Federal Court of Appeal  Cour d'appel fédérale

Date: 20180207

Dockets: A-64-17
A-65-17

Citation: 2018 FCA 34

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

Docket: A-64-17

BETWEEN:

ADVENTURER OWNER LTD.
DOCKENDALE HOUSE, WEST BAY STREET,
P.O. BOX CB-13048, NASSAU, BAHAMAS

Appellant

And

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket: A-65-17

AND BETWEEN:

ADVENTURER OWNER LTD., OWNER, AND ALL OTHERS INTERESTED IN THE SHIP M/V CLIPPER ADVENTURER AND THE SHIP M/V CLIPPER ADVENTURER

Appellants

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AND THE ADMINISTRATOR OF THE SHIP-SOURCE
OIL POLLUTION FUND**

Respondents

Heard at Ottawa, Ontario, on January 30, 2018.

Judgment delivered at Ottawa, Ontario, on February 7, 2018.

REASONS FOR JUDGMENT BY: GAUTHIER J.A.

CONCURRED IN BY: BOIVIN J.A.
DE MONTIGNY J.A.

Federal Court of Appeal  Cour d'appel fédérale

Date: 20180207

Dockets: A-64-17
A-65-17

Citation: 2018 FCA 34

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

Docket:A-64-17

BETWEEN:

ADVENTURER OWNER LTD.
DOCKENDALE HOUSE, WEST BAY STREET,
P.O. BOX CB-13048, NASSAU, BAHAMAS

Appellant

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Respondent

Docket:A-65-17

AND BETWEEN:

ADVENTURER OWNER LTD., OWNER, AND ALL OTHERS INTERESTED IN THE SHIP M/V CLIPPER ADVENTURER AND THE SHIP M/V CLIPPER ADVENTURER

Appellants

And

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AND THE ADMINISTRATOR OF THE SHIP-SOURCE
OIL POLLUTION FUND**

Respondents

REASONS FOR JUDGMENT

GAUTHIER J.A.

[1] On January 27, 2017, Harrington J. of the Federal Court dismissed Adventurer Owner Ltd.'s (Adventurer) action against Her Majesty the Queen in Right of Canada (the Crown) for damages resulting from the M/V Clipper Adventurer (the Clipper) grounding on a shoal in the Canadian Arctic (2017 FC 105) (T-901-11). In its reasons, the Federal Court maintained the Crown's action *in personam* and *in rem* against Adventurer and the Clipper for the costs and expenses it incurred to prevent marine oil pollution damage (T-1149-12). Adventurer and the Clipper appealed from the Federal Court's decision with respect to both actions (A-64-17 and A-65-17). On April 12, 2017, de Montigny J.A. issued an Order consolidating both appeals and designating the appeal in file A-64-17 as the lead appeal.

[2] For the reasons that follow, I have not been persuaded that the Federal Court made a reviewable error. Hence, these appeals should be dismissed.

I. CONTEXT

[3] The Federal Court made several detailed findings of fact throughout its reasons (Federal Court reasons). I will only refer to a few that situate where the grounding took place, what information those on board the Clipper had and what warnings had actually been issued.

[4] On August 27, 2010, the Clipper, sailing at full speed, ran aground on a submerged and uncharted shoal in the Coronation Gulf in the Canadian Arctic (Federal Court reasons at paras. 1, 13).

[5] In the Arctic, surveying is essentially opportunistic by nature; that is, it is done when the circumstances are favourable. As such, "[l]ess than 10% of the vast Arctic waters have been surveyed to modern standards" (Federal Court reasons at para. 30). The Canadian Hydrographic Chart 7777 for "Coronation Gulf, Western Portion" covered the area where the grounding occurred (Federal Court reasons at para. 13). Both this chart and the other nautical publications carried on board the Clipper indicated that with respect to the area where the Clipper chose to set her course, which was well outside the main shipping corridor and the magenta coloured area on Chart 7777, the chart only showed tracks and spot soundings that could be quite old and mariners were notified to proceed with caution (Federal Court reasons at paras. 14-16, 45). In fact, as noted by the Federal Court, there "are great many underwater shoals rising from a very rocky bottom" (Federal Court reasons at para. 16).

[6] The shoal on which the Clipper grounded was discovered on September 13, 2007 by the M/V Sir Wilfrid Laurier, a Canadian icebreaker (Federal Court reasons at para. 17). Following its discovery, a Notice to Shipping (NOTSHIP) A101/07 was issued to signal its existence. Later on, this NOTSHIP was replaced by NOTSHIP A102/07 on September 16, 2007 (Federal Court reasons at paras. 21-22). NOTSHIP A102/07 was cancelled when a Notice to Mariners (NOTMAR) was issued on October 8, 2010 (Federal Court reasons at para. 59).

[7] After the customary 14 days of broadcasting applicable in the Arctic region, NOTSHIPs remain available on the Canadian Coast Guard's (CCG) website or can be obtained from the CCG Centre (Federal Court reasons at paras. 23-24). Moreover, these written NOTSHIPs are distributed on a weekly basis to all interested parties who make a request in that respect.

[8] Neither those on board the Clipper nor her managers in Florida made such a request. The Clipper's chart agent in Canada updated the vessel charts with NOTMARs. The said agent specifically mentioned that no Temporary and Preliminary Notices to Mariners (T&P NOTMARs) were in force for Chart 7777 and that they did not provide NOTSHIPs (Federal Court reasons at para. 46). Thus, as a matter of fact, the Clipper did not have a properly updated nautical chart on board.

[9] As the Coronation Gulf is within an area covered by the World Wide Navigational Warning Service of the International Maritime Organization (IMO), CCG, which was responsible for such area, also issued what is referred to as NAVAREA XVIII Warning 5/10 after the IMO service came into effect in that region on July 1, 2010. This warning contained

information essentially similar to that used in NOTSHIP A102/07 and was broadcasted from July 1 until August 20, 2010 (Federal Court reasons at paras. 41-42).

[10] Fortunately, there was no loss of life (128 passengers and a crew of 69 were on board), but the Clipper was heavily damaged (Federal Court reasons at paras. 2-4). There was little pollution from the ship bunkers, but the Crown had nevertheless to incur costs and expenses to take preventive measures (Federal Court reasons at para. 3).

[11] Adventurer instituted an action against the Crown on the basis that its servants were negligent, among other things, in failing to issue a NOTMAR or a Preliminary NOTMAR in 2007 when the shoal was discovered or in 2010 shortly after further hydrographic data were made available through a survey carried out by a member of the Canadian Hydrographic Service's (CHS) while on board the M/V Wilfrid Laurier (Federal Court reasons at paras. 31-32, 38-40).

[12] The Crown sued Adventurer and the Clipper to recover its costs. Although the Crown's action was served on the Ship-source Oil Pollution Fund (SOPF), no claim was paid by the SOPF and the Crown has been provided with security by Adventurer (Federal Court reasons at para. 123). The Administrator of the SOPF's participation in the proceeding before the Federal Court was limited and the Administrator did not participate at all in the appeals. Both actions were tried together and the trial lasted more than 17 days.

II. FEDERAL COURT DECISION

[13] After a detailed review of the relevant facts, the Federal Court described its task with respect to the negligence claim as follows:

> [82] In order to succeed in a negligence claim, the plaintiff must establish that the defendant owed it a duty of care, was in breach of that duty, and that the breach caused the damage claimed. […]

[14] With respect to the Crown's vicarious liability pursuant to subparagraph 3(*b*)(i) and section 10 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, the Federal Court noted that there was no duty on "any Crown servant to seek out and discover uncharted shoals" such as the one involved here (Federal Court reasons at para. 83). However, it found that, once the shoal had been discovered, various Crown servants within the Department of Fisheries and Oceans (more particularly those working in the CCG and the CHS) were under a duty to warn mariners sailing in the Canadian Arctic waters, such as those on board the Clipper, of the presence of the said shoal (Federal Court reasons at paras. 60, 61, 83-88).

[15] Turning to the question of whether Adventurer had established a breach of the duty to warn, the Federal Court concluded that the duty to warn the Clipper had been discharged by the issuance of NOTSHIP A102/07 (Federal Court reasons at paras. 8, 89, 93, 102).

[16] Having so concluded, it held that it was not necessary for it to consider whether those on board the Clipper should have been aware of the NAVAREA XVIII Warning 5/10 issued in July and August 2010 (Federal Court reasons at para. 43).

[17] The Federal Court also concluded that those on board the Clipper had been negligent in setting up a course without the benefit of the NOTSHIPs which they were required to consult (section 7 of the *Charts and Nautical Publication Regulations, 1995*, S.O.R./95-149, and section 7 of the *Collision Regulations*, C.R.C., c. 1416 (*Chart Regulations*)) and in failing to pay heed to the warnings contained in the nautical publications that had to be and were carried on board (Federal Court reasons at paras. 90-92, 102).

[18] Although this was not strictly necessary, the Federal Court also found that, even in the absence of direct knowledge arising from the NOTSHIP A102/07 or the NAVAREA XVIII Warning 5/10, those on board the Clipper "should have known there were uncharted shoals" and "should have proceeded through the islands at a much slower speed in the wake of a zodiac with a portable echo sounder" (Federal Court reasons at para. 102). In that respect, the Federal Court accepted the opinion of one of the Crown's experts.

[19] The Federal Court held that Adventurer and those in charge of the navigation of the Clipper were solely responsible for the grounding of the ship (Federal Court reasons at paras. 8, 89 *in fine*).

[20] The Federal Court dealt in *obiter* with several issues relating to the apportionment of the damages claimed by Adventurer and the date of conversion of foreign currency (US dollar to CDN dollar).

[21] With respect to the Crown's claim for reimbursement of the costs of preventive measures, the Federal Court concluded that subsection 116(1) of the *Marine Liability Act*, S.C. 2001, c. 6 (MLA), did not apply as the claim against the Clipper and Adventurer was not a claim under Part 7 of the MLA. It awarded the Crown simple interest at 5%.

III. ISSUES

[22] Adventurer does not challenge the Federal Court's findings that it was negligent. Rather, it challenges the Federal Court's conclusion that the issuance of NOTSHIP A102/07 was sufficient to fulfil the duty to warn identified by the Federal Court. What Adventurer seeks is an apportionment (on the basis of 50/50) of the liability for the grounding and a different conversion date which would enable it to benefit from the recent increase in value of the US dollar.

[23] With respect to the Crown's claim, Adventurer argues that the Federal Court should have applied section 116 of the MLA and awarded the lower rate of interest (approximately 1%) it prescribes. That is so because this claim, being covered by section 109 of the MLA, is a claim under Part 7 of the MLA.

[24] Adventurer acknowledged that should this Court not accept its argument that the Federal Court erred in concluding that the Crown was not liable for the grounding because there was no breach of the duty to warn, there is no need for this Court to address the other issues it raises with respect to causation, apportionment and the conversion date.

IV. ANALYSIS

A. *Breach of Duty*

[25] It is trite law that the standards of review applicable to these appeals are those set out in *Housen v. Nikolaisen,* 2002 SCC 33, [2002] 2 S.C.R. 235 (*Housen*).

[26] Adventurer alleges that the Federal Court made an extricable error of law in its application of the standard of care in this matter. Thus, it submits that this Court should review the conclusion that the duty to warn — which is not in dispute — had been discharged on a correctness basis. I do not agree.

[27] The Supreme Court of Canada dealt at length with the standard of care, i.e. what constitutes a reasonable conduct in the circumstances of a case, in *Galaske v. O'Donnell,* [1994] 1 S.C.R. 670 (*Galaske*). The judges agreed that this normally involves a question of mixed fact and law. There may well be rare cases where the trier of fact applied an incorrect legal principle but, as noted by McLachlin J. (concurring) as she then was, the "standard of care is for the trial judge to determine on the evidence" and "may vary from case to case" (Galaske at 698).

[28] In *Housen,* the Supreme Court confirmed the views expressed in *Galaske* (at para. 31). Still in *Housen* (at para. 36) and later on in *Sattva Capital Corp. v. Creston Moly Corp.,* 2014 SCC 53, [2014] 2 S.C.R. 633 at para. 54, the Supreme Court also warned appellate courts to be cautious in finding an extricable question of law so as to eliminate the deference due to the trier

of fact. I understand from those decisions that, when the legal principle is not readily extricable, an appellate court should apply the more stringent standard of the palpable and overriding error.

[29] I also do not accept Adventurer's submission that the present matter is akin to the one in *Rhône (The) v. Peter A.B. Widener (The)*, [1993] 1 S.C.R. 497, where the trial court had improperly characterized the legal test to determine whether a person was the "directing mind" of the corporation. In this case, the Federal Court correctly noted that the issue before it was whether the issuance of NOTSHIP A102/07 fulfilled the duty of those working in CCG and CHS to warn mariners of the presence of the shoal discovered in 2007. The Federal Court clearly understood that, according to Adventurer, the standard of care required more than this NOTSHIP (Federal Court reasons at para. 89; see also at paras. 38-40, 63-71, 90, 95, 98-100).

[30] For Adventurer, the error in principle becomes evident when one considers the Federal Court's finding at paragraph 40 of the reasons. It argues that the Federal Court's acceptance of its evidence as to what should have occurred once CHS approved the NOTMARs drafted by Mr. Leyzack to replace NOTSHIP A102/07 (Federal Court reasons at paras. 38-40) was determinative of the case. For Adventurer, the finding of fact at paragraph 40 should necessarily have resulted in a finding that the duty to warn had been breached because a NOTMAR should have been issued in June 2010.

[31] There is no legal principle that a failure to satisfy the level of services set by internal management as its target is determinative of the standard of care applicable in all circumstances. It is clearly a relevant factor to consider in assessing the reasonableness of one's conduct, but it

is the task of the trier of fact to determine the weight to be given to it after considering all the circumstances of the case.

[32] On my reading of the reasons as a whole, I understand that the Federal Court did consider Adventurer's evidence relevant, but it did not agree with Adventurer's core proposition that the factual finding it made with respect to what should have occurred if internal management expectations had been met was determinative of the standard of care applicable to the specific duty to warn that arose from the discovery of the shoal.

[33] This is not a case where no warning was given of the presence of the shoal. This is also not a case where a local warning given by means of a NOTSHIP would normally be duplicated by issuing an additional document such as a NOTMAR, for once a NOTMAR is issued, any previous NOTSHIP is cancelled; these means of informing mariners are not meant to coexist. This is also not a case involving any misrepresentation by anybody working in the Department of Fisheries and Oceans.

[34] On the facts before it, which included for example that the shoal was well outside the well-travelled courses (Federal Court reasons at para. 27), the Federal Court was entitled to consider other factors and circumstances such as whether the actual warning given to mariners through the issuance of NOTSHIP A102/07 was a suitable and reasonable warning that all those concerned at the Department of Fisheries and Oceans could reasonably expect mariners to use and consider while sailing in the Coronation Gulf in August 2010.

[35] Mariners have their own duty of care at common law. They must have on board and make use of up to date charts and nautical publications. This duty is informed by the local regulations that apply to the waters they chose to sail in.

[36] In addition to subsection 1(1) of the *Collision Regulations* that define NOTSHIP and NOTMAR and section 7 of the *Chart Regulations*, which treats these two types of documents on an equal footing, the Federal Court heard copious evidence about how these means of conveying important information to mariners are used. There is ample evidence in the evidentiary record to support the Federal Court's conclusion that the issuance of NOTSHIP A102/07 fulfilled the duty to warn mariners of the presence of this shoal (see the Crown's compendium and the additional evidence referred to in the Crown's memorandum). I have not been persuaded that the Federal Court made a palpable and overriding error in concluding effectively that this was a suitable and reasonable warning in this case (objective test).

[37] Having concluded that the judge did not err in finding that the there was no breach for which the Crown should be held liable, it is not necessary to deal with the other arguments of Adventurer with respect to causation, apportionment and the appropriate date of conversion of the foreign currency in which the damages were incurred. These questions could not be determinative of the appeals.

B. *Rate of Interest*

[38] The last issue to consider is whether the Federal Court made a legal error by not applying subsection 116(1) of the MLA, because a copy of the proceedings against Adventurer had to be

served on the Administrator of the SOPF pursuant to section 109, which is found in Part 7 of the MLA.

[39] This is a question of statutory interpretation that is subject to the standard of correctness (*Housen* at para. 8; *Canadian National Railway Co. v. Canada (Attorney General)*, 2014 SCC 40, [2014] 2 S.C.R. 135 at para. 33). In my view, the Federal Court correctly concluded that subsection 116(1) of the MLA was not applicable in the present circumstances.

[40] The Crown's claim arose under Article 3 of the *Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* (March 23, 2001, Can. T.S. 2010 No. 3) (*Bunkers Convention*), which is one of the ten articles of the *Bunkers Convention* that were given force of law in Canada by section 69 of the MLA. Articles 1 to 10 of the *Bunkers Convention* are included at Schedule 8 of the MLA. These articles provide for the liability of a shipowner for oil pollution damage resulting from bunker spills which are defined to include the costs of preventive measures. Before us, Adventurer took the firm position that the right of the Crown to claim the costs of the preventive measures against it arises under section 71 of the MLA and Article 3 of the *Bunkers Convention*, both of which are found in Part 6 of the MLA.

[41] Pursuant to section 109 (located in Part 7 of the MLA), if a claimant commences proceedings against an owner of a ship or its guarantor in respect of a matter such as one covered by Article 3 of the *Bunkers Convention*, or sections 71 or 77 of the MLA, "the document commencing the proceedings shall be served on the Administrator" of the SOPF and "the Administrator shall appear and take any action" which "he or she considers appropriate for the

proper administration of the [SOPF].” Adventurer argues that, even though the right of the Crown to sue for the preventive costs arises under Part 6, the Crown’s obligation to serve its proceedings on the Administrator is sufficient to bring the claim within the scope of subsection 116(1) of the MLA which is applicable to “a claim under this Part.”

[42] Despite the fact that both parties made scant submissions in their memoranda and at the hearing in respect of the statutory interpretation of subsection 116(1), this Court must still perform a purposive analysis, as this is the approach mandated by the Supreme Court of Canada (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27 at para. 21). I have done so even if the present matter does not warrant extensive comments.

[43] Thus, the words “a claim under this Part” (en français « aux demandes en recouvrement de créance présentées en vertu de la présente partie ») in subsection 116(1) must be construed by considering them in their entire context and their grammatical and ordinary sense harmoniously with the scheme of the MLA and particularly of Part 7, the object of the MLA, and the intention of Parliament.

[44] Part 7 of the MLA is entitled “Ship-source Oil Pollution Fund.” Its main purpose is to establish (or continue as the SOPF exists since 1989) a Canadian compensation scheme based on the “polluter pays” principle to compensate the victims of oil pollution by ship, subject to certain conditions and limitations, including time limitation to present their claim.

[45] Part 7, among other things, sets out the account of the SOPF (section 92), and deals with the appointment of its Administrator and Deputy Administrator (sections 94, 95). It provides for the governance of the SOPF (sections 120-124).

[46] It provides for the liability of the SOPF in respect of certain claims arising from ship-source pollution in various circumstances including when the liability of the shipowner is provided for under Part 6 such as sections 71 and 77, or under Article 3 of the *Bunkers Convention* and the said owner is financially unable to pay, or in the event of a mystery spill from a ship source. It deals specifically with certain claims for loss of income (sections 101, 103, 107).

[47] Part 7 gives various powers to the Administrator of the SOPF including the right to be part of a settlement in an action against a shipowner or its guarantor in respect of matters concerning the SOPF (section 109), and to sue a shipowner or his guarantor after being subrogated to the rights of a claimant (paragraphs 106(3)(*c*), (*d*)). It also gives the Administrator the right to sue a shipowner and a ship in order to obtain guarantees before or after a claim is made against it (paragraph 102(1)(*b*)). Part 7 also deals with certain matters in respect of the International Fund and the Supplementary Fund, but these provisions are not truly relevant for our purpose other than to say that in certain cases, the SOPF may have to present a claim to these funds and even sue them if they fail to respond to a valid claim.

[48] Section 116 is found in a subpart of Part 7 entitled “Levies to be paid to the Ship-source Oil Pollution Fund, the International Fund and the Supplementary Fund.”

[49] Section 116 of the MLA reads as follows:

Claimants entitled to interest	**Droit aux intérêts**
116. (1) Interest accrues on a claim under this Part against an owner of a ship, the owner's guarantor, the Ship-source Oil Pollution Fund, the International Fund or the Supplementary Fund at the rate prescribed under the Income Tax Act for amounts payable by the Minister of National Revenue as refunds of overpayments of tax under that Act as are in effect from time to time.	116. (1) Aux demandes en recouvrement de créance présentées en vertu de la présente partie contre le propriétaire d'un navire, le garant d'un propriétaire de navire, la Caisse d'indemnisation, le Fonds international ou le Fonds complémentaire s'ajoutent des intérêts calculés au taux en vigueur fixé en vertu de la Loi de l'impôt sur le revenu sur les sommes à verser par le ministre du Revenu national à titre de remboursement de paiements en trop d'impôt en application de cette loi.
Time from which interest accrues	**Délais**
(2) Interest accrues on a claim under this Part	(2) Les intérêts visés au paragraphe (1) sont calculés :
(*a*) if the claim is based on paragraph 77(1)(*a*) or on Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention, from the day on which the oil pollution damage occurs;	*a*) dans le cas d'une demande fondée sur l'alinéa 77(1)*a*) ou sur l'article III de la Convention sur la responsabilité civile ou l'article 3 de la Convention sur les hydrocarbures de soute, à compter de la date où surviennent les dommages dus à la pollution par les hydrocarbures;
(*b*) if the claim is based on section 51 or 71 or paragraph 77(1)(*b*) or (*c*), or on Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention as they pertain to preventive measures,	*b*) dans le cas d'une demande fondée sur les articles 51 ou 71 ou les alinéas 77(1)*b*) ou *c*) ou, à l'égard des mesures de sauvegarde, sur l'article III de la Convention sur la responsabilité civile ou l'article 3 de la Convention sur les hydrocarbures de soute, à compter :
(i) in the case of costs and expenses, from the day on which they are incurred, or	(i) soit de la date où sont engagés les frais,
(ii) in the case of loss or damage, from the day on	(ii) soit de la date où

which the loss or damage occurs; or	surviennent les dommages ou la perte;
(*c*) if the claim is based on section 107, from the time when the loss of income occurs.	*c*) dans le cas d'une demande fondée sur l'article 107, à compter de la date où survient la perte de revenus.
(My emphasis)	(Je souligne)

[50] Section 116 is only referred to in one other section of the MLA, that is section 92 in Part 7, which deals with the credits and charges to be made to the special account of the SOPF established in the accounts of Canada.

[51] Adventurer has not put forward any rationale as to why Parliament would intend to limit the rate of interest payable by the polluter when no payment by the SOPF is involved. The SOPF acts primarily as a debtor rather than a creditor. It makes more sense that Parliament would want to regulate the rate of interest payable by the SOPF, and thus recoverable when it exercises its right of subrogation.

[52] Two recent examples of a claim made against the owner of a ship or its guarantor can be found in *Administrator of the Ship-source Oil Pollution Fund v. Beasse*, 2018 FC 39 at paras. 1, 24, 45, and *Administrator of the Ship-Source Oil Pollution Fund v. Wilson*, 2017 FC 796 at paras. 7, 8. In both cases, the SOPF was subrogated after having compensated the CCG for a claim presented, among other things, under sections 77 and 103. In both cases, the Federal Court applied subsection 116(1) to calculate the rate of interest that could be claimed by the SOPF.

[53] Having duly considered all of the above, I conclude that the claims against an owner of a ship or its guarantor referred to in subsection 116(1) are claims by the SOPF against the said shipowner or its guarantor. The right of the Crown to claim against Adventurer in this matter is not a claim under Part 7.

V. CONCLUSION

[54] I have not been persuaded that the Federal Court made any reviewable error in this matter and I propose to dismiss these appeals with costs. In light of the Crown's submissions, the said costs should be fixed at one lump sum of $5,000.00 (all-inclusive) for both appeals.

"Johanne Gauthier"
J.A.

"I agree
Richard Boivin J.A."

"I agree
Yves de Montigny J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-64-17 AND A-65-17
APPEAL FROM JUDGMENTS OF THE HONOURABLE JUSTICE SEAN HARRINGTON DATED JANUARY 27, 2017, NOS. T-901-11 AND T-1149-12	
DOCKET:	A-64-17
STYLE OF CAUSE:	ADVENTURER OWNER LTD., DOCKENDALE HOUSE, WEST BAY STREET,, P.O. BOX CB-13048, NASSAU, BAHAMAS v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA
AND DOCKET:	A-65-17
STYLE OF CAUSE:	ADVENTURER OWNER LTD., OWNER, AND ALL OTHERS INTERESTED IN THE SHIP M/V CLIPPER ADVENTURER AND THE SHIP M/V CLIPPER ADVENTURER v. HER MAJESTY THE QUEEN IN RIGHT OF CANADA, AND THE ADMINISTRATOR OF THE SHIP-SOURCE, OIL POLLUTION FUND
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	JANUARY 30, 2018
REASONS FOR JUDGMENT BY:	GAUTHIER J.A.
CONCURRED IN BY:	BOIVIN J.A. DE MONTIGNY J.A.
DATED:	FEBRUARY 7, 2018

APPEARANCES:

Nicholas J. Spillane Victor DeMarco Katherine Shaughnessy-Chapman	FOR THE APPELLANT ADVENTURER OWNER LTD. DOCKENDALE HOUSE, WEST BAY STREET, P.O. BOX CB-13048, NASSAU, BAHAMAS
Benoît de Champlain Miriam Clouthier	FOR THE RESPONDENT HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Nicholas J. Spillane Victor DeMarco Katherine Shaughnessy-Chapman	FOR THE APPELLANTS ADVENTURER OWNER LTD., OWNER, AND ALL OTHERS INTERESTED IN THE SHIP M/V CLIPPER ADVENTURER AND THE SHIP M/V CLIPPER ADVENTURER
Benoît de Champlain Miriam Clouthier	FOR THE RESPONDENT HER MAJESTY THE QUEEN IN RIGHT OF CANADA

SOLICITORS OF RECORD:

Brisset Bishop s.e.n.c. Montreal, Quebec	FOR THE APPELLANT ADVENTURER OWNER LTD. DOCKENDALE HOUSE, WEST BAY STREET, P.O. BOX CB-13048, NASSAU, BAHAMAS
Nathalie G. Drouin Deputy Attorney General of Canada	FOR THE RESPONDENT HER MAJESTY THE QUEEN IN RIGHT OF CANADA
Brisset Bishop s.e.n.c. Montreal, Quebec	FOR THE APPELLANTS ADVENTURER OWNER LTD., OWNER, AND ALL OTHERS INTERESTED IN THE SHIP M/V CLIPPER ADVENTURER AND THE SHIP M/V CLIPPER ADVENTURER

Nathalie G. Drouin
Deputy Attorney General of Canada

FOR THE RESPONDENTS
HER MAJESTY THE QUEEN IN
RIGHT OF CANADA