerning the formulation of the various components of the November 24, 2016 agreement. It is appropriate to reproduce here a portion of his email message:

> [TRANSLATION] ...
> we are willing to move forward immediately with what was agreed last Friday and have already approved one exception late yesterday afternoon so that one of these vessels could continue downriver without having to anchor at Trois-Rivières, but Notice 27A needs to be amended[], or at least the committee needs to provide assurance that the Notice will be amended[] to include double pilotage as a *sine qua non* condition for the passage of these vessels upriver from Québec City.
>
> (Appeal Book, vol. 1 at p. 216.)

[11] Similarly, the Corporation issued a bulletin to its members on December 1, 2016, in which it stated that after obtaining [TRANSLATION] "written confirmation of the double pilotage rule," the pilots of the vessels in question would be able to "continue upriver [at night] after the circumstances have been reviewed as applicable to all other assignments."

[12] On December 6, 2016, the Authority assigned pilots Morin and Simard to the pilotage of a Hapag-Lloyd post-Panamax vessel, the *Barcelona Express*, from Trois-Rivières to Montréal. Late that morning, a Corporation representative advised an officer of the Authority that the *Barcelona Express* could not navigate at night and consequently had to drop anchor at Lanoraie.

[13] Discussions took place throughout the afternoon in an effort to resolve the situation. On one hand, the Authority sought to provide guarantees in response to the Corporation's concerns with regard to formalization of the November 24, 2016 agreement, and the double pilotage rule for post-Panamax vessels. The Authority also forwarded two email messages from the Coast Guard confirming the Coast Guard's intention to amend Notice 27A concerning double pilotage, although the exact content of these two messages led to some confusion. On the other hand, the Corporation required confirmation of the double pilotage rule in the form of an amendment to the contract for services. Facing this impasse, and having failed to obtain confirmation from the Corporation that Notice 27A had been amended, Capts. Morin and Simard anchored the *Barcelona Express* at Lanoraie at nightfall.

[14] Not until 6:45 the following morning did Capts. Morin and Simard finally raise anchor and continue toward Montréal on the *Barcelona Express* during daytime. That same day, the Coast Guard published Notice Q-1872/2016 confirming that wide-beam vessels were henceforth subject to the double pilotage rule. However, the Notice did not address the issue of nighttime navigation.

[15] It was not until December 12, 2016, that the "interim exception" to Notice 27A was ultimately issued. It specified that [TRANSLATION] "nighttime navigation is authorized" for post-Panamax vessels "travelling upriver in the section Québec-Montréal" and that "these vessels are subject to double pilotage by the Laurentian Pilotage Authority" (Appeal Book, vol. 2 at p. 318).

II. Previous decisions

A. *Decisions of the Authority*

[16] On December 7, 2016, the Authority's chief executive officer suspended the pilotage licences of Capts. Morin and Simard for 10 days under paragraph 27(1)(*c*) of the Act.

[17] On December 8, 2016, the board of directors of the Authority confirmed the suspensions but reduced their duration to seven days, as authorized under subsection 27(4) of the Act. The grounds for this suspension were set out in the "Whereas" clauses of the resolution adopted by the board of directors, which it is useful to reproduce here:

> [TRANSLATION]
> WHEREAS the vessel "BARCELONA EXPRESS" was anchored and its voyage delayed for approximately 13 hours on December 6, 2016;
>
> WHEREAS the Authority entered into a written commitment to assign two (2) pilots to four (4) specific Hapag-Lloyd vessels including the "BARCELONA EXPRESS";
>
> WHEREAS pilots Michel Simard and Donald Morin, who had the conduct of the "BARCELONA EXPRESS," had been informed by the Authority's dispatchers and by email that nighttime transit had been authorized by the Coast Guard and that the Coast Guard had amended Notice to Mariners 27A such that the restriction on nighttime navigation applicable to the "BARCELONA EXPRESS" had been lifted;
>
> WHEREAS pilots Michel Simard and Donald Morin insisted, despite this information, that their Corporation provide its prior consent before the "BARCELONA EXPRESS" could proceed at night;
>
> WHEREAS the [Corporation] and its two (2) pilots used the situation as a pretext to require as a condition for proceeding that the Authority approve an amendment to the applicable contract for services, this despite the prior commitments of the [Corporation] and the provision of written authorization by the Coast Guard;
>
> WHEREAS a request of this nature to amend the contract for services is contrary to sections 15.3 and 27 of the *Pilotage Act*;

> WHEREAS the interruption of the voyage of the "BARCELONA EXPRESS" cannot be justified on safety grounds and was instead due to improper and illegal considerations;
>
> WHEREAS the decision to anchor the "BARCELONA EXPRESS" was groundless and consequently an act of negligence within the meaning of paragraph 27(1)(*c*) of the *Pilotage Act*;
>
> WHEREAS the licences of pilots Michel Simard and Donald Morin were suspended by letter from the Chief Executive Officer dated December 7, 2016;

[18] The Corporation contested this decision by filing an application for judicial review before the Federal Court on the grounds that the Authority's power to suspend under paragraph 27(1)(*c*) of the Act was limited solely to situations where a hazard was posed to navigation.

B. *Federal Court decision*

[19] After providing an overview of the legislative framework, summarizing the facts in dispute and rejecting the Authority's preliminary arguments concerning the Corporation's standing and the "clean hands" doctrine, the judge focused on the merits of the application. He concluded that the Authority's decision to suspend the licences under paragraph 27(1)(*c*) of the Act was unreasonable in the light of the fact that it was not made based on safety considerations as was required, according to the judge, by that provision and the overall scheme of the Act. In the judge's opinion, the purpose of the suspension was rather to sanction what the Authority considered the Corporation's failure to comply with its contractual obligations, a matter falling outside of the scope of discipline within the meaning of the Act.

[20] The judge also dismissed the Authority's argument that its disciplinary power should extend to violations of section 15.3 of the Act prohibiting the refusal to provide services. In his

opinion, it would be unreasonable to extend the Authority's disciplinary power in this manner insofar as the disciplinary power provided for in sections 27 to 29 of the Act did not apply to contractual matters or collective labour relations. In the judge's opinion, allowing the Authority to sanction violations of section 15.3 of the Act through use of its power to suspend would be allowing it to take justice into its own hands and decide unilaterally as to the scope of the Corporation's contractual obligations. Only a neutral third party, arbitrator or judge may rule on any contractual remedies the Authority may have.

[21] The judge consequently allowed the Corporation's application for judicial review and voided the two suspensions. That decision is the subject of this appeal.

III. Issues

[22] The issue at the centre of this appeal is whether the judge erred in concluding that the Authority's decision to suspend the pilots under paragraph 27(1)(*c*) of the Act was unreasonable. To determine this, it is necessary to analyze the scope of this provision and, in particular, the question as to whether the Authority may make use of this power to sanction behaviour or acts that do not pose a hazard to the safety of navigation.

[23] The appellant argues further that the judge erred in failing to allow the preliminary arguments it had submitted to the effect that the Corporation did not have legal standing required to apply for judicial review of the suspensions and did not have "clean hands." I will address these two grounds of appeal before moving on to the substantive issue.

[24] Before proceeding, it is important to speak briefly about the rather moot nature of this dispute. Although this issue has not been raised by the parties or debated in Federal Court, the fact remains that the licence suspensions imposed by the appellant ended a long time ago and that the application for judicial review appears, at first glance, to no longer be of interest or applicable.

[25] In *Borowski v. Canada (Attorney General)*, [1989] 1 SCR 342 [*Borowski*], the Supreme Court stated that a court retains its discretion to hear a dispute that has become moot in that the source of the dispute between the parties no longer exists. The relevant factors to be considered concerning the exercise of this discretion are closely related to the motives underlying the practice of declining to decide moot issues. First, since the capacity of the courts to decide cases is rooted in the adversary system, an adversarial context must remain between the parties despite the disappearance of the original dispute.

[26] The concern for judicial economy also requires that we hear only cases where a decision of the court will have real impact on the rights of the parties. In this regard, Justice Sopinka, speaking for the Supreme Court in *Borowski*, wrote:

> ...[A]n expenditure of judicial resources is considered warranted in cases which although moot are of a recurring nature but brief duration. In order to ensure that an important question which might independently evade review be heard by the court, the mootness doctrine is not applied strictly. (...) The mere fact ... that a case raising the same point is likely to recur even frequently should not by itself be a reason for hearing an appeal which is moot. It is preferable to wait and determine the point in a genuine adversarial context unless the circumstances suggest that the dispute will have always disappeared before it is ultimately resolved. [Emphasis added]
>
> (*Borowski* at p. 360.)

[27] This is precisely the situation that the Federal Court was facing in the present case. Under section 27 of the Act, the Authority may suspend a pilotage licence only for a maximum period of 15 days. It is consequently reasonable to think that challenges to this type of suspension will always be moot by the time they are heard by a judge under the auspices of an application for judicial review. Refusal to hear an application on this ground would, for all intents, leave the Authority free to exercise its discretion with immunity to any form of judicial review. In the light of the fact that the parties also continue to defend diametrically opposed positions concerning the issue and that an adversarial context consequently exists before both the Federal Court and this Court, I find it appropriate to exercise our discretion and decide the issue despite its mootness.

IV. Standard of review

[28] In an appeal from a Federal Court decision concerning an application for judicial review, this Court must ask whether the judge clearly identified the appropriate standard of review and then applied said standard properly (*Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36, [2013] 2 S.C.R. 559 at para. 45 [*Agraira*]). In other words, an appeal court must put itself in the place of the trial judge and examine *de novo* the administrative decision subject to the application for judicial review rather than looking for any errors that the reviewing court may have committed (*Hoang v. Canada (Attorney General*), 2017 FCA 63, [2017] F.C.J. no. 321 at para. 26; *Agraira* at para. 45; *Merck Frosst Canada Ltd. v. Canada (Health)*, 2012 SCC 3, [2012] 1 S.C.R. 23 at para. 247).

[29] On the other hand, discretionary Federal Court decisions not arising from its superintending power are subject to the standard of review propounded by the Supreme Court in

Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235. This applies to the judge's decisions concerning the preliminary objections raised by the appellant as to lack of standing and the objection based on the misconduct of the two pilots and the Corporation (see *Budlakoti v. Canada (Citizenship and Immigration)*, 2015 FCA 139, [2015] F.C.J. no. 697 at paras 37-39, leave to appeal to SCC refused, 36591 (January 28, 2016); *Canada v. Long Plain First Nation*, 2015 FCA 177, [2015] F.C.J. no. 961 at para. 88). For the Court to be able to intervene in this regard, the appellant must consequently show that the judge committed either an error on an extricable legal principle or a palpable and overriding error on an issue of fact or a matter of mixed fact and law.

V. Analysis

A. *Standing*

[30] The appellant argues that the application for judicial review should have been denied solely on the ground that the respondent did not have standing in the case, having no interest distinct from that of its individual members. It argues further that the judge erred in applying the doctrine of standing in that this argument had not even been raised by the respondent. Moreover, only Parliament may recognize that someone has standing to bring an action on another's behalf, while in the present case, neither the Act nor the contract for services grants the respondent this standing.

[31] Section 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7 [*FCA*] provides that an application for judicial review may be made by the Attorney General of Canada or by "anyone

directly affected by the matter in respect of which relief is sought." According to the case law developed on this requirement, applicants may claim to be "directly affected" only if the challenged decision affects their rights, imposes an obligation on them or causes them harm (see notably *Rothmans of Pall Mall Canada Ltd. v. Canada (M.N.R.)*, [1976] F.C.J. no. 59, [1976] 2 FC 500 (F.C.A.); *Irving Shipbuilding Inc. v. Canada (Attorney General)*, 2009 FCA 116, [2009] F.C.J. no. 449, leave to appeal to SCC refused, 33208 (October 22, 2009); *League for Human Rights of B'Nai Brith Canada v. Odynsky*, 2010 FCA 307, [2010] F.C.J. no. 1424 at para. 58; *Bernard v. Close*, 2017 FCA 52, [2017] F.C.J. no. 275 at para. 2 [*Bernard*], leave to appeal to SCC refused, 37575 (August 24, 2017)).

[32] That being said, section 18.1 of the *FCA* has been interpreted flexibly so that the Court could exercise certain discretion and recognize the required standing where warranted under the circumstances (*Friends of the Island Inc. v. Canada (Minister of Public Works)*, [1993] 2 FC 229, [1993] F.C.J. no. 233 at paras 79-80 (F.C.), rev'd on other grounds by 185 N.R. 48; see also Thomas A. Cromwell, *Locus Standi: A Commentary on the Law of Standing in Canada* (Toronto: Carswell, 1986) at pp. 163-164; *Canadian Telecommunications Union, Division No. 1 of the United Telegraph Workers v. Canadian Brotherhood of Railway, Transport*, [1982] 1 F.C. 603 (C.A.)). As this Court reiterated in *Teva Canada Limited v. Canada (Health)*, 2012 FCA 106, [2012] F.C.J. no. 398, the requirement for standing is to be interpreted taking into consideration the objects of the *FCA*, notably justice, fairness, practicality, order, efficiency and the minimization of cost, delay and waste, not with a view to laying traps (at para. 55).

[33] In the present case, I am willing to consider that the Corporation had an interest distinct from that of the two pilots subject to the disciplinary sanction. I arrive at this conclusion not because the suspension of certain pilots could have impact on the Corporation's capacity to meet its obligations, an argument that I find purely speculative and not supported on the evidence, but because the Authority cites not only the actions of the two pilots but also the actions of the Corporation itself in its grounds for suspension.

[34] In the letter of January 7, 2016, sent to the two pilots, the chief executive officer of the Authority directly implicates the Corporation. In this regard, he relates the decision to anchor the *Barcelona Express* to the intention of the pilots and the Corporation to pressure the Authority into amending the contract for services. The Corporation's role in the acts attributed to the pilots is set out even more explicitly in the letter of December 9, 2016, which confirms the suspension of the pilots by the Authority's board:

> [TRANSLATION]
> The lifting of the restriction on nighttime navigation was also brought to the attention of the Corporation des pilotes du Saint-Laurent central Inc., of which you are members. However, this Corporation required, as a condition for the nighttime transit of the "BARCELONA EXPRESS," that our Authority agree to amend our current contract for services. This imposition was improper and illegal. It could not in any manner justify interrupting the provision of service to the vessel then under your conduct. You insisted nevertheless that only your Corporation could authorize proceeding with the voyage. Your decision to drop anchor in the absence of your Corporation's provision of consent and despite the lifting of all restrictions on nighttime transit by the Authority and the Canadian Coast Guard clearly constitute negligence in the performance of your duties.
>
> (Appeal Book, vol. 2 at pp. 384-385, and vol. 3 at pp. 502-503.)

[35] On reading this excerpt from the challenged decision, there is no doubt that the Corporation had an actual interest distinct from that of the pilots. Although the Corporation's

rights are not directly affected, the challenged decision clearly harms the Corporation by alleging that the request to amend the contract for services as a condition for night-time transit was illegal and improper. We are a long way from a situation such as that, for example, in *Bernard*, where the applicant was denied standing because she was not a member of the union involved in the proceedings and had no relationship with the grievors. In the light of these circumstances, I conclude without hesitation that the judge did not commit any palpable and overriding error in exercising his discretion by recognizing the Corporation's standing.

[36] In the alternative, I further conclude that the Corporation had standing on behalf of the two sanctioned pilots. As the judge stated in paragraphs [38] *et seq.* of his reasons, Parliament explicitly recognized, in subsection 15(2) of the Act, the Corporation's exclusive right to enter into a contract for services with the Authority and, consequently, to represent its members both while negotiating this contract and during the subsequent performance thereof. Moreover, reference to this principle of exclusivity of representation is made in paragraph 3.01 of the contract for services (Appeal Book, vol. 1 at p. 84). As the judge correctly notes in paragraph [39] of his reasons, this contract recognizes [TRANSLATION] "a regime that existed at the time of proclamation of the Act and which Parliament sought to maintain." It follows from the preceding that the Corporation is empowered to represent its members, like a union, in any dispute relating to the provision of service opposing a pilot against the Authority.

[37] The contract for services goes even further in this respect. Paragraph 15.02 of that document, in the section entitled "General Provisions," reads as follows:

> [TRANSLATION]
> In any dispute between a pilot and the Authority, the Corporation may intervene by application of law to take up defence of the pilot.
>
> (Appeal Book, vol. 1 at p. 96.)

[38] As for paragraph 16.03, found in the "Disciplinary or Legal Proceedings" section, it provides that the Authority shall forward to the Corporation all reports on pilot conduct making pilots subject to disciplinary measures, before taking any such measures (Appeal Book, vol. 1 at p. 98). This provision adds that the Corporation and the pilot have 10 business days to respond to the allegations contained in such a report.

[39] In view of the Act and the contract for services, it seems clear to me that the Corporation is explicitly granted standing on behalf of the pilots both in disputes arising from the contract for services and in the context of disciplinary sanctions. The reason is that the Authority plays a dual role, acting as both a provider of services and a regulatory body. Moreover, there is no question that the Corporation is not acting without the consent of both pilots, since the pilots filed affidavits and underwent examination for discovery in relation to the application for judicial review filed by the Corporation.

[40] The Corporation consequently had standing not only to act on its own behalf, but also to represent the two pilots whose pilotage licences had been suspended.

B. *“Clean hands” doctrine*

[41] The appellant argues that the judge erred in failing to apply the clean hands doctrine, according to which a court may refuse to exercise its discretion to hear an application for judicial review if the applicant has acted unlawfully, shown bad faith or lacked transparency. The appellant’s point of criticism against the Corporation was that the latter required that the letter of agreement accompanying the contract for services be amended to guarantee double pilotage of all post-Panamax vessels, failing which, the *Barcelona Express* would be anchored. In the appellant’s opinion, this requirement constituted a flagrant violation of section 15.3 of the Act, a matter concerning which it was possible to rule without addressing the merits of the case, contrary to the judge’s ruling. According to the appellant, the substantive controversy rather bore on the question as to whether the pilots were justified in dropping anchor at night based on the absence of an official amendment to Notice 27A.

[42] The appellant has not convinced me that the judge committed an error on an extricable legal principle or a palpable and overriding error by exercising his discretion on this matter. First, based on the letters addressed to the two pilots on December 7 and 9, 2016, requiring an amendment of the contract for services was specifically a ground for the suspension (Appeal Book, vol. 3 at pp. 498 and 501). Second, the Corporation vehemently challenged the submission that imposing this requirement constituted a violation of section 15.3 of the Act. In these circumstances, the judge correctly concluded, in paragraph [55] of his reasons, that [TRANSLATION] ”the parties specifically relate the essential challenge to the acts attributed to the

Corporation and the legal characterization thereof." A misunderstanding of the merits of the case cannot support application of the clean hands doctrine.

[43] I note additionally that the Corporation insisted that Notice 27A be amended to indicate not only that nighttime transit of post-Panamax vessels was authorized, but also that these vessels were subject to double pilotage. The evidence shows that these two issues were closely connected throughout the exchanges taking place between the two parties following the November 24, 2016 meeting. Additionally, in an email message dated November 27, 2016 to the participants in said meeting, the president of the Corporation wrote the following:

> [TRANSLATION]
> At our last meeting, we agreed to make 4 Hapag-Lloyd vessels – the *Detroit*, *Livorno*, *Genoa* and *Barcelona Express* – subject to the same conditions as long vessels.
>
> What this essentially comes down to in terms of changes is that these vessels can continue upriver to Montréal if part of their transit, or even their entire transit, takes place at night.
>
> [...]
>
> The basic premise discussed at the same meeting was that all wide-beam vessels (post-Panamax, wider than 32.50 m) will be subject to double pilotage.
>
> We discussed the fact that this should be documented somewhere, and the idea to incorporate it into Notice 27A was approved.
>
> (Appeal Book, vol. 1 at p. 216.)

[44] Consequently, even if we suppose that the subject of dispute is, in fact, determining whether the pilots were justified in dropping anchor due to the absence of an official amendment to Notice 27A, as the appellant argues, it is clear to me that the issue of double pilotage lay at the heart of the dispute along with that of night-time transit. The judge could consequently conclude

reasonably that he could not rule on the alleged violation of section 15.3 of the Act without addressing the merits of the dispute between the two parties.

C. *Reasonableness of the suspension*

[45] The appellant submits that the judge identified the correct standard of review in this case, that of reasonableness, but that he went on to apply the standard of correctness by failing to show any deference with respect to his interpretation of section 27 of the Act. In support of its interpretation that the negligence addressed in paragraph 27(1)(*c*) of the Act is not limited to safety-related issues, the appellant argues that efficiency is another essential aim of Parliament, that the language of section 27 itself refers to all sorts of conduct deemed generally unacceptable or unprofessional or otherwise prohibited under the Act or regulations, that the very notion of negligence must be interpreted in its broader sense and that the existence of a possible criminal sanction for refusing to provide a service in no way conflicts with the additional issue of a licence suspension.

[46] I am of the view that these arguments are unfounded and that the judge correctly dismissed them. There does not appear to be any doubt that the primary object of the Act and the main mission of the Authority are to ensure the safety of navigation. The wording of section 18 could not be clearer in stating that the object of an authority is to establish an efficient pilotage service in the interests of safety. It is appropriate to reproduce here this provision:

18. The objects of an Authority are to establish, operate, maintain and administer in the interests of safety an efficient pilotage service within the region set out in respect of the	18. Une Administration a pour mission de mettre sur pied, de faire fonctionner, d’entretenir et de gérer, pour la sécurité de la navigation, un service de pilotage efficace dans la

Authority in the schedule.	région décrite à l'annexe au regard de cette Administration.

[47] Efficiency is not an ultimate object in the same manner as safety but rather a component of same. This ultimate object is also in keeping with the extrinsic evidence submitted by the respondent, notably the Royal Commission on Pilotage (joint book of statutes, regulations and authorities (joint book), tab 59 at p. 519) as well as the Parliamentary debates surrounding adoption of the Act (joint book, tab 62 at p. 5990; tab 63 at p. 1207).

[48] The appellant argued that previous acts and regulations expressly granted the Authority power to suspend a pilot's licence in the event of the pilot's refusal or delay in assuming the conduct of a vessel (see *Pilotage Act*, 1873, 36 Victoria, c. 54, s. 70; *Canada Shipping Act*, R.S.C. 1906, c. 113, s. 550g); *Canada Shipping Act*, R.S.C. 1927, c. 186, s. 530g); *Canada Shipping Act*, R.S.C. 1934, c. 44, para. 361(1)(*h*); *Canada Shipping Act*, R.S.C. 1952, c. 29, para. 329(f); *Canada Shipping Act*, R.S.C. 1970, c. S-9, para. 314(f); *Règlement général de la circonscription de pilotage de Montréal*, P.C. 1961-1475, C. Gaz. 1961.II.1597). According to the appellant, there is no reason to believe that Parliament sought to remove this power when it adopted what is now paragraph 27(1)(*c*) of the Act. Based on this reasoning, the current provision is simply a consolidation of the powers granted to the Authority since 1873.

[49] It seems to me, on the contrary that the different wording of the power to suspend licences adopted by Parliament in 1971 shows an intent to limit this power to the threshold situations described in the new provision. It is also important to note that the collective bargaining regime in subsection 15(2) of the Act, which is difficult to reconcile with the

appellant's interpretation of paragraph 27(1)(*c*) of the Act, simply did not exist in the former acts.

[50] Insofar as the Authority's regulation-making powers may be exercised only with a view to ensuring the safety of navigation (*Alaska Trainship Corporation et al. v. Pacific Pilotage Authority*, [1981] 1 SCR 261 at pp. 268-269), and not for economic considerations (*Pacific Pilotage Authority v. Alaska Trainship Corp.*, [1980] 2 FC 54 at pp. 76-77 (C.A.)), it appears to me that the judge correctly followed the same reasoning, by analogy, to the Authority's power to suspend licences. As the judge notes in paragraph [64] of his reasons, it is entirely [TRANSLATION] "logical that the disciplinary regime in section 27 should also relate to this ultimate object [...] of promoting the safety of navigation."

[51] Additionally, the judge correctly dismissed the appellant's argument that section 27 of the Act goes far beyond basic safety conditions and also applies to unacceptable or unprofessional conduct. It is true that some grounds for suspension appear, at first glance, to have a more tenuous connection to the safety of navigation, for example, a pilot's having the conduct of a vessel while his or her licence is suspended (paragraph 27(1)(*a*) of the Act), or failing to meet the qualifications required of a holder of a licence (paragraph 27(1)(*d*) of the Act). Nevertheless, as the judge states, all of these conditions are part of a regime targeting the ultimate object of ensuring the safety of navigation (Decision at para. 66). [TRANSLATION] "If Parliament deemed it necessary to establish a licensing regime to ensure the achievement of this object," the judge correctly wrote, "then it follows that offences may be created to ensure the integrity of this regime" (*ibid.*). I fully agree with this reasoning.

[52] Having determined, based on an admission in this regard by one of the Authority's officers (Appeal Book, vol. 4 at p. 752) and of the resolution adopted on December 8, 2016 (Appeal Book, vol. 4 at p. 698), that the actions attributed to captains Morin and Simard had not compromised the safety of navigation, the judge concluded that the appellant had sanctioned the captains on grounds unrelated to the objects of the regime provided for in sections 27 to 29 of the Act. The judge thereby correctly applied the standard of reasonableness, which he had already found to be the applicable standard in the circumstances. Contrary to the appellant's argument, the Authority's decision was not within the range of possible, acceptable outcomes which are defensible in respect of the facts and law, despite all deference due to this type of determination. As noted by Brown and Evans, "[w]hether express or implied, the purposes and objects of a statute prescribe the limits of the legal authority of a decision-maker exercising discretionary power, even when the power is conferred in subjective terms" (Donald J.M. Brown and John M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf, Toronto: Thomson Reuters Canada Limited, 2017, at p. 15:2241).

[53] Finally, I agree entirely with the judge's analysis of the Authority's two distinct objects, these being to ensure the safety of navigation, notably through the regime for issuing licences and pilotage certificates, and to provide pilotage services directly. The Authority's disciplinary powers with respect to the latter mission are, by necessity, broader than those it exercises under the authority of sections 27 to 29 of the Act, which may fall within the scope of a professional disciplinary regime established to maintain the safety and protection of the public. When acting as an employer or under the auspices of its contractual relationship with the Corporation, it is entirely appropriate that the Authority cannot serve as the judge in its own cause and must

submit to a third party (judge or arbitrator) to resolve any disputes arising in relation to the pilots' provision of services. This is the route chosen in *Laurentian Pilotage Authority v. Corporation des pilotes du Saint-Laurent central inc.*, 2015 FCA 295, [2015] F.C.J. no. 1495.

[54] Consequently, even if one supposes that the pilots' decision to anchor the *Barcelona Express* for the night may be classified as a refusal to provide service (which the Corporation vigorously denies, arguing instead that this decision was made strictly to comply with the regulations still in force on December 6, 2016), this decision cannot amount to negligence within the meaning of paragraph 27(1)(*c*) of the Act. As the judge notes, the Authority should have turned to arbitration if it thought that the Corporation was not meeting its obligations, as authorized under paragraph 17 of the contract for services (Appeal Book, vol. 2 at p. 98). An urgent situation could also have been addressed through an application for interlocutory injunction to the courts. The disciplinary power described in section 27, which Parliament took care to limit to certain specific provisions of the Act, was not the appropriate mechanism for addressing circumstances of this nature. Consequently, the judge correctly concluded that the Authority's decision was also unreasonable in this regard.

VI. Conclusion

[55] For all of the above reasons, I the appeal should be dismissed, with costs.

"Yves de Montigny"
J.A.

"I agree.
Richard Boivin"

"I agree.
Marianne Rivoalen"

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

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APPEARANCES:

Patrick Girard Patrick Desalliers	FOR THE APPELLANT
Jean Lortie Sophie Brown	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Stikeman Elliott LLP Montréal, Quebec	FOR THE APPELLANT
McCarthy Tétrault LLP Montréal, Quebec	FOR THE RESPONDENT