BLG
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Mari-Times Newsletter

An annual summary of key Canadian legal developments

December 2018

In this issue

Introduction

2018 was another active year in Canadian maritime law. The federal Government's Oceans Protection Plan (OPP) has continued to spur legislative, regulatory, and policy changes in a number of areas, ranging from the proposed *Wrecked, Abandoned or Hazardous Vessels Act*, to the proposed *Oil Tanker Moratorium Act*, to various regulations and policy initiatives aimed at protecting marine wildlife. Numerous important legal decisions concerning maritime law and related admiralty practice areas were also rendered in 2018. Additionally, the legalization of recreational-use cannabis in Canada has created multiple new obligations at all levels of the maritime industry.

A. Policy Developments

1. Pilotage Act Review

The Government's review of the *Pilotage Act*, R.S.C., 1985, c. P-14, was completed in Spring 2018. The *Pilotage Act* was originally enacted in 1972, following the Royal Commission on Pilotage. The *Pilotage Act* provides the legislative framework for pilotage services in Canada and establishes the four Pilotage Authorities as Crown corporations: the Atlantic Pilotage Authority, the Great Lakes Pilotage Authority, the Laurentian Pilotage Authority, and the Pacific Pilotage Authority.

The *Pilotage Act* has been reviewed several times since its inception, either as a stand-alone subject or as part of a wider review of transportation issues. Although there have been several recommendations for reform, there was only one set of substantial amendments made in 1998. Otherwise, the majority of the *Pilotage Act* is largely unchanged. According to the Government of Canada, the primary purpose of the current *Pilotage Act* Review is to "modernize the legislation to better align with the existing and future realities of the marine transportation system".

The Final Report makes 38 recommendations categorized under the themes of purpose and principles, governance, labour, safety framework, tariffs and fees, and technical amendments.

Highlights of the Report include recommendations that:

- the *Pilotage Act* be amended to include the following:
    - A Preamble, setting out the rationale for legislative action and the linkages to the broader public interest, including environmental protection;
    - A Purpose clause that clearly outlines the government's legislative purpose of establishing a safe, efficient, responsive and accountable national system of marine pilotage as a regulated monopoly, as well as outlines the public outcomes the legislation is meant to secure; and
    - A statement of governing policy principles for the national marine pilotage system.
- the government make a commitment to developing and implementing a code of conduct for all licensed marine pilots;
- the Great Lakes Pilotage Authority and the Laurentian Pilotage Authority be amalgamated into the St. Lawrence and Great Lakes Pilotage Authority;
- one position on the Board of Directors of the Pacific Pilotage Authority be reserved for a representative from the Indigenous communities of British Columbia;
- the final offer selection process be amended so the arbitrator must consider the purpose and principles of the *Pilotage Act* when making arbitration rulings;
- the *Pilotage Act* be amended so all pilot corporations, as monopoly service providers, be subject to greater levels of transparency and accountability;
- the *Pilotage Act* be amended to provide the Minister of Transport, with the approval of the Governor in Council, the authority to make all regulations pertaining to pilotage safety, and that the *Pilotage Act* and its regulations have primacy over pilotage services contracts;
- the *Pilotage Act* be amended to provide the Pilotage Authorities with the authority to adopt and enforce binding practices and procedures related to the safe and efficient delivery of pilotage services;
- Transport Canada, as the independent regulator, establish a comprehensive set of key safety performance indicators;
- the government provide the necessary resources to develop the pilotage safety regulatory and oversight capacity in Transport Canada;
- the *Pilotage Act* enforcement provisions be amended to include an Administrative Monetary Penalty scheme that imposes higher penalties for serious violations;
- the *Pilotage Act* be amended to provide the Minister of Transport with the authority to regulate the conduct of pilotage risk assessments;
- the *Pilotage Act* be amended to establish an objective that Pilotage Authorities must optimize the use of new technologies;
- the *Pilotage Act* be amended to provide the Minister of Transport with the authority to require the Pilotage Authorities to publish their voyage plans and that the Minister of Transport exercise this authority;
- the Minister of Transport pursue an amendment to subsection 22(2) of the *Pilotage Act* to extend eligibility to all foreign masters and navigation officers for a pilotage certificate and subsequently terminate the Pacific Pilotage Authority waiver program and replace it with pilotage certification;
- Transport Canada implement and administer a standardized exemption scheme and stipulate the requirements in a new national regulation;
- Transport Canada amend the general fitness requirements in the General Pilotage Regulations (SOR/2000-132) and undertake a review of the processes for determining medical fitness of pilots;

- Transport Canada amend the Marine Personnel Regulations (SOR/2007-115) to formally recognize crew experience, training, and qualifications required under the Polar Code;
- the *Pilotage Act* grant the Pilotage Authorities complete authority to fix tariffs and other fees as is the case with NavCanada and the Port Authorities;
- the grounds for filing a tariff objection to the Canadian Transportation Agency be limited to compliance by the Pilotage Authorities with clearly specified statutory criteria (including Pilotage Authority operational considerations) and processes, and that only those subject to tariff charges, or their representatives and associations, be able to file objections;
- the Canadian Transportation Agency render decisions no later than 90 days after receiving a notice of objection;
- the Pilotage Authorities be authorized to fix fees for all other products and services provided by them.

2. Establishment of New Marine Refuges and Parliamentary Committee Report on Marine Protected Areas

The Parliamentary Standing Committee on Fisheries and Oceans released its fourteenth Report of the 42nd Parliament: *Healthy Oceans, Vibrant Coastal Communities*: *Strengthening the Oceans Act Marine Protected Areas' Establishment Process*. The Report was presented to the House of Commons on June 11, 2018. The Report provides 24 recommendations relating to more effective designation and administration of marine protected areas.

On December 21, 2017, seven new marine refuges off the coasts of Newfoundland and Labrador and Nunavut were established by the Department of Fisheries and Oceans. These refuges represent an additional 2.53% of protected ocean, bringing Canada's current total to 7.75%. The OPP goal is to increase that percentage to 10%. The new area is made up of an additional 145,598 km^2 of protected ocean.

3. Comprehensive Economic and Trade Agreement

The Comprehensive Economic and Trade Agreement (CETA) is the free trade agreement between Canada and the European Union, provisionally applied since September 21, 2017. CETA will be in force once the parliaments in all EU Member States ratify the text. Chapter 14 of CETA introduces significant changes to Canada's coasting trade regime, which protects Canadian shipowners against competitors registered under foreign flags.

Under the *Coasting Trade Act*, S.C. 1992, c. 31, only Canadian-flagged vessels or duty-paid vessels can carry goods or passengers between two Canadian ports. Foreign shipowners must apply for a coasting trade license. CETA changes this framework because it gives preferential market access to EU shipowners. Under CETA, there are three activities that no longer require a coasting trade license if performed by EU vessels. First, EU shipping lines can now provide feeder services on both continuous and single trip bases between the ports of Montréal and Halifax, provided the service is part of carriage involving the importation of inbound goods into Canada or of outbound goods from the country. Second, CETA allows European vessels to transport their own empty containers as long as they do not derive a direct financial benefit from doing so. Finally, Canadian companies can now hire EU vessels for dredging anywhere in Canadian waters.

4. Cumulative Effects of Marine Shipping initiative

The Government of Canada will dedicate $9.3 million over the next five years to the Cumulative Effects of Marine Shipping initiative under the OPP. The initiative seeks to develop a new framework for assessing potential cumulative effects of marine shipping on the environment. It will be applied in six pilot areas: Northern and Southern British Columbia, the St. Lawrence River (Québec), the Bay of Fundy, the south coast of Newfoundland, and the eastern Arctic (Nunavut).

Under the initiative, Canada will work with Indigenous peoples, local stakeholders, and coastal communities to better understand Canada's coastal ecosystems. The information will allow Canada's marine safety system to be better equipped to support the marine shipping industry and protect the marine environment.

5. BC Government Clean Growth Future initiative: Clean Transportation

The Government of British Columbia has released an intentions paper, *Clean Transportation: Building a clean growth future for B.C.* The paper sets out the government's plans for:

- integrating transportation and land use planning;
- supporting electric or hybrid ferries;
- increasing use of clean electricity and technologies in ports;
- integrating cleaner and more efficient shipping corridors;
- examining ways to shift modes of transportation, such as moving more goods by rail; and
- increasing engagement with stakeholders to make trade and shipping more efficient in B.C.

The strategy will be unveiled in late 2018.

6. Whales Initiative

As part of the OPP, the Government of Canada is introducing a 5-year, $167.4 million Whales Initiative. Specifically in regards to the Southern Resident Killer Whale in the Salish Sea, the initiative aims to reduce disturbance from underwater vessel noise by:

- imposing a new mandatory requirement for all marine vessels (including recreational boats) to stay at least 200 meters away from killer whales, effective July 11, 2018;
- asking vessels to move further away from key foraging grounds within shipping lanes of the Strait of Juan de Fuca, with the help of the U.S. Coast Guard, and partnering with the Vancouver Fraser Port Authority's Enhancing Cetacean Habitat and Observation (ECHO) program on a voluntary vessel slowdown in Haro Strait starting in July 2018;
- working with BC Ferries to develop a noise management plan to reduce underwater noise impacts of its fleet on killer whales; and
- developing the necessary tools to implement mandatory measures where needed to reduce noise from vessel traffic, and such legislation if required.

The initiative will also improve prey availability for the Southern Resident Killer Whale by:

- reducing the total fishery removal for Chinook salmon by 25-35 per cent, to help increase prey availability;
- implementing mandatory fishery closures in specific areas where whales forage for food by closing these areas to recreational fin fishing and commercial salmon fishing, and exploring the use of additional regulatory measures; and
- increasing scientific research, monitoring and controls of contaminants in whales and their prey, and funding additional research on prey availability.

The initiative aims to enhance monitoring under the water and in the air by:

- adding to the under-water hydrophone network in the Salish Sea to better measure noise impacts and track the noise profile of individual vessels; and
- increasing aerial surveillance patrols through the Transport Canada's National Aerial Surveillance Program, and Fisheries and Oceans Canada's Fisheries Aerial Surveillance and Enforcement Program to better monitor and enforce new measures.

Finally, the initiative will encourage compliance and strengthen enforcement by:

- investing in education and awareness among recreational boaters to reduce their impact on the whales by providing, for example, the Cetus Research and Conservation Society with funding of up to $415,000 for three years to deliver the "Straitwatch" program;
- adding more fishery officers on the water to verify compliance with approach distances and disturbances and harassment provisions of the regulations and enforce fisheries closures; and
- enhancing strong enforcement of environmental regulations to reduce contaminants affecting the killer whales.

In addition to these measures, the federal Government has also proposed a recovery strategy for the Offshore Killer Whale under the *Species at Risk Act*, S.C. 2002, c. 29.

7. Spills Response

The B.C. Government is preparing to expand its regulatory spill prevention, response, and management regime. The B.C. Government's regulatory framework for spill management has been divided into two phases. Phase 1 included three regulations enacted in October 2017: *Spill Preparedness, Response and Recovery Regulation, Spill Contingency Planning Regulation*, and *Spill Reporting Regulation*, all under the *Environmental Management Act* (EMA). These regulations also brought into force "Division 2.1 – Spill Preparedness, Response and Recovery" of the EMA.

Phase 2 is currently underway. On February 28, 2018, the Ministry of the Environment released its intentions paper: *Policy Intentions Paper for Engagement: Phase Two Enhancements to Spill Management in British Columbia*. The public consultation process is comprised of four "policy concepts," with a Technical Working Group assigned to examine and solicit feedback on each concept. The policy concepts are:

1. Response times
2. Geographic Response Plans
3. Addressing loss of public and cultural use from spills
4. Maximizing the marine application of environmental emergency regulatory powers

The Ministry of the Environment intends to use the public feedback and policy proposals generated by the technical Working Groups to inform the policy options it puts forward to the government.

8. Proactive Vessel Management Program

As part of the OPP, the Government of Canada is introducing a new approach to managing marine traffic issues in local waterways: the Proactive Vessel Management program. The government is currently soliciting feedback from the following stakeholders:

- Indigenous peoples and coastal communities;
- Provincial, territorial and municipal governments;

- Canada's marine shipping industry;
- Pilotage authorities;
- Marine associations;
- Port authorities; and
- Non-governmental organizations.

Stakeholders can make written submissions on issues such as Proposed Amendments to the *Navigation Safety Regulations*, Hazardous and Noxious Substances, Enhanced Maritime Situational Awareness, and Emergency Towing Needs for the West Coast. Transport Canada has set up an online hub for the collection of submissions, found at www.letstalktransportation.ca/OPP in English and www.parlonstransport.ca/ppo in French.

B. Legislative Developments

1. Bill C-64: *Wrecked, Abandoned or Hazardous Vessels Act*

On October 30, 2017, the Government of Canada tabled Bill C-64, to enact the *Wrecked, Abandoned or Hazardous Vessels Act*, as part of Canada's broader OPP. The Act's objectives will be to promote the protection of the public, of the environment, and of infrastructure by regulating abandoned or hazardous vessels and wrecks in Canadian waters. The Act is a response to widespread discontent among coastal communities over the costs associated with removing derelict vessels and the pollutants they discharge. It seeks to address both the environmental and financial aspects of abandoned vessels by implementing a ten-part approach to wrecked vessels:

- First, the Act will implement the Nairobi International Convention on the Removal of Wrecks (2007) (the Convention) into Canadian law. This is an IMO international treaty that established uniform rules for the prompt and effective removal of shipwrecks in states' exclusive economic zones.
- Second, the Act will require owners of vessels of 300 gross tonnage and above and unregistered vessels being towed, to maintain wreck removal insurance or other financial security. Although this does not address the many abandoned vessels whose owners cannot be found currently sitting in Canadian waters, it will help prevent owners from shirking their financial obligations in the future.
- Third, the Act will explicitly prohibit vessel abandonment unless authorized under statute or due to a maritime emergency. A vessel will be deemed abandoned if an owner has left it unattended for a period of two years.
- Fourth, the Act will prohibit the leaving of a dilapidated vessel in the same place for more than 60 days without authorization. A dilapidated vessel is one that is significantly degraded or dismantled or is incapable of being used for safe navigation.
- Fifth, the Act will authorize the Minister of Transport or Minister of Fisheries and Oceans to order the removal of a dilapidated vessel from any federal property.
- Sixth and seventh, the Act will authorize the Minister of Fisheries and Oceans and the Minister of Transport, respectively, to take measures to prevent, mitigate, or eliminate hazards posed by vessels or wrecks and to hold the owner liable for their incurred costs. Hazard is given a broad definition in the Act and includes harmful consequences to the environment, coastlines, shorelines, infrastructure, or any other interest including health, safety, well-being, and economic interest.
- Eighth, the Act establishes an administration and enforcement scheme to ensure compliance. This scheme includes powers of search and seizure, and an administrative monetary penalties regime. If a vessel owner contravenes certain provisions of the Act – including the prohibition against leaving a dilapidated vessel stranded or grounded for more than 60 consecutive days – the owner may be subject to criminal penalties and even imprisonment.
- Ninth, the Act authorizes the Governor in Council to make regulations excluding certain vessels from the application of the Act, setting fees, and establishing requirements for salvage operations and towing vessels.
- Finally, the Act makes related and consequential amendments to other legislation.

Bill C-64 was passed by the House of Commons on June 20, 2018. The Bill passed second reading in the Senate on October 18, 2018.

2. Bill C-55: An Act to amend the *Oceans Act and the Canada Petroleum Resources Act*

Bill C-55 sets out to amend the *Oceans Act*, S.C., 1996, c. 31, in order to meet Canada's commitment to protecting oceans. The amendments makes the Minister of Fisheries and Oceans responsible for establishing a network of marine protected areas, and it empowers the Minister to designate marine protected areas by order and prohibit certain activities in those areas. Additional amendments bolster enforcement provisions.

The proposed amendments to the *Canada Petroleum Resources Act*, R.S.C., 1985, c. 36 (2nd Supp.), support the amendments to the *Oceans Act*. As an example, the Governor in Council may order or prohibit an interest owner under the *Canada Petroleum Resources Act* from commencing or continuing work on lands that are subject to the interest of that interest owner. The other amendments are with respect to compensation and deposits.

Bill C-55 was passed by the House of Commons on April 25, 2018 and passed first reading in the Senate on April 26, 2018.

3. Bill C-48: *Oil Tanker Moratorium Act*

Bill C-48, the *Oil Tanker Moratorium Act*, was introduced into the House of Commons by the Minister of Transport in May 2017. The Act would ban tankers carrying more than 12,500 tonnes of crude oil or persistent oils from stopping, loading, and unloading at any ports along British Columbia's north coast. Roughly 95% of the oil tanker traffic in British Columbia takes place along its southern coast, which indicates that the current Act will not have a significant practical effect on commerce in the province at this time.

Bill C-48 passed third reading in the House on May 8, 2018. The Bill passed first reading in the Senate on May 9, 2018.

4. Bill C-68: An Act to amend the *Fisheries Act* and other Acts in consequence

On February 7, 2018 the Minister of Fisheries and Oceans Canada announced proposed amendments to the *Fisheries Act*, R.S.C., 1985, c. F-14, and related acts to undo changes made in 2012 by the previous federal Conservative Government. The Bill would restore past protections for all fish and fish habitats and create enhanced protections, which would include provisions to explicitly provide for Aboriginal interests.

The proposed amendments in Bill C-68 would:

- create protection for all fish and fish habitats, not just for those connected with commercial and recreational use or Aboriginal fisheries;
- strengthen the role of Indigenous peoples in project reviews, monitoring, and policy development, including a requirement for the consideration of Aboriginal interests in habitat decisions;
- promote restoration of degraded habitat and the rebuilding of depleted fish stocks, for which there are currently no provisions under the *Fisheries Act*;
- allow for the better management of large and small projects impacting fish and fish habitat through a new permitting framework and code of practice;
- create a public registry for projects to provide full transparency;
- create new fisheries management tools to enhance the protection of fish and ecosystems;
- strengthen the long-term protection of marine refuges for biodiversity;
- help ensure that the economic benefits of fishing remain with the license holders and their community by providing clear ability to enshrine current inshore fisheries policies into regulations; and
- clarify and modernize enforcement powers to address emerging fisheries issues and to align with current provisions in other legislation.

Bill C-68 has been passed by the House of Commons and transferred to the Senate, where it passed first reading on June 20, 2018.

5. Bill C-86: A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures

Bill C-86 was introduced in the House of Commons on October 29, 2018. This omnibus bill includes amendments to both the *Canada Shipping Act*, 2001, S.C. 2001, c. 26 (CSA 2001) and the *Marine Liability Act*, S.C. 2001, c. 6 (the MLA).

a. Canada Shipping Act

Under the proposed amendments to the CSA 2001, provinces, local governments, and Indigenous organizations will be able to enter into agreements or arrangements with the Minister of Transport or the Minister of Fisheries and Oceans respecting the administration or enforcement of any provision of the CSA 2001.

The Bill will also allow the Minister of Transport to make an interim order containing any provision that may be contained in a regulation made under the Act. The interim order can only be made on the recommendation of the Minister of Transport if the Minister believes that immediate action is required to mitigate a direct or indirect risk to marine safety or to the marine environment. An interim order would be in effect for a period of up to one year but can be extended by the Governor in Council for a period of no more than two years. Interim orders will be published in the Canada Gazette within 23 days after it is made, at which time it becomes an offence to contravene the order.

The Bill will authorize the Minister of Fisheries and Oceans, pollution response officers, and accompanying persons to enter private property in the case of a discharge of oil from a vessel or oil handling facility.

The Minister's powers to respond to a vessel that is or may be discharging oil will be expanded to include authorization to remove, sell, dismantle, destroy, and dispose of the vessel. Any disposition of a vessel will result in clear title for the party acquiring the vessel.

Finally, the Bill authorizes the Governor in Council to make regulations respecting the protection of marine environment from the impacts of navigation and shipping activities, including regulations:

- Respecting the design, construction, manufacture and maintenance of vessels;

- Respecting the development, maintenance and implementation of a management system that sets out the manner in which marine environment protection measures are to be integrated into day to day operations;
- Respecting the inspections and testing of vessels, or classes of vessels, and their machinery, equipment and supplies;
- Respecting compulsory and recommended routes;
- Regulating or prohibiting the operation, navigation, anchoring, mooring or berthing of vessels; and
- Regulating or prohibiting the loading or unloading of a vessel or class of vessels.

b. Marine Liability Act

Bill C-86 sets out several changes to the Ship-source Oil Pollution Fund (the Fund). Notably, the Fund's per-occurrence limit of liability has been removed (ss. 110 and 111 of the MLA have been repealed). Prior to these amendments, the Fund's maximum aggregate liability for 2018 was $174 million.

The Bill authorizes the provision of up-front emergency funding out of the Fund to the Minister of Fisheries and Oceans to respond to significant oil pollution incidents, to a maximum of $10 million per year, or up to $50 million if ordered by the Governor in Council.

In the event that the SOPF is depleted, the Bill authorizes the temporary transfer of funds from the Consolidated Revenue Fund to the Fund. The Bill also requires the Minister of Fisheries and Oceans to replenish those funds within 2 years, and imposes levies on receivers and exporters of oil in order to ensure the Fund is replenished.

The Bill establishes that ship owners are liable for the costs and expenses incurred by the Minister of Fisheries and Oceans or any other person for preventive measures taken in response to an occurrence that caused pollution damage, or created a grave and imminent threat of causing oil pollution damage. In the event the preventive measures were taken with respect to an occurrence that did not cause damage or create an imminent threat, then the Fund is liable for the costs.

The Bill expands the liability of ship owners and the Fund to include any kind of loss damage, costs, and expenses for economic loss suffered by persons whose property was not polluted.

The Bill will create an expedited process for claims (others than for economic loss) that are less than $35,000, unless the Administrator deems the claim to be for a significant incident, in which case the limit is $50,000. These claims have a one-year limitation period. The Administrator may investigate and reassess the basis for any claim in which payment was made for up to three years after the occurrence.

Finally, the Bill provides for administrative monetary penalties for contraventions of specified or designated provisions under the MLA.

C. Regulatory Developments

1. Arctic Shipping Safety and Pollution Prevention Regulations

On January 10, 2018, the *Arctic Shipping Safety and Pollution Prevention Regulations* (SOR/2017-286) (the Polar Code Regulations) was published in the Canada Gazette, Part II. The Polar Code Regulations repeal the Arctic Shipping Pollution Prevention Regulations and bring Canadian regulations in line with the International Maritime Organization's mandatory *International Code for Ships Operating in Polar Waters* (the Polar Code), which came into effect in January 2017. After a series of voluntary polar shipping guidelines that have existed since the 1990s, the Polar Code is the first mandatory IMO instrument focused on shipping in the Arctic and Antarctic.

The Polar Code Regulations are divided into three parts. Part 1 is devoted to safety measures. These measures include the incorporation of certain International *Convention for the Safety of Life at Sea* (SOLAS) requirements (including a wholesale adoption of Chapter XIV of SOLAS for non-fishing vessels of 300 gross tonnage or more) and additional Canadian requirements (including a requirement that an ice navigator be on board certain vessels in Arctic waters).

Part 2 addresses pollution prevention measures. This part maintains the standards established by the pre-existing *Arctic Waters Pollution Prevention Act* (R.S.C., 1985 c. A-12) (which is not repealed by the Polar Code Regulations) and therefore only includes provisions which either expand upon or improve Canada's existing Artic pollution regime. These include minor changes to operational requirements for vessels carrying noxious liquid substances and additional structural requirements (e.g. double hulling for certain vessels) and operational requirements (e.g. modifications to oil records books).

Finally, Part 3 provides consequential amendments. In addition to repealing the *Arctic Shipping Pollution Prevention Regulations*, sections of the *Navigation Safety Regulations and Ship Station (Radio) Regulations*, 1999 will be repealed. There will be no increased administrative burdens as a result of these amendments.

The additional requirements imposed by the Polar Code Regulations are numerous and often highly technical. Accordingly, interested parties should be sure to consult Transport Canada's summary attached to the published Polar Code Regulations for a more comprehensive analysis of the new regime.

2. Regulations Amending the Administrative Monetary Penalties and Notices (CSA 2001) Regulations

Administrative Monetary Penalties (AMPs) are widely issued for offences under the *Canada Shipping Act, 2001* and related regulations. The legislative scheme with respect to AMPs in the maritime context was amended on April 23, 2018 to designate new violations, set out appropriate penalty ranges for certain regulations made under the *CSA 2001* and for certain provisions of the *CSA 2001*, and expand the enforcement tools available to marine safety inspectors.

The amendments designate new provisions as violations under which Transport Canada marine safety inspectors may issue AMPs. The amendments will be made to the following regulations:

- *Collision Regulations* (C.R.C., c. 1416);
- *Ballast Water Control and Management Regulations* (SOR/2011-237);
- *Small Vessel Regulations* (SOR/2010-91);
- *Fire and Boat Drills Regulations* (SOR/2010-83);
- *Safety Management Regulations* (SOR/98-348); and
- *Vessel Pollution and Dangerous Chemicals Regulations* (SOR/2012-69).

3. Regulations Amending the Marine Mammal Regulations

On July 11, 2018, the Minister of Fisheries, Oceans and the Canadian Coast Guard announced that amendments to the *Marine Mammal Regulations* (SOR/93-56) are now published in the *Canada Gazette, Part II*. The new rules for whale watching and approaching marine mammals, which are now in effect, will provide a minimum approach distance of 100 meters for most whales, dolphins and porpoises to legally protect these animals from human disturbances. These variations include:

- 200 meters for all Orca populations in BC and the Pacific Ocean;
- 200 meters for all whales, dolphins and porpoises in the Saguenay-St. Lawrence Marine Park;
- 400 meters for threatened or endangered whales, dolphins and porpoises in the St. Lawrence Estuary (the critical habitat of the endangered St. Lawrence Estuary beluga); and
- 50 meters in parts of the Churchill Estuary (which includes the Churchill River) and parts of the Seal River.

The requirement to respect the approach distances does not apply to a vessel that is in transit. Amendments to the Regulations also require operators of a vehicle to report a collision or other accidental contact with a marine mammal. Before the changes to the regulations, voluntary guidelines existed but were not enforceable. These amendments now make it possible for anyone in contravention of the Regulations to be charged with an offence under the *Fisheries Act*.

D. Recent Key Judgments

1. *Adventurer Owner Ltd. v. Canada*, 2018 FCA 34

Adventurer Owner Limited (Adventurer) appealed the decision of the Federal Court dismissing its action against the Crown for damages resulting from the *M/V Clipper Adventurer* (the Clipper) running aground on a shoal in the Canadian Arctic.

On August 27, 2010, the Clipper ran aground on a submerged and unchartered shoal in the Coronation Gulf in the Canadian Arctic. The Crown incurred considerable expenses in its efforts to control the resulting oil pollution, which was minimal, and to prevent further pollution damage.

After the shoal's discovery in 2007, a Notice to Shipping (the NOTSHIP) was created and radio broadcast for 14 days to signal its existence. Following further investigation by a team of hydrographers in 2009, a Notice to Mariners (the NOTMAR) was issued on October 8, 2010. NOTSHIPs are available electronically on the Canadian Coast Guard (the CCG) website as well as through weekly distributions upon request. NOTMARs are permanent updates to hardcopy hydrographic charts.

Canadian mariners are required under the *Charts and Nautical Publications Regulations*, 1995, SOR/95-149 (the Regulations) and the *Collision Regulations*, CRC, c 1416 to have onboard and consult all applicable Canadian nautical charts and publications. Importantly, section 7 of the Regulations requires that these materials be up-to-date based on, among other things, information contained in NOTSHIPs.

Adventurer brought an action against the Crown claiming that various Crown servants within the Department of Fisheries and Oceans, specifically those working in the CCG and the Canadian Hydrographic Service (the CHS), breached their duty to warn mariners sailing in the Canadian Arctic waters of the presence of the shoal. On this basis, Adventurer submitted that the Crown was vicariously liable for the costs and expenses it incurred as a result of the incident. The Crown denied liability and filed a counterclaim against the *Clipper*.

At trial, the Federal Court held that various Crown servants in the employ of the CCG and the CHS had a duty to warn mariners of the presence of the shoal. The Crown had discharged that duty by the issuance of the NOTSHIP. The Federal Court further held that the Adventurer and crew of the *Clipper*, who failed to keep the *Clipper*'s hydrographic charts up-to-date and who set up a course without consulting the NOTSHIPs and other nautical materials, were solely

responsible for the grounding of the vessel. The Federal Court dismissed the Plaintiffs' claim while granting the Crown judgment of $445,361.64 in *personam* and *in rem* against the Plaintiffs.

On appeal, the Adventurer did not challenge the Federal Court's finding that it was negligent; rather, it appealed the finding that the issuance of the NOTSHIP discharged the Crown's duty to warn. The Federal Court of Appeal upheld the Federal Court's decision that the issuance of the NOTSHIP satisfied the Crown's duty to warn and that the Crown was therefore not liable for breach of that duty. Ample evidence showed that it was reasonable for the Crown to expect mariners to use and consider the issued NOTSHIP while sailing in the Coronation Gulf in August 2010. In fact, it is the duty of mariners, both under common law and local regulations, to make use of up-to-date nautical charts and publications.

2. *Corporation des Pilotes du Saint-Laurent Central Inc. v. Laurentian Pilotage Authority*, 2018 FC 333

Representatives of the Laurentian Pilotage Authority (the LPA), the Corporation des Pilotes du Saint-Laurent Central Inc. (the Corporation), the Canadian Coast Guard, Transport Canada, and the Montréal Port Authority attended a meeting on November 24, 2016 to discuss the navigation of post-Panamax ships on the St. Lawrence River at night in the winter months. The discussions ended, but there was confusion as to whether the outcome of the meeting was binding as those in attendance did not have the authority to amend either Notices to Mariners or the LPA's regulations. Regardless, the Corporation issued a bulletin for its members, indicating that a verbal agreement had been reached with the LPA requiring double pilotage of post-Panamax ships upstream from Québec City to Montréal.

On the night of December 6, 2016, the two pilots were assigned to pilot a post-Panamax ship from Trois-Rivieres to Montréal, but anchored at Lanoraie as night fell and refused to continue sailing the vessel at night. The pilots indicated that they would only proceed to continue navigating the ship at night if the Corporation confirmed that the proper authorization was given in writing.

On December 8, the LPA suspended the licenses of both pilots through its disciplinary power conferred by s.27 of the *Pilotage Act*, in order to discipline the pilots for refusing to provide their services without endangering navigation safety. The Corporation applied for judicial review of this decision. The issues in the case were whether the pilots showed negligence by anchoring the ship, and whether they could be sanctioned under s.27 of the *Pilotage Act* because they had refused to provide a service (itself a breach of s.15.3 of the Act).

The Federal Court allowed the application for judicial review, and set aside the decision to suspend the pilots. The Court found that the LPA's disciplinary power was limited by section 15.3 of the *Pilotage Act*. Therefore, the concept of negligence in s.27 cannot encompass issues that relate to the employer-employee relationship or the contractual relationship between the Corporation and the LPA if those issues do not affect navigation safety. In situations where the LPA directly employs pilots, it can exercise both the disciplinary powers of section 27 to 29 of the Act (which concern navigation safety) and the disciplinary powers held as an employer (which are broader than the ones described in the Act). However, when pilots organize a corporate body (such as the Corporation), they are no longer the Authority's employees, and thus the Authority cannot exercise an employer's powers of discipline them where navigational safety is not a concern.

The underlying objective of ss.27-29 of the Act is to ensure navigation safety. In this case, what is really at issue is a disagreement regarding the scope of the Corporation's contractual obligations to the LPA and regarding the impact of changes to the normative framework governing navigation on the St. Lawrence River as discussed during the meeting in November 2016. When an administrative authority exercises a power in a way that is contrary to the purposes of its enabling statute, the decision in question is unreasonable and should be overturned

3. *Elroumi v. Shenzhen Top China Imp & Exp Co., Ltd China*, 2018 FC 633

The Plaintiff launched a claim against Entrepot Canchi, a warehouse company, which in turn launched a third party claim against the shipping company CMA CGM. Both Entrepot Canchi and CMA CGM took the position that the Federal Court lacks jurisdiction to hear the claim against Entrepot Canchi, and that the Plaintiff's claim should fail.

The Plaintiff had purchased goods from the Defendants, Foshan Haojia Co. Ltd. and Hoajia Industry Co. Ltd., and paid for shipment of those goods from Huang Pu, China, to Montréal, Québec. The three original through bills of lading issued by King Freight International Corp. identified Montréal as the port of discharge and delivery and the Plaintiff, Nada Elroumi, as consignee and notifying party. Several days after the Plaintiff's goods were loaded onto a vessel in China, a sea waybill was issued by CMA CGM. It identified King Freight International Corp. as the shipper, Jet-Sea International Shipping Inc. as the consignee and notifying party, Hong Kong as the port of loading, Vancouver as the port of discharge, and Montréal as the port of delivery. The Plaintiff's goods were transported from Vancouver to Montréal by train. It was arranged that Entrepot Canchi would then transport the goods to Ms. Elroumi's residence in Laval, Québec. Upon clearing customs, the goods were declared to be damaged.

The issue in this case was whether the Federal Court had jurisdiction over the Plaintiff's claim.

According to paragraph 22(2)(f) of the *Federal Courts Act*, RSC 1985, c F-7, the Federal Court's jurisdiction to hear claims against ocean carriers extends beyond marine transportation when goods continue

their journey after discharge under a through bill of lading. In the case at bar, coverage under the bills of lading was limited to the ocean carriers, King Freight International Corp. and CMW CGM. The Plaintiff could have therefore brought an action for damages against either one of them, whether the damage occurred during marine transportation or rail transportation. However, the Plaintiff's claim was against Entrepot Canchi, a land carrier. The Federal Court held that the Plaintiffs' claim was outside its jurisdiction and that the Superior Court of Québec had exclusive jurisdiction over the matter.

4. *R. v. Alassia Newships Management Inc.*, 2018 BCCA 92

This case is an appeal of an order of the Supreme Court of British Columbia dismissing Alassia Newships Management Inc.'s (Alassia) application for a prerogative remedy arising out of delivery of a summons.

In February 2017, Alassia was charged with various environmental offences related to an alleged oil spill from one of its vessels nearly two years earlier. On February 15, 2017, the Provincial Court of British Columbia issued a summons to Alassia requiring appearances on April 5, 2017. The summons was served on the master of one of Alassia's other vessels (the Master) that was in port in Nanaimo, British Columbia on March 1, 2017.

Alassia is a Greek ship management company with offices in Athens, Greece. Alassia did not appear before the Provincial Court on April 5, 2017 in order to avoid attornment to the jurisdiction of the Provincial Court. The Justice of the Peace held that Alassia had been properly served with the summons and allowed the matter to proceed as an *ex parte* trial. As a result, Alassia made an application before the Supreme Court for prerogative relief in the nature of certiorari and/or prohibition to quash the Provincial Court's exercise of jurisdiction over it and to prevent further advancement of proceedings until valid service was effected. The Supreme Court dismissed the application.

Two issues were raised before the Court of Appeal: first, whether the summons on Alassia was properly served such that the Provincial Court had jurisdiction over the company; and second, whether, if the Provincial Court did not have such jurisdiction, a prerogative remedy in the nature of certiorari and/or prohibition is available.

On the first issue, the Court of Appeal found that Alassia had not been properly served and that the Provincial Court therefore exceeded its jurisdiction. The Master who was allegedly served was not a "senior officer" such that service on him constituted proper service of the summons on Alassia as required under section 703.2 of the Criminal Code. His role was not similar to that of a ship owner or manager; he did not make decisions regarding Alassia's business, nor did he establish any of the company's policies or manage its activities.

The Crown argued that the delivery of the summons, although served on someone other than a senior official, constituted valid service because the delivery still gave constructive notice to Alassia. The Court of Appeal found this to be incorrect. It clarified that the notice given must be notice in law, not notice in fact. Notice in law requires service of a summons meeting the requirements of section 703.2 of the *Criminal Code*.

With respect to the second issue, the Court of Appeal granted Alassia the prerogative relief. It found that there was no basis upon which to deny Alassia's application given that it had not been properly served.

The Court of Appeal allowed the appeal and granted prerogative relief to Alassia. The Crown submitted an application for leave to appeal to the Supreme Court of Canada on October 9, 2018.

5. *R. v. MV Marathassa*, 2018 BCPC 125

In *R. v. MV Marathassa*, 2018 BCPC 125, the defendant motor vessel, *Marathassa*, faced numerous regulatory charges in relation to an alleged oil spill from the vessel in April 2015.

On April 8, 2015, Transport Canada received notice of an alleged oil spill in English Bay, British Columbia. The manager of compliance and enforcement for Transport Canada, Captain Yeung, directed two Transport Canada inspectors to "target [the Marathassa] for a [port state control] inspection and pollution investigation". The following day, one of the inspectors, Inspector Waheed, boarded the vessel, informed the captain of the *Marathassa* (the Captain) and legal counsel for the *Marathassa* that he was there to conduct an inspection.

Upon completion of the inspection, Inspector Waheed had not found any evidence of a pollutant being discharged by the *Marathassa*. Divers did, however, find oil in certain pipes indicating that there may have been an escape. At that point, Inspector Waheed informed the Captain that the matter was very serious and that he would be conducting an investigation.

Inspector Waheed remained on board without a warrant. He continued to examine vessel equipment, took photographs, and directed the crew to measure the oil in the fuel tanks. He later testified at trial that when he informed the Captain that he was conducting an investigation, he was also continuing to conduct an inspection to ascertain the source of the pollutant. He maintained that he remained on board under his capacity as an inspector. In the following days, Inspector Waheed returned to the *Marathassa* numerous times to collect more evidence, again without a warrant or the Captain's informed consent. He testified that these activities were done pursuant to his inspection powers.

The *Marathassa* argued that Transport Canada's boarding of the vessel and seizure of evidence without a warrant or informed consent breached the *Marathassa*'s right against unreasonable search or seizure under section 8 of the Charter of Rights and Freedoms.

The Crown argued that Transport Canada was conducting a pollution inspection on board the *Marathassa* and was therefore entitled to gather the evidence. Even if it was found to be carrying out an investigation instead of an inspection, the Crown submitted that the *Marathassa* had no expectation of privacy, which is required for a section 8 breach.

Three issues were brought before the Provincial Court of British Columbia: first, whether Transport Canada had legal authority to be on the *Marathassa* in April 2015; second, whether Inspector Waheed's activities breached the *Marathassa*'s section 8 rights; and third, whether any evidence should be excluded pursuant to subsection 24(2) of the *Charter*.

On the first issue, the Provincial Court held that Transport Canada did not have legal authority to be on the *Marathassa* in April 2015. This was because Inspector Waheed was, in actuality, conducting an unlawful investigation under the guise of an inspection. Captain Yeung and Inspector Waheed's electronic communications and personal notes all refer to Inspector Waheed as conducting an investigation. The Provincial Court found no basis for Captain Yeung and Inspector Waheed to misconstrue the meanings of "inspection" and "investigation" and the terms' legal ramifications.

Furthermore, contrary to his testimony, Inspector Waheed did not actually take steps on board the *Marathassa* to inspect the source or continuing existence of pollution. Instead, his only apparent purpose for being on board was to collect evidence of a contravention that would only be relevant after it was confirmed that the *Marathassa* was the source of the pollution.

On the second issue, the Provincial Court held that Inspector Waheed's investigation breached the *Marathassa*'s section 8 Charter rights. In order to establish a breach under section 8 of the Charter, there must be an expectation of privacy. Where vessels are concerned, there is an expectation of privacy that persons not authorized to board the vessel will not board. In this case, the Captain did not consent to Inspector Waheed boarding the *Marathassa* to conduct an investigation. There is a relaxation of the expectation of privacy in the case of inspections; however, inspections permitted by statute are not without their limitations. For example, not all evidence-gathering activities are permitted in inspections, and inspections may not be conducted in the vessel's living quarters except with a warrant or in exceptional circumstances.

Therefore, while the *Marathassa* was subject to inspections, which would have diminished the expectation of privacy, much of Inspector Waheed's conduct fell outside what is allowed under an inspection and was therefore subject to the expectation of privacy. This constituted a breach of the *Marathassa*'s section 8 *Charter* rights.

With respect to the third issue, the Provincial Court found it necessary to exclude the evidence gathered through Transport Canada's unlawful searches and seizures. This decision was made on the basis that Captain Yeung and Inspector Waheed's deliberate and repeated unlawful conduct demonstrated a blatant disregard for the *Marathassa*'s Charter rights. Additionally, the impact of the breaches on the *Marathassa* were more than trivial; the breaches were intentional, demanding, and ongoing. Finally, the Provincial Court held that the evidence was not essential to the "truth-seeking function" of the trial process as it was not entirely reliable and the exclusion of the evidence would not end the Crown's case. Excluding the evidence was necessary in order to maintain integrity and public confidence in the justice system.

6. *Sargeant v. Worldspan Marine Inc.*, 2017 BCSC 1153

The plaintiff, Harry Sargent III, commissioned the defendant, Worldspan Marine Inc. (Worldspan) to build a custom yacht (the Vessel). Construction was commenced in March 2008. Disputes concerning the escalating costs of construction arose between Mr. Sargeant and Worldspan. Subsequently, Offshore Interiors Inc. (Offshore), an unpaid trade creditor of Worldspan, commenced a Federal Court action against the Vessel in July 2010. Offshore arrested the Vessel, and later took default judgment against the Vessel. Mr. Sargeant, among other parties including Worldspan and various trade creditors, made in rem claims against the Vessel in the Federal Court (the Federal Court Action). Mr. Sargeant also commenced this action in the Supreme Court of British Columbia against Worldspan for breach of fiduciary duty, breach of trust, conversion, fraud, and breach of contract (the Supreme Court Action). Worldspan applied for a temporary stay of this action pending the resolution of the in rem claims in the Federal Court Action.

In deciding whether to grant a stay, the Supreme Court noted that Mr. Sargeant would not be able to recover the entirety of his claim solely through the Federal Court Action. The amount recoverable in the Federal Court Action would be limited to whatever amount the Federal Court allows on his in rem claim against the proceeds of sale of the Vessel, and would not extend to Mr. Sargeant's claims for fraud and conversion. Those claims were raised by Mr. Sargeant in the Supreme Court Action. Because fraud and conversion were only raised in one of the two actions, the Supreme Court was satisfied that there would be little risk of inconsistent verdicts between the two actions.

The Supreme Court also found that a stay in the proceedings would not promote judicial economy and efficiency as Mr. Sargeant intended to pursue his fraud claim in the Supreme Court Action regardless of the outcome in the Federal Court Action. Additionally, Worldspan sought a temporary, rather than a permanent stay, imposing a further delay of at least 6 months. This delay would result in prejudice to Mr. Sargeant. The Supreme Court found that, on weighing all of these factors, the balance of convenience favoured dismissal of the stay application. Accordingly, the Supreme Court dismissed Worldspan's application for stay of the Supreme Court Action pending resolution of the in rem claims in the Federal Court Action.

7. *DP World Prince Rupert Inc. v. The "Hanjin Vienna"*, 2017 FC 761

In *DP World Prince Rupert Inc. v. The "Hanjin Vienna"*, 2017 FC 761, the former shipowners of the container ship, Hanjin Vienna, brought a motion for the better production of documents.

The former shipowners chartered out the *Hanjin Vienna* to Hanjin Shipping Co. (Hanjin) on a charterparty that went back to 1999. Following Hanjin's bankruptcy, the Hanjin Vienna was arrested in September 2016 by various creditors, including DP World Prince Rupert Inc. (DP World), and was eventually sold by Court Order in February 2017. DP World, which provided stevedore and terminal operation services to Hanjin, brought an action against the former shipowners for the proceeds of the sale of the ship.

The former shipowners asserted that DP World, as well as other creditors, knew or should have known of Hanjin's perilous financial situation prior to its well-publicized bankruptcy. They sought production of documentation which might show DP World's awareness of the situation and the risk-management steps it subsequently took. The Federal Court held that this was a reasonable concern and granted the former shipowners' motion in part. The Federal Court held that the request for all invoices on all of Hanjin's ships was overly broad. It limited the production to invoices dated from 2016 and later, as there was no evidence that Hanjin defaulted on its financial obligations before 2016. Documentation production was also limited to the *Hanjin Vienna* and its sister ship, the *Hanjin Geneva*.

8. *British Columbia v. The Administrator of the Ship-source Oil Pollution Fund*, 2018 BCSC 793

In this case, the Province of British Columbia (the Province) petitioned for the restoration of a vessel owner in the Register of Companies with prejudice to anyone's rights against the Province in respect of the vessel.

The *Chilcotin Princess* was a derelict vessel that remained moored at an old cannery wharf in British Columbia for many years. Before January 2014, the vessel was owned by Inter Coast Towing Ltd. (Inter Coast), a British Columbia corporation. On January 6, 2014, Inter Coast was dissolved for failure to file annual company reports, and the vessel vested in the Province.

In order to prevent or minimize oil pollution damage caused by the moored vessel, the Canadian Coast Guard (the CCG) took action in March 2015 to remove all accessible oil and other hydrocarbons from the *Chilcotin Princess*. In the process, the CCG incurred costs of approximately $138,000, which were reimbursed from the Ship-source Oil Pollution Fund (the SOPF).

The administrator of the SOPF (the Administrator) submitted that she had a subrogated claim on behalf of the SOPF against the Province for the reimbursement of the CCG's costs. The Province petitioned for an order restoring Inter Coast to the Register of Companies, with Inter Coast deemed to have always continued in existence and with prejudice to anyone's right against the Province in respect of the *Chilcotin Princess*.

The parties agreed that Inter Coast should be restored. The issue before the Supreme Court was whether the restoration should be with prejudice to any rights that the Administrator may have acquired against the Province in respect of the *Chilcotin Princess* after Inter Coast's dissolution.

Under subsection 360(7) of the *Business Corporations Act*, SB. 2002, c 57 (the BCA), a restoration order is made without prejudice to the rights acquired by persons before the restoration, unless the court orders otherwise. Accordingly, the Province bears the onus of establishing that restoration should be with prejudice to such rights.

The Province submitted that the common law principle of *bona vacantia* was applicable and that assets vesting in the Province were to vest without attached liabilities. The Supreme Court held that bona vacantia did not apply, as the vesting of a yet-to-be distributed asset in the Province upon dissolution of a corporation is statutory, provided by section 344 of the BCA. Therefore, the general rule under subsection 360(7) of the BCA is maintained.

The Supreme Court went on to agree with the Administrator's argument that even if the vessel did vest in the Province without attached liabilities, this would not have made a difference. The CCG's expenditures were not an attached liability. They arose after the vessel vested in the Province, at which point the Province became the vessel's "owner" for the purposes of liability and compensation and the SOPF under the *Marine Liability Act*, SC 2001, c 6.

The Supreme Court of British Columbia allowed the Province's petition for an order restoring Inter Coast, but without the two qualifications the Province sought.

9. *Oddy v. Waterway Partnership Equities Inc.*, 2017 BCSC 1879

The plaintiff, Kornella Oddy, commenced a negligence action for damages arising out of an accident causing injuries. On September 12, 2012, Ms. Oddy boarded the houseboat, the *Annalise*, for a five day excursion on Shuswap Lake, British Columbia. The defendant Waterway Partnerships Equities Inc. (Waterway) rented the houseboat to Ms. Oddy and her party, which included Ms. Oddy's husband, Brian Oddy. Prior to departure, Waterway informed Mr. Oddy of the best practices with respect to the houseboat and Mr. Oddy assured Waterway's representative that he was familiar with the operation of houseboats such as the *Annalise*. Waterway instructed Mr. Oddy how to moor the houseboat at night using double braided nylon mooring lines and stakes to be driven into the beach.

That evening, the *Annalise* was moored as per Waterway's instructions. The wind and unstable ground at the first mooring site caused the party to relocate to another beach, where more solid ground offered better mooring. There is no evidence that the Annalise was improperly moored.

Early the next morning, Ms. Oddy and her husband were awoken by the sound of the wind to find that one of the mooring lines had become slack. Ms. Oddy promptly rushed outside in order to start the engine and realign the boat. Before she could start the engine, the stake to which one of the mooring lines were attached popped out of the ground. Both the stake and the line, which was under great tension, catapulted towards the *Annalise*, causing significant injury to Ms. Oddy.

At trial, Ms. Oddy submitted that Waterway was negligent in failing to equip the Annalise with an appropriate mooring line. She alleged that by not providing a mooring line that was less elastic, Waterway breached its standard of care and caused injuries that were reasonably foreseeable.

Waterway submitted that for the past 10 years it has been sourcing its mooring lines from a company, Western Marine, which is a reputable marine equipment supplier. Such double braided nylon ropes are widely used for mooring lines in the marine industry. Waterways understood that these mooring lines were stronger and more durable than those it had previously used.

The Supreme Court of British Columbia agreed that Waterway owed Ms. Oddy a duty of care, but held that negligence was not made out in this case. There was no evidence that Waterway knew or ought to have known that the rope it purchased from Western Marine for mooring houseboats was not suitable for that intended purpose. Specifically, it had no knowledge that the elasticity of the rope posed any particular risk. The standard of care imposed on Waterway did not require consulting an engineer or other marine expert prior to purchasing the rope, nor did it require Waterway to inform Ms. Oddy of a risk that the mooring line and stake would catapult out of the ground towards the *Annalise*.

Although Waterway met its standard of care and thus did not breach its duty of care to Ms. Oddy, the Supreme Court went on to conclude that even if there had been a breach, the damage would have been too remote for negligence to be established.

10. *Mackenzie v. Canada (Transportation Safety Board)*, 2018 FC 322

In *Mackenzie v. Canada (Transportation Safety Board)*, 2018 FC 322, the applicant, Hugh Mackenzie, brought a motion in the Federal Court for an interlocutory injunction preventing the respondent, the Transportation and Safety Board of Canada (TSB), from making use of evidence obtained by a search warrant.

Mr. Mackenzie is a tour operator employed by Kingston and the Islands Boatlines Ltd. (KTI). KTI is the owner and operator of the Island Queen III (the Vessel). On August 8, 2017, the Vessel touched bottom and, as a result, took on water in a stern compartment. In the course of its investigation, the TSB requested KTI to provide information by a summons under the *Canadian Transportation Accident Investigation and Safety Board Act*, SC 1989, c 3. KTI refused to provide the requested information.

On November 10, 2017, Mr. Mackenzie filed an application for judicial review seeking a declaration that the TSB did not have the statutory authority to issue the summons. In the alternative, Mr. Mackenzie submitted that the TSB should have, but failed, to provide reasons for the relevance of the information to the investigation.

On March 2, 2018, the TSB obtained an *ex parte* warrant from the Ontario Criminal Court to seize the information that was requested by the summons. The TSB was requested to not make use of the seized material prior to the judicial review hearing. The TSB, however, refused to agree.

Mr. Mackenzie applied for an interlocutory injunction preventing the TSB from making use of evidence obtained pursuant to the warrant until the April 3, 2018 judicial review hearing. The basis for Mr. Mackenzie's application was that the TSB lacked the statutory authority to use the evidence obtained by means of the warrant.

The TSB argued that the Federal Court had no jurisdiction to grant the injunction. It also submitted that doing so would amount to an impermissible collateral attack on the warrant that was lawfully issued.

The Federal Court held that it did not have jurisdiction to grant an interlocutory injunction to impound information obtained by a warrant pending a determination on the merits. That, the Court held, is an order that an applicant must obtain in a provincial court.

The Federal Court also held that no grounds existed for granting an injunction in this case. It is undisputed law that an interlocutory injunction is intended to maintain the *status quo* in respect of possible prejudice so that issues raised in the underlying proceeding are

adjudicated without prejudice. In its reasons, the Federal Court pointed to a discrepancy between Mr. Mackenzie's two applications. The application for the interlocutory injunction was on the basis that the TSB did not have authority to use the evidence obtained under the warrant issued by an Ontario Court of Justice. The basis for the underlying application for judicial review was that the TSB did not have authority to issue the summons. As such, the remedy that Mr. Mackenzie sought by applying for an injunction did not relate to his underlying judicial review claim. Any possible prejudice that would result from the TSB using the evidence before the hearing would not directly affect the adjudication of the issue of the underlying judicial review, which was whether the TSB had authority to issue a summons and obtain the evidence in the first place.

The Federal Court showed guarded concern over the timing of the TSB's decision to obtain a warrant, which was only a month before the set hearing date. While Mr. Mackenzie failed to provide particulars or submissions respecting abuse of process, and the Federal Court was not prepared to dive too deeply into the matter, it nevertheless considered the timing of the warrant in deciding not to award costs.

11. *Tsleil-Waututh Nation v. Canada*, 2018 FCA 153

In this case, the Tsleil-Waututh Nation applied for judicial review of an Order in Council issued in respect of the proposed expansion of the Trans Mountain pipeline system.

In December 2013, Trans Mountain Pipeline ULC (Trans Mountain) applied to the National Energy Board (the NEB) for a certificate of public convenience and necessity (the Certificate) allowing its Trans Mountain Expansion Project (the Project). The capacity of the Trans Mountain's existing pipeline system would increase almost threefold as a result of the expansion.

Consequentially, the Project would increase the number of tankers loaded at the Westridge Marine Terminal from approximately five Panamax and Aframax class tankers per month to approximately 34 Aframax class tankers per month. These tankers are intended to transport crude oil, primarily diluted bitumen, to markets in the Pacific Rim, including Asia.

In response to Trans Mountain's application, the NEB released a report on May 19, 2016 recommending that the Governor in Council approve the expansion (the NEB Report). The Governor in Council accepted the NEB's recommendation and issued an Order in Council directing the NEB to issue the necessary Certificate.

The Applicants (Tsleil-Waututh Nation, City of Vancouver, City of Burnaby, Squamish Nation, Coldwater Indian Band, The Stó:lō Collective, Upper Nicola Band, Stk'emlupsemc te Secwepemc of the Secwepemc Nation, Raincoast Conservation Foundation, and Living Oceans Society) brought applications, which were later consolidated, for judicial review of the NEB Report and Order in Council.

The Applicants submitted that the NEB breached the requirements under the CEAA, 2012 by excluding Project-related marine shipping from the definition of the Project in the NEB Report, and that the Governor in Council's reliance on the materially flawed NEB Report was therefore unreasonable. Tsleil-Waututh further submitted that the NEB breached the CEAA, 2012 by failing to determine whether Project-related marine shipping would likely cause significant adverse environmental effects, and whether such effects were justifiable.

In the NEB Report, the NEB excluded Project-related marine shipping from the Project's scope on the basis that the NEB lacked regulatory oversight over marine vessel traffic and that marine shipping was not incidental to the Project. This effectively removed Project-related marine shipping from the scope of environmental assessment under the CEAA, 2012. The NEB instead considered Project-related marine shipping as a public interest consideration under the *National Energy Board Act*, RSC 1985, c N-7 (the NEB Act).

The Federal Court of Appeal held that there were insufficient grounds to support the NEB's position that a responsible authority conducting an environmental assessment (EA) under the CEAA, 2012 must itself have regulatory oversight over the particular subject matter in order to define a designated project to include physical activities incidental to the Project.

The Federal Court of Appeal additionally held that the NEB failed to consider criteria relevant to the determination of whether marine shipping is incidental to the Project. Instead, the NEB Report appears to be based on rationale that is not supported by any statutory scheme. As a result, the NEB Report was materially flawed and it was unreasonable for the Governor in Council to rely on it in approving the Project.

The Respondents alternatively argued that the NEB's assessment of marine shipping under the NEB Act was nevertheless substantially adequate such that the Governor in Council could rely upon it for the purpose of assessing the public interest and the environmental effects of the Project. While the Federal Court of Appeal found that the NEB Report adequately informed the Governor in Council of the effects of Project-related marine shipping, it held that the NEB Report inadequately informed the Governor in Council of the effects of the Project itself. This was because the NEB's definition of the Project classified Project-related shipping as a public interest issue addressed under the NEB Act, thereby excluding it as part of the Project subject to EA under the CEAA, 2012. This allowed the NEB to make the work-around conclusion that, as it defined the Project, the Project itself was not likely to cause significant adverse effects.

The Federal Court held this conclusion to be flawed and that the Governor in Council erred by relying on the NEB Report in making its decision.

Pursuant to these findings, in addition to the finding not discussed here that the federal government failed to adequately discharge its duty to consult and accommodate, the Federal Court of Appeal quashed the Order in Council. The matter was remitted back to the Governor in Council for appropriate action, if it sees fit, to address flaws and for proper redetermination.

12. *Canpotex Shipping Services Limited v. Marine Petrobulk Ltd.*, 2018 FC 957

In this case, the Federal Court reconsidered its 2015 decision of *Canpotex Shipping Services Limited v. Marine Petrobulk Ltd*, 2015 FC 1108 (the First Decision) pursuant to the instructions of the Federal Court of Appeal.

The central issue of these proceedings was who was entitled to payment in respect of funds paid into trust. The dispute arose in 2014 when Canpotex Shipping Services Limited (Canpotex) and O.W. Supply & Trading A/S (OW S&T) agreed to a fixed term price trading agreement for the purchase of marine bunkers (the Fixed Price Agreement). Canpotex subsequently ordered marine bunkers from O.W. Bunkers (U.K.) Limited (OW UK), a subsidiary of OW S&T, subject to the general terms and conditions of sale of the O.W. group of companies (the OW Group), which included OW S&T and OW UK. OW UK arranged for Marine Petrobulk Ltd. (Petrobulk) to deliver the bunkers to two of Canpotex's chartered vessels (the Vessels) in Vancouver. Petrobulk sent an invoice for its services to OW UK, who in turn invoiced Canpotex.

Shortly thereafter, the OW Group filed for bankruptcy and its outstanding debts were assigned to ING Bank N.V. (ING). ING demanded payment from Canpotex for the amount owing under the OW UK invoices. Petrobulk, still awaiting payment for its delivery of the bunkers, sent an invoice to Canpotex and registered a maritime lien against the Vessels and their owners. Canpotex paid the outstanding amount of USD$661,050.63 (the Funds) into the trust account of Canpotex's solicitors.

Both ING and Petrobulk filed motions seeking declaratory judgment that the Funds should be paid to them. The Federal Court ordered that Petrobulk be paid its fee out of the trust fund. The Court further ordered that Canpotex pay ING an amount equal to the mark up payable to OW UK for the supply by Petrobulk. As a result, Canpotex's liabilities in respect of the bunkers were extinguished together with any and all liens.

The Federal Court of Appeal held that the Federal Court erred in applying the Fixed Price Agreement to Canpotex's bunker purchases. It remitted the matter to the Federal Court for reconsideration in light of the Federal Court of Appeal's finding that the OW Group's standard terms and conditions (the STC) governed the purchases.

In reconsidering its earlier decision, the Federal Court focused primarily on a specific clause in the STC, which provided that the terms and conditions are subject to variation when the physical supply of bunkers is provided by a third party which insists that the buyer is also bound by the terms and conditions. In particular, the Federal Court considered whether Petrobulk insisted that Canpotex had to be bound by Petrobulk's STC for the sale and delivery of the bunkers to the Vessels.

The Federal Court was satisfied that Petrobulk insisted that OW UK and Canpotex contract on its STC, and that this requirement was accepted. Petrobulk made it clear to the parties that the bunkers had to be sold and delivered on their STC and on no other terms, otherwise there would be no deal.

Based on its findings, the Federal Court maintained that the outcome respecting payment out of the Funds and the extinguishment of liabilities remained the same as in the First Decision. It ordered that Canpotex pay Petrobulk out of the trust fund, and that it pay ING the mark up fee. Accordingly, Canpotex's liabilities in respect of the bunkers were extinguished.

13. *Jones Marine Group Ltd. v. Canada and Nanaimo Port Authority*, 2018 FC 613

JMG is a marine towing company that owns and operates a fleet of tugs on the coast of British Columbia. On October 6, 2014, one of JMG's tugs sank near one of the six deep sea anchorages located within the Northumberland Channel and operated by the Nanaimo Port Authority. The sinking of the wreck caused the Port to temporarily shut down the anchorage and limit its use upon re-opening – the Port expressed concern over the obstruction to navigation posed by the wreck.

The Minister of Transport issued a notice of removal on January 20, 2015, and a second one in October 2015, on the basis that the wreck's proximity to the anchorage was a navigational hazard and that any fouling of the wreck could result in the release of pollutants into the environment. JMG hired marine experts to dispute the Minister's findings, but the Minister issued a final notice of removal on November 9, 2016. JMG sought judicial review of this decision, alleging that it was unreasonable to conclude that the wreck posed a serious risk to the navigation and safety of vessel traffic and that the Minister's decision arrived through a procedure that breached procedural fairness.

On review, the Court rejected both of JMG's claims. The Court determined that the Minister's decision was reasonable in light of the materials that the Minister had at his disposal, and the fact that JMG knew of the Minister's arguments nearly two years before the final notice was issued. Additionally, a decision under s.16(1) of the Navigation Protection Act is a non-judicial administrative decision in light of public safety concerns and does not have an established procedure. There was no evidence that the decision was reached by the Minister in breach of procedural fairness.

E. Legalization of Cannabis in Canada and Vessel Operation

With the coming into force of the *Cannabis Act* and *An Act to amend the Criminal Code* (Bills C-45 and C-46, respectively), Canada has now become the second country in the world to legalize recreational cannabis. Further to this development, Transport Canada has issued a Ship Safety Bulletin, "Legalization of cannabis in Canada and vessel operation - SSB No.: 12/2018" (RDIMS No.: 14523388). This bulletin advises authorized representatives and seafarers of their responsibility to operate vessels safely, and as a practical tip, highlights the following laws and policies:

- Under s. 253(1) of the *Criminal Code*, you may not operate, assist in the operation of, or have the care or control of a vessel while impaired. This applies whether or not the vessel is moving.
- Under s. 14 of the *Safe Working Practices Regulations*, "no person shall be permitted in any working area whose ability to work is, in the opinion of the person in charge of the area, impaired by alcohol or a drug". The term "working area" includes anywhere work is being done on board a ship, and applies to anyone working on a ship in Canada or on any Canadian ship outside Canada.
- Under the newly amended *Non-Smokers' Health Act*, smoking or vaping cannabis in the workplace is prohibited.
- Carrying any cannabis or cannabis products across Canada's borders will remain a serious criminal offence, even if the cannabis is for medical purposes.
- When considering whether to issue a marine medical certificate to seafarers, Transport Canada and marine medical examiners will consider consumption of cannabis in their determinations.

F. The Arctic Shipping Safety and Pollution Prevention Regulations: The Polar Code enters into force in Canada

After years of negotiation at the International Maritime Organization (IMO), the *International Code for Ships Operating in Polar Waters* (Polar Code) came into effect on January 1, 2017. The Polar Code's main objective is to increase security and introduce a number of pollution prevention measures for vessels operating in the Arctic and Antarctic (Polar Regions). As one of the world's primary Arctic coastal states, Canada's adoption is considered crucial to the Polar Code's success. The *Arctic Shipping Safety and Pollution Prevention Regulations*, SOR/2017-286 (Regulations) were adopted under the Canada Shipping Act, 2001 and finally entered into force on January 10, 2018. This client alert provides an overview of the most important changes to the legal regime in Canada.

1. Objectives and general application of the Regulations

The Polar Code is a series of amendments to the 1974 International Convention for the Safety of Life at Sea (SOLAS) and the International Convention on the Prevention of Pollution from Ships (MARPOL). The goal of the Polar Code is to address the unique hazards associated with operations in the Polar Regions (including specific demands put on ships and their operations) as well as the challenges faced by coastal Arctic communities and polar ecosystems.

The Regulations have the effect of making the Polar Code compulsorily applicable to certain classes of vessels in Canadian waters. They maintain the existing levels of safety and pollution prevention to vessels operating in the Polar Regions and modernize certain aspects of the existing legal regime. In particular, the Regulations repeal the *Arctic Shipping Pollution Prevention Regulations* (C.R.C., c. 353) and re-introduce most of its measures in an updated and more modern form. Finally, the Polar Code is adapted with a number of changes aimed at the specific situation and unique issues posed by the Canadian Arctic.

In order to define the geographical scope as well as the vessels to which these Canadian additions or modifications apply, the Regulations introduce the concept of the *Shipping Safety Control Zone* (SSCZ). The SSCZ is similar in scope to the definition of "Arctic Waters" contained in the A*rctic Waters Pollution Prevention Act* (R.S.C., 1985, c. A-12), but excludes rivers, lakes and fresh waters. The Regulations do not apply to government vessels or to foreign state vessels being used for government non-commercial use purposes, similar to criteria established under the UN Convention on the Law of the Sea.

Like the Polar Code, the Regulations have two major focal points: safety-related technical measures for the construction, equipment and operation of ships, and pollution prevention measures.

2. Safety Measures

Incorporating the Polar Code by reference, the Regulations capture Chapter XIV of SOLAS as well as a number of specific Canadian obligations.

Chapter XIV of SOLAS now applies to Canadian and foreign vessels operating in the SSCZ, if these vessels are (a) certified under Chapter I of SOLAS *and* are cargo vessels of 500 gross tonnage (GT) or more *or* are passenger vessels; or (b) are not certified under Chapter I of SOLAS. These safety measures do not apply to fishing vessels, pleasure craft, or vessels without a mechanical means of propulsion (although other non-polar Canadian requirements may apply to these vessels).

Additional Canadian requirements are reintroduced by these Regulations and are not part of the Polar Code. Nonetheless, they apply within Canadian waters, as a parallel regime. These requirements apply only to Canadian and foreign-flagged vessels operating within the SSCZ if they are (1) vessels of over 300 GT, (2) vessels that carry pollutants or dangerous goods (or are towing or tugging a vessel that carries pollutants or dangerous goods), (3) vessels towing or tugging (an)other vessel(s) if the combined tonnage is 500 GT or more, and (4) passenger vessels that are certified under Chapter I of SOLAS.

Canada currently accepts two methods of determining a vessel's operational and ice capabilities: the Zone/Date System (ZDS) and the *Arctic Ice Regime Shipping System* (AIRSS). The Proposed Regulations adopt the IMO's preferred system as a third officially accepted method: the *Polar Operational Limit Assessment Risk Indexing System* (POLARIS).

Vessels using the ZDS system may only operate within the SSCZ if they stay within a pre-determined zone between pre-determined dates. If a vessel operates outside of that zone or time-limit, it must adhere to the criteria under the AIRSS or POLARIS systems. Any vessels built after January 1, 2017 must adhere to the POLARIS system – effectively phasing out the use of AIRSS in the future.

Moreover, vessels operating outside of the ZDS-zone and timeframe and which make use of AIRSS are required to have a qualified ice navigator on board. The Regulations allow the ice navigator to be certified in accordance with the 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), or the Code for Advanced Training in international Arctic waters and the Antarctic area. As a result, the Regulations create a dual system:

(1) Ice navigators on vessels to which SOLAS Chapter XIV applies and on all vessels of over 500 GT that operate within the SSCZ must adhere to the STCW standards; and

(2) Vessels between 300 GT and 500 GT operating within SSCZ using AIRSS have a choice between the two training systems for ice navigators.

Only vessels operating outside of the ZDS will be required to send a message to the minister containing route and vessel information upon their entry into the SSCZ. No additional reporting will be required – unless the information in the initial entry message changes.

Finally, the Regulations also introduce a number of new obligations, requiring Canadian-flagged vessels built after January 1, 2017 to have inflatable life rafts on board, use marine evacuation systems, and use life or rescue boats that can operate at low temperatures.

3. Pollution Prevention

The existing *Arctic Waters Pollution Prevention Act* (AWPPA) provides a complete prohibition on the unauthorized deposit of waste from ships in the Canadian Arctic. The Regulations only incorporate those provisions of the Polar Code that strengthen Canada's existing AWPPA regime.

The Regulations provide for certain exemptions for the prohibition established by the AWPPA. These exemptions include that waste may be deposited if it necessary for saving a life or the safety of the vessel as well as a result of an accident and damage to the vessel. Even where authorized, vessels are still required to make efforts to minimize the pollution.

The Regulations seek to strengthen Canada's *Vessel Pollution and Dangerous Chemicals Regulations* and AWPPA's prohibition on the deposit of oil from vessels by specifically excluding certain Polar Code allowances for the discharge of clean ballast water and the discharge of oily water from machinery spaces of certain vessels operating for more than 30 days in the Arctic, and by incorporating certain structural and operational requirements. These structural requirements differentiate between oil tankers and other vessels.

AWPPA also prohibits the deposit of noxious liquid substances (NLS) from vessels operating in Arctic waters under Canadian jurisdiction. The Regulations incorporate further operational and structural requirements to strengthen this regime, including prohibiting the carriage of certain NLS, unless they are separated from the outer shell.

The existing AWPPA prohibits the deposit of garbage except as provided by regulations. Accordingly, the Regulations maintain this prohibition and only incorporate the Polar Code provisions with respect to food waste discharge. This discharge is subject to certain criteria, including minimum distances from ice, unless the retention of waste would present an imminent health risk to the people aboard the vessel.

The Regulations replace the blanket allowance for the release of untreated sewage in Artic waters with the Polar Code's operational discharge requirements for vessels of 400 GT or more or certified to carry more than 15 persons. A vessel that meets these criteria would be allowed to discharge or deposit sewage in accordance with provisions established under MARPOL Annex IV and with discharge at set distances from ice. For vessels below 15 GT and carrying no more than 15 persons, the deposit of untreated sewage is still permitted. These sections do not apply to certain vessels constructed on or after January 1, 2017 that were designed for operation in polar waters.

4. Consequential amendments

Together with these Regulations, a variety of consequential amendments were enacted to three other regulations within Canada's Arctic shipping regime. In addition to repealing the *Arctic Shipping Pollution Prevention Regulations*, sections of both the *Navigation Safety Regulations* and the *Ship Station (Radio) Regulations*, 1999 pertaining to additional navigation safety equipment while operating within Arctic shipping safety control zones are repealed. Further, sections of the *Vessel Pollution and Dangerous Chemical Regulations* are modified to limit conflict with the Regulations' pollution prevention measures.

Ships constructed before January 1, 2017, must implement the relevant safety measures of the Regulations by their first intermediate or renewal survey, whichever occurs first, after January 1, 2018. In most instances, construction provisions are only applicable to ships built on or after January 1, 2017.

5. Conclusions

These Regulations are an attempt to streamline the disjointed set of rules and regulations in place before. They improve predictability for ship owners and operators in the hope that this will create a more attractive environment within which to conduct Arctic shipping operations.

Transport Canada acknowledges that the Regulations are non-exhaustive in their treatment of other potential safety and environmental concerns facing the Arctic. Additional measures beyond those within the current requirements of the AWPPA or those adopted by the IMO are being considered for implementation, including the expansion of the application criteria to other types of vessels. Accordingly, at some point in the future, we may see more vessels subject to Canada's new Arctic shipping regime. For now, the implementation of the Polar Code in Canada is a robust modernization of Canada's Arctic shipping regime.

G. Recap: Workshop on Maritime Autonomous Surface Ships (MASS), Ottawa, ON – September 12, 2018

Transport Canada recently invited members of the Maritime industry to a workshop on Maritime Autonomous Surface Ships (MASS), which was held in Ottawa, Canada, on September 12, 2018. BLG, with its preeminent national maritime expertise, was the only law firm invited to attend. We are excited to be able to provide some overview of what was discussed, and what appeared to be Transport Canada's plans for regulating autonomous ships in Canada.

Martin Abadi and Robin Squires attended the workshop on behalf of BLG. They brought with them information obtained from our clients that have inquired about the plans for autonomous shipping in Canada, along with perspectives on regulation from other jurisdictions. Martin and Robin presented to the group on the first day of the workshop about BLG's past and current work in the autonomous shipping space and our clients' questions and concerns about autonomous shipping and its regulation and insurance. They also provided advice to Transport Canada as it begins the process of developing regulations for autonomous shipping in Canada.

The main points of the BLG presentation included the following:

- if regulatory changes are to be made, representatives from all parts of the shipping chain should be involved in developing those changes;
- there should be a mechanism in place whereby regulatory changes can adapt swiftly to the changing landscape, or the Canadian maritime industry risks falling behind the rest of the world;
- Canada's harsh environment should be considered when developing the regulations such that the practicality of international agreements is not hampered; and
- within the limits of existing regulations, BLG's clients recommend the granting of local exemptions or permits to allow testing or operation of remote controlled and semiautonomous vessels in local waters or specific navigational areas within Canadian waters such that testing can occur before international agreements are adopted.

Martin and Robin's presentation was met with great interest, and some debate.

Other presentations of interest at the workshop included two presentations from seafarers. One presentation was by a member of the International Longshore and Warehouse Union, and the other was by the President of the Canadian Marine Pilots Association. Both presentations from seafarers made strong points about not heading down the path of autonomy too quickly. Rather, Canada should proceed cautiously and slowly, so as not to disrupt the lives and careers of the thousands of seafarers employed in the industry.

Professor Aldo Chircop from Dalhousie University presented on the numerous changes that may be required in international law in order to allow for autonomous ships to operate between jurisdictions. Professor Chircop focused on the jurisdictional issues as between and among flag state, coastal state, and port state with respect to the numerous international conventions and agreements that would be impacted by a move to allow autonomous ships.

Lloyd's Register presented on its new regulations and standards for the technical systems that must be in place to allow an autonomous ship to operate. In addition, Lloyd's Register reviewed with the group their LR Cyber Class notations for different degrees of autonomy and remote access for ships.

Wärtsilä, BC Ferries and the Canadian Hydrographic Service all presented on their current involvement in the MASS and their expectations for the future of autonomous shipping.

Professor John Dalziel from Dalhousie University gave an extremely interesting presentation regarding the potential for autonomous ships to be used in search and rescue response in the very near future. Because of the potential to have dedicated resources left in certain locations, such as the Arctic and other remote locations, along with the ability to provide response quickly and with a minimum of potential for rescuer injury or death, Professor Dalziel is of the view that search and rescue response operations are a logical place to begin efforts to make ships autonomous.

Finally, there was a presentation from Rachel Horne, from the Australian Maritime Safety Authority. Ms. Horne spoke about how Australia has amended their regulatory regime to allow ease of exemption and permission for autonomous vessels within Australian waters. In addition, they have already granted exemptions and permits to certain autonomous vessels to allow them to operate within Australian waters. The efforts Australia has made may well serve as a model for Transport Canada's effort.

The Transport Canada workshop ended with a scoping exercise involving small groups of attendees considering a number of implementation options from small domestic introduction of autonomous ships to the allowance of autonomous ships from all jurisdictions within Canadian ports and waters. The multitude of issues and considerations that arose in the small group discussions were eye-opening and provided much food for thought.

Transport Canada is aiming to have draft regulations ready to coincide with changes brought about by the International Maritime Organization's scoping effort aimed at completing the analytical work by 2020.

Canadian Maritime Law

With the leading maritime law practice in Canada, BLG provides the full spectrum of legal services — from negotiation and drafting of contracts and policies through to risk management and defence against claims, including arbitration. Our clients — domestic and international shipping lines, ship owners, operators, charterers, terminal operators, P&I clubs, H&M underwriters and general marine insurers — turn to us for critical insights and timely, innovative solutions based on well over 100 years of experience in this industry.

Published annually, this newsletter supplements the various bulletins issued throughout the course of the year and underscores BLG's commitment to provide clients with salient information relating to legal developments in the maritime industry. This edition delves into various matters which occurred over 2018. Special thanks are extended to the authors and editors who contributed to this publication including: Darren McGuire, Dino Rossi, Nils Goeteyn, Auke Visser, Jacob Gehlen and Scott Duncan.

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