

Federal Court



Cour fédérale

Date: 20110509

Docket: T-1683-05

Citation: 2011 FC 531

Ottawa, Ontario, May 9, 2011

PRESENT: The Honourable Mr. Justice Beaudry

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT
OF CANADA**

Plaintiff

and

In Rem

**THE M.V. STORMONT AND THE M.V.
PAUL E NO. 1**

And In Personam

**MCKEIL MARINE INC., DETROIT-WINDSOR
TRUCK FERRY INC. AND CMT CANADIAN
MARITIME TRANSPORT LTD.**

Defendants

REASONS FOR JUDGMENT AND JUDGMENT

[1] This is a motion on consent brought by Her Majesty the Queen (HMQ) so that the Court provides a preliminary determination of law under rule 220 of the *Federal Courts Rules*, SOR/98-106 on the question of whether or not the icebreaking service fee as per section 47 of the *Oceans Act*, S.C. 1996, c. 31 (*Oceans Act*) as amended, applies to the operations of the Defendants (DWTF).

[2] For the reasons outlined below, I find that section 47 of the *Oceans Act* does apply to the operations of DWTF.

Factual background

[3] The facts are not in dispute in this case, the parties filed a document entitled "Agreed Facts" (Plaintiff's Motion Record, tab C). For ease of reference this document is reproduced here.

AGREED FACTS

Detroit Windsor Truck Ferry (« DWTF »)

1. DWTF is a truck Ferry service running on the Detroit River between the ports of Windsor, Ontario and Detroit, Michigan. It operates as a tug-barge combination. Trucks are loaded on to the barge and the tug tows the barge across the river from Windsor to Detroit, and return.
2. DWTF has regularly-scheduled crossings between Detroit and Windsor. There are five daily crossings from Detroit to Windsor and five daily crossings from Windsor to Detroit. Each crossing takes 20 minutes to complete. Crossings take place during weekdays only.

The parties

3. Detroit-Windsor Truck Ferry Inc. ("DWTF Inc.") is incorporated under the laws of Michigan, United States of America.
4. CMT Canadian Marine Transport Ltd. ("CMT") is incorporated under the laws of the Parliament of Canada.
5. McKeil Marine Inc. ("McKeil") is incorporated under the laws of the Province of Ontario.
6. "The MV Stormont" and "The MV Paul E NO.1" are both tugs that have been utilized in the operations of the DWTF. The tug, "The MV Stormont" is operated by McKeil and is owned by a wholly owned subsidiary of McKeil, being McKeil Work Boats Limited ("MWB"). The tug, "The MV Paul E No. 1" was operated by McKeil and owned by MWB up until 2007 when it was sold. Each tug was under charter to CMT.

Geographic Location of Operations

7. CMT leases and operates a ferry terminal at 5550 Maplewood Drive, Building 100, Windsor, Ontario (the “Windsor Terminal”). The Windsor Terminal lies on the southeast shore of the Detroit River and is located within the Port of Windsor.
8. DWTF Inc. owns and operates a ferry terminal at 1475 Springwells Court, Detroit, Michigan (the “Detroit Terminal”). The Detroit Terminal lies on the northwest shore of the Detroit River and is located within the Port of Detroit.
9. The Windsor Terminal is located at a point on the Detroit River where the river is 778 metres wide. The international boundary between Canada and the United States runs midway between the banks of the Detroit River and is located approximately 389 meters from the Windsor Terminal (the “Canada-US Border”)
10. The northwest boundary of the Port of Windsor is the Canada-US Border. The southeast boundary of the Port of Detroit is the Canada-US Border. There are no intervening Canadian Waters between the two ports.
11. For the Windsor to Detroit run, the DWTF departs the Windsor Terminal and travels .65 nautical miles (1.2 kms.) inside the boundaries of the Port of Windsor. It thereupon leaves the confines of the Port of Windsor when crossing the Canada-US Border, and immediately enters the confines of the Port of Detroit and travels a further .57 nautical miles (1.06 kms.) inside the boundaries of the Port of Detroit where it docks at the Detroit Terminal.
12. For the Detroit to Windsor run, the DWTF travels 1.25 nautical miles (2.3 km.) inside the boundaries of the Port of Detroit. It thereupon leaves the confines of the Port of Detroit when crossing the Canada-US Border, and immediately enters the confines of the Port of Windsor, and travels a further .2 nautical miles (.37 kms.) inside the Port of Windsor where it docks at the Windsor Terminal.
13. Attached as Exhibit “1” to this Statement of Facts is a pictorial representation of the routes followed by the DWTF.
14. As per Section 41 of the *Oceans Act*, S.C. 1996, c. 31, as amended, “the Ministry of Fisheries and Ocean is responsible for coast guard services. The powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to services for safe, economical and efficient

movement of ships in Canadian waters through the provision of aids to navigation systems and services; marine communications and traffic management services, ice breaking and ice management services; and channel maintenance. The Ministry shall ensure that these services are provided in a cost effective manner.”

Icebreaking Services Fee

15. The Minister of Fisheries and Oceans has the authority to fix fees to be paid for icebreaking services provided by the Canadian Coast Guard (“CCG”). Such authority is derived by Section 47 of the *Oceans Act*, S.C. 1996, c. 31, as amended.
16. CCG levies fees for Icebreaking Services Fee (ISF) in order to recover a portion of the costs of icebreaking services it provides to commercial shipping, including icebreaking route assistance, ice routing and information services, and harbour breakouts. The Minister fixed the fees on December 21, 1998 and the fee schedule was published in the Canada Gazette on January 16, 1999. The fee schedule is attached as Exhibit “2”. The fee schedule continues in effect to this day.
17. Pursuant to section 3(1) and (2) of the Fee Schedule “the fee payable, for ice breaking services, by ship for each transit to or from a Canadian port located in the ice zone within the ice season dates prescribed in annex 1 is \$3,100. The fee set out in subsection (1) is payable a maximum of eight times per ship during each ice season, beginning with the ice season commencing on December 21, 1998.” “Transit” is defined in the schedule as “any movement by a ship, which includes one port of departure, one port of arrival and no immediate port calls in between, but does not include any movement by a ship which remains entirely within the boundaries of a single port.” “Ice zone” is defined in the schedule as “that part of Canada in which icebreaking services are available in support of commercial shipping as described in Annex 1.”
18. During the course of any given ice season, ships will move from one dock to another within the Port of Windsor. In the process of that movement, those ships have straddled and/or crossed the international boundary between the Ports of Windsor and Detroit. The CCG does not recover icebreaking fees from these ships because the locations that the ships depart from and arrive at are located within the boundaries of a single port.

19. The Port of Windsor is a Canadian port located in an ice zone referred to in Annex 1, Part A of the fee schedule. It is a Canadian port within the area designated as “area 2”.
20. DWTF operates during the ice season dates prescribed with respect to area 2. (i.e., December 21 to April 15).

Assessment of Fees

21. CCG has levied fees for icebreaking services with respect to the operations of DWTF. Such fees were levied commencing in January 1999. Invoices have been issued in the name of McKeil.

Icebreaking Services

22. Icebreaking activities along the Detroit River are, by international agreement, a shared responsibility between CCG and the United States Coast Guard (USCG). This international agreement provides for the coordination of icebreaking activities in the Great Lakes.
23. The CCG operates two major ice-capable vessels in the Great Lakes, the CCGS SAMUEL RISLEY and the CCGS GRIFFON. The USCG operates eight ice-capable vessels in the Great Lakes, the USCGC MACKINAW being its major ice-capable vessel and several smaller, ice-capable vessels, the USCGC NEAH BAY, USCGC HOLLYHOCK, USCGC BRISTOL BAY, USCGC BISCAYNE BAY, USCGC KATMAI BAY, USCGC MOBILE BAY and USCGC ALDER. Occasionally, the USCG will redeploy a vessel from the east coast to assist with icebreaking operations. The USCGC THUNDER BAY provided assistance in spring 2009 and the USCGC PENOBSCOT BAY in spring 2008 and winter 2010.
24. Both CCG and USCG vessels provide icebreaking services within the Ports of Detroit and Windsor during the ice season.

The foregoing facts have been agreed to for the purpose of this matter as between counsel for Her Majesty the Queen and counsel for Detroit Windsor Truck Ferry, Inc. and CMT Canadian Marine Transport, Ltd.

[4] An action was commenced by HMQ on October 5, 2005 for the unpaid fees.

Issues

[5] The only issue in this case is as follows:

“Does the icebreaking services fee as per section 47 of the *Oceans Act*, S.C. 1996, c. 31 as amended; apply to the operations of DWTF?”

Relevant legislation

[6] The relevant legislation is in the attached Appendix.

Plaintiff's arguments

Interpretation of the term “transit” under the *Icebreaking Services Fee Schedule*

[7] The Plaintiff argues that the movement of DWTF’s tugboat-barge between the Windsor and Detroit ports is a “transit” as contemplated by the fee schedule.

[8] For convenience, the definition of the terms “ice zone” and “transit” pursuant to section 1 of the fee schedule for icebreaking services (Schedule) are reproduced here.

"ice zone" means that part of Canada in which icebreaking services are available in support of commercial shipping as described in Annex I. (zone de glaces)

"zone de glaces" Secteurs du Canada où des services de déglacage sont disponibles durant l'hiver pour faciliter la navigation commerciale, selon la description de l'annexe I. (ice zone)

"transit" means any movement by a ship which includes one port of departure, one port of arrival and no intermediate port calls in between, but does not include any movement by a ship which remains entirely within the boundaries of a single port. (transit)

"transit" Mouvement d'un navire entre un port de départ et un port d'arrivée et sans escale entre les deux, ce qui exclut le mouvement d'un navire qui demeure entièrement dans les limites d'un même port. (transit)

[9] Based on the above definition, the Plaintiff submits that the DWTF tugboat-barge moves from one point of departure, the port of Windsor, to the one point of arrival, the port of Detroit, and the tugboat does not make any port calls in between. The tugboat movement is a direct port to port movement, to or from a Canadian port located in an ice zone, and as such, should be charged the appropriate fees.

[10] The Plaintiff argues that the icebreaking services fee does apply to DWTF's tug-barge operations, as each trip to and from the port of Windsor, the tugboat vessel is "transiting" an "ice zone" as defined by the fee schedule at Annex 1 where the areas of the ice zone are more fully described at para 2 "..... and all Canadian Ports situated along the shores of Lake Superior, Lake Huron, Lake Erie, and Georgian Bay including estuaries, connecting rivers and lakes, the adjacent Canadian waters including islands....". (My underline) (See Motion Record, Exhibit 2, page 5 of 15)

DWTF's arguments

Comments in relation to the legislative provisions

[11] DWTF submit several comments and observations in relation to the legislative context described above. First, with regards to sections 40 and 41 of the *Oceans Act*, DWTF state that these sections contemplate that the Minister has powers and responsibility over icebreaking and ice management services, but only for the "safe, economical and efficient movement of ships in Canadian waters". Second, the Minister's powers, duties and functions can only be exercised where they have not been assigned to any other department, board or agency of the Government of Canada. As such, the Minister's powers under section 40 are residual only, where other

departments, boards and agencies do not have the authority in the field of regulating activities in Canadian waters and, therefore, of assessing fees within their respective jurisdictions. DWTF do not dispute that the Minister of Fisheries and Oceans has the authority to fix fees to be paid for icebreaking services provided by the Canadian Coast Guard (CCG) but the fees have to be paid by the Windsor Port Authority (WPA) which is listed in Part 1 of the schedule in the *Canada Marine Act*, S.C. 1998 C.10 (*Marine Act*).

[12] DWTF allege that the *Marine Act* provides a comprehensive framework for the regulation of marine activities in Canada (the responsible Minister being the Minister of Transport) even if it was enacted after the *Oceans Act*.

[13] DWTF underscore that the regulation of marine activities inside the port of Windsor comes within the jurisdiction of WPA.

[14] Also, sections 49 and 67 of the *Marine Act*, confer powers upon a port authority and the Minister of Transport, respectively, to fix fees to be paid in respect of the following:

- a. Ships, vehicles, aircraft and persons coming into or using the port;
- b. Goods loaded on ships, unloaded from ships or transhipped by water within the limits of the port or moved across the port; and
- c. Any service provided by the port authority, or any right or privilege conferred by it, in respect of the port.

Main arguments

1) The schedule applies only when the port of departure and arrival are both Canadian ports

[15] DWTF argues neither the *Oceans Act* nor the schedule define what is meant by a “port” for the purposes of the definition of “transit”.

[16] DWTF also state that the schedule refers only to ports located inside an ice zone and that by definition an “ice zone” must be in Canadian waters and that therefore within this context, “ports” must be Canadian. There is nothing in the schedule to suggest that the term “port” should extend to foreign ports, such as the port of Detroit.

[17] DWTF also submit that in the context in which it appears, the definition of “transit” contemplates that the departure and arrival ports must both be Canadian. In order to support this interpretation, DWTF examine the French and English version of the definition of “transit” in the schedule, reproduced again here for convenience:

"transit" means any movement by a ship which includes one port of departure, one port of arrival and no intermediate port calls in between, but does not include any movement by a ship which remains entirely within the boundaries of a single port.
(transit)

"transit" Mouvement d'un navire entre un port de départ et un port d'arrivée et sans escale entre les deux, ce qui exclut le mouvement d'un navire qui demeure entièrement dans les limites d'un même port. (transit)

[18] DWTF contend that since section 2(1) of the fee schedule contemplates that the ship must “effect a transit” within the ice zone, and since the definition of transit requires that there be a port of departure and a port of arrival, the transit must be between two Canadian ports in order to attract icebreaking fees.

[19] DWTF note that the French language version uses the term “transit” as a noun, whereas the English language version uses it as a verb. The French version is explicit, in that the transit means a movement of a ship between a port of departure and a port of arrival and without stopping over between the two, which excludes the movement of a ship that remains entirely within the boundaries of a single port. Since the English version is less clear, the French language version should prevail.

2) Icebreaking services are payable only when a ship “transits” Canadian waters

[20] DWTF argue that icebreaking services fees are payable only when a ship transits Canadian waters. The only Canadian waters that DWTF transits are the waters of the port of Windsor. As such, a movement which takes place wholly within a port does not attract icebreaking services fees. Since DWTF does not transit Canadian waters, icebreaking service fees are not payable.

[21] DWTF underscore that the Minister of Fisheries and Oceans only has powers with respect to services provided for the movement of ships in Canadian waters and that therefore, icebreaking fees can therefore only be charged for ships that move within Canadian waters. Once those ships enter international waters, or in this case enter US waters, there is no right to charge a fee for the services provided.

[22] The fee schedule designate three areas of Canada as ice zones to which icebreaking service fees apply (see Annex to the schedule, Motion Record, Exhibit 2, pages 4 and 5 of 15). Since the movement of ships inside a port has been excluded from the application of the schedule, DWTF

argue that the intention is to assess the movement of vessels in those areas. DWTF mention that this is logical because the schedule can only assess fees for the movement of ships in Canadian waters

[23] DWTF urge that the physical relationship between the ports of Detroit and Windsor is somewhat unique. They are two commercial ports in very close proximity. The Canada-US international boundary is drawn by an imaginary line in the Detroit River. When a vessel leaves the port of Windsor, it enters the port of Detroit. There are no “adjacent Canadian waters” as indicated in the area described at para 2 of Annex 1 of the schedule over which the vessel moves.

[24] DWTF note that to interpret this section in the manner in which the Plaintiff suggests would give rise to an absurdity: according to the definition of transit, vessels that travel the exact same route within the port of Windsor but stop at the border would not be subject to the fee, whereas DWTF would be subject to the fee simply because it moves an extra millimetre and enters US waters. In this scenario, both vessels would receive the benefit of icebreaking services within Canadian waters, yet only one would have to pay for those services.

[25] There are no Canadian waters through which DWTF “moves” between the ports of Windsor and Detroit. There is simply no intervening area separating the two ports. Fees are therefore not payable.

3) The Minister of Fisheries and Oceans has no authority to claim fees to DWTF

[26] DWTF argue that the Minister of Fisheries and Oceans has no authority to claim fees against the operations of DWTF in any event as the only authority to do so rest in the hands of POA under the *Marine Act*.

Analysis

[27] The fee schedule Part 1 (Fees) section 3(1) provides the following "Subject to subsections (2) to (6), the fee payable for icebreaking services by a ship for each transit to or from a Canadian port located in the ice zone within the ice season dates prescribed in Annex 1 is \$3,100". The definition of the word "transit" in the same schedule (section 1) states "means any movement by a ship which includes one port of departure, one port of arrival and no intermediate port calls in between..." (my underline) must be read with section 3(1) meaning Canadian ports. The same section contemplates two scenarios, the first, when there is a movement by a ship to a Canadian port of arrival and a second one where there is a movement by a ship from a Canadian port of departure. The word "or" in section 3(1) makes that proposition logical.

[28] There is nothing in the definition of the word "transit" and the words in section 3(1) that allude to where the ship is coming from or where it is going. There is an exception: "but does not include any movement by a ship which remains entirely within the boundaries of a single port". (last two lines of the definition of "transit")

[29] I find that the English version of the word "transit" is not ambiguous. The words in the definition are precise. Where the words of a statute are precise and unequivocal, those words will play a dominant role in the interpretative process *Placer Dome Canada Ltd. v Ontario (Minister of Finance)*, [2006] 1 SCR 715 at para 22.

[30] I am not prepared to say that the French version of the word "transit" should prevail and I do not accept DWTF's argument that the transit must be between two Canadian ports in order to attract icebreaking fees.

[31] In this case, I am of the opinion that the icebreaking services fee does apply to DWTF's operations because the movement of the tugboat is from outside the port of Windsor to a point of arrival, Windsor, a Canadian port. The same applies when the movement of the tugboat is from the port of Windsor to another destination which is outside the port of Windsor. The movements are to or from a Canadian port located in an ice zone as contemplated in the description of the areas of ice zone at Annex 1 of the fee schedule. The movements of the tugboat in both scenarios meet the definition of the word "transit" in both languages.

[32] The exception in the last two lines of the definition of the word "transit" in the schedule, cannot apply to DWTF's activities described at paragraph 31 because the movements of the tugboat do not remain entirely within the boundaries of a single port being Windsor.

[33] Finally, section 47(1) of the *Oceans Act* gives the Minister a broad discretion to set fees for various services such as marine navigation services supplied by CCG, *Her Majesty the Queen v Mid Atlantic Minerals Inc.*, [2003] 1 FC 168. This is not contested by the parties (“Agreed Facts”, para 15).

[34] DWTF allege that the Minister has no power to impose icebreaking fees to its operations because POA is the only one entitled with that jurisdiction pursuant to section 67 of the *Marine Act*. However, as section 67 of the *Marine Act* is broadly worded and section 41(1)(a)(iii) of the *Oceans Act* is specific to coast guard services including icebreaking and ice management services, I cannot conclude that the former precludes the latter. Accordingly, I find that the powers delegated to the POA under the *Marine Act* do not preclude the Ministry of Fisheries and Oceans from exercising its residual authority under section 41 of the *Oceans Act* in imposing icebreaking fees to DWTF.

[35] Finally, I see no merit in DWTFs’ argument that icebreaking fees are payable only when a ship “transit” Canadian waters. To accept that, I would have to add the words “only in Canadian waters” in the description at para 2 (area) of Part A: Areas of ice zone at Annex 1 of the fee schedule (see page 5 of 15, Motion Record, Exhibit 2). I have no jurisdiction to include these words.

JUDGMENT

THIS COURT DECLARES that the icebreaking services fee as per section 47 of the *Oceans Act, S.C. 1996*, c. 31 as amended, applies to the operations of the Defendants.

“Michel Beaudry”

Judge

APPENDIX

The *Oceans Act*, s.c. 1996, c. 31

40. (1) As the Minister responsible for oceans, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to the policies and programs of the Government of Canada respecting oceans.
Encouragement of activities

(2) For the purpose of subsection (1), the Minister shall encourage activities necessary to foster understanding, management and sustainable development of oceans and marine resources and the provision of coast guard and hydrographic services to ensure the facilitation of marine trade, commerce and safety in collaboration with other ministers of the Government of Canada.

41. (1) As the Minister responsible for coast guard services, the powers, duties and functions of the Minister extend to and include all matters over which Parliament has jurisdiction, not assigned by law to any other department, board or agency of the Government of Canada, relating to

(a) services for the safe, economical and efficient movement of ships in Canadian waters through the provision of

- (i) aids to navigation systems and services,
- (ii) marine communications and traffic management services,
- (iii) ice breaking and ice management services, and
- (iv) channel maintenance;

40. (1) Le ministre étant responsable des océans, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux et liés à des orientations, objectifs et programmes du gouvernement fédéral touchant les océans.
Activités

(2) Dans l'exercice de ses attributions et en collaboration avec d'autres ministres fédéraux, il encourage les activités propres à promouvoir la connaissance, la gestion et la préservation des océans et des ressources marines, dans la perspective du développement durable, et fournit des services de garde côtière et des services hydrographiques destinés à assurer la sécurité de la navigation et à faciliter le commerce maritime.

41. (1) Le ministre étant responsable des services de garde côtière, ses pouvoirs et fonctions s'étendent d'une façon générale à tous les domaines de compétence du Parlement non attribués de droit à d'autres ministères ou organismes fédéraux concernant :

a) les services destinés à assurer la sécurité, la rentabilité et l'efficacité du déplacement des navires dans les eaux canadiennes par la fourniture :

- (i) de systèmes et de services d'aide à la navigation,
- (ii) de services de communication maritime et de gestion du trafic maritime,
- (iii) de services de brise-glace et de surveillance des glaces,
- (iv) de services d'entretien des chenaux;

(b) the marine component of the federal search and rescue program;

(c) [Repealed, 2005, c. 29, s. 36]

(d) marine pollution response; and

(e) the support of departments, boards and agencies of the Government of Canada through the provision of ships, aircraft and other marine services.

Cost effective

(2) The Minister shall ensure that the services referred to in subparagraphs (1)(a)(i) to (iv) are provided in a cost effective manner.

47. (1) The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix the fees to be paid for a service or the use of a facility provided under this Act by the Minister, the Department or any board or agency of the Government of Canada for which the Minister has responsibility.

Amount not to exceed cost

(2) Fees for a service or the use of a facility that are fixed under subsection (1) may not exceed the cost to Her Majesty in right of Canada of providing the service or the use of the facility.

b) le volet maritime du programme fédéral de recherche et de sauvetage;

c) [Abrogé, 2005, ch. 29, art. 36]

d) l'intervention environnementale en milieu marin;

e) les services de navigation maritime et aérienne et les autres services maritimes fournis aux ministères et organismes fédéraux.

Obligation du ministre

(2) Le ministre devra s'assurer que les services mentionnés aux sous-alinéas (1)a)(i) à (iv) sont dispensés de la manière la plus économique et la plus judicieuse possible.

47. (1) Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de services ou d'installations au titre de la présente loi par lui-même ou le ministère, ou tout organisme fédéral dont il est, du moins en partie, responsable.

Plafonnement

(2) Les prix fixés dans le cadre du paragraphe (1) ne peuvent excéder les coûts supportés par Sa Majesté du chef du Canada pour la fourniture des services ou des installations.

Icebreaking Services Fee Schedule, adopted pursuant to section 47(1) of the *Oceans Act*, dated December 21, 1998 was published in the *Canada Gazette* on January 16, 1999.

1. Definitions:

"ice zone" means that part of Canada in which icebreaking services are available in support of commercial shipping as described in Annex I. (zone de glaces)

1. Définitions

"zone de glaces" Secteurs du Canada où des services de déglçage sont disponibles durant l'hiver pour faciliter la navigation commerciale, selon la description de l'annexe I. (ice zone)

"transit" means any movement by a ship which includes one port of departure, one port of arrival and no intermediate port calls in between, but does not include any movement by a ship which remains entirely within the boundaries of a single port.
(transit)

2. (1) Subject to subsections (2) to (7) and section 3, this fee schedule applies to all ships that transit the ice zone.

(2) This fee schedule does not apply to ship transits that are exclusively:

(a) between any locations prescribed pursuant to s.110.7(1) of the Income Tax Act (R.S.C. 1985, c.1 (5th Supp.), as amended) and s.7303.1 of the Income Tax Regulations (C.R.C. c.945, as amended) and which are listed in Revenue Canada Form T4039 Northern Residents Deductions - Places in Prescribed Zones, as amended from time to time; or

(b) between any locations described in (a) and any location in Canadian waters north of 60° North latitude.

(3) This fee schedule does not apply to a ship that is operated by, or on the behalf of, the government of the province of Newfoundland.

(4) A transit made exclusively along a route where the only icebreaking services available are ice routing and information services, which are not necessary to transit that route, will not be subject to the fee.

"transit" Mouvement d'un navire entre un port de départ et un port d'arrivée et sans escale entre les deux, ce qui exclut le mouvement d'un navire qui demeure entièrement dans les limites d'un même port.
(transit)

2. (1) Sous réserve des paragraphes (2) à (7) et de l'article 3, le présent barème des droits s'applique à tous les navires qui effectuent un transit dans la zone des glaces.

(2) Le présent barème des droits ne s'applique pas aux transits effectués exclusivement :

(a) entre des emplacements prescrits conformément au paragr. 110.7(1) de la Loi de l'impôt sur le revenu (L.R.C. 1985, ch.1 (5e suppl.), dans sa version modifiée) et à l'art. 7303.1 du Règlement de l'impôt sur le revenu (C.R.C. chap.945, avec ses modifications) et qui sont énumérés sur le formulaire de Revenu Canada T4039, Déductions pour les habitants de régions éloignées - Endroits situés dans les zones visées par règlement, avec ses modifications successives; ou

(b) entre des emplacements mentionnés au paragraphe a) et n'importe quel endroit dans les eaux canadiennes au nord du 60° parallèle de latitude Nord.

(3) Le présent barème des droits ne s'applique pas aux navires exploités par le gouvernement de la province de Terre-Neuve ou pour le compte de celui-ci.

(4) Un transit qui se déroule uniquement le long d'une route où les seuls services de déglacage sont les conseils et renseignements sur la navigation dans les glaces, qui ne sont pas nécessaires afin d'effectuer un transit le long de cette route, ne sera pas assujéti aux droits.

(5) A stop at a Canadian port for any of the sole purposes specified in this subsection will not be subject to the fee:

(a) to respond to a medical emergency;

(b) to undertake emergency ship repairs;

(c) to respond to a government department or agency request to stop;

(d) to make an overnight stop required due to the seasonal removal of lighted aids to navigation;

or

(e) to bunker.

(6) This fee schedule does not apply to a transit completed by a tug or a pilot boat for which the sole purpose was the support of another self-propelled vessel.

(7) Where a transit completed by a tug-barge combination is subject to this fee schedule, the fee shall be payable by the tug.

(5) L'arrêt d'un navire dans un port canadien uniquement pour l'une des raisons mentionnées dans ce paragraphe n'entraînera pas l'imposition de droits :

(a) urgence médicale;

(b) réparations pressantes du navire;

(c) arrêt effectué à la demande d'un ministère ou d'un organisme gouvernemental;

(d) escale de nuit en raison de l'enlèvement saisonnier des aides lumineuses à la navigation;

ou

e) mazoutage.

(6) Le présent barème des droits ne s'applique pas aux transits d'un remorqueur ou d'un bateau-pilote dont le but unique est de venir en aide à un navire autopulsé.

(7) Chaque transit d'un remorqueur-chaland est assujéti aux droits d'un transit simple qui seront perçus auprès du remorqueur.

Canada Marine Act, S.C. 1998, c. 10

4. In recognition of the significance of marine transportation to Canada and its contribution to the Canadian economy, the purpose of this Act is to

(a) implement marine policies that provide Canada with the marine infrastructure that it needs and that offer effective support for the achievement of national, regional and local social and economic objectives and will promote and safeguard Canada's competitiveness and trade objectives;

4. Compte tenu de l'importance du transport maritime au Canada et de sa contribution à l'économie canadienne, la présente loi a pour objet de :

a) mettre en œuvre une politique maritime qui permette au Canada de se doter de l'infrastructure maritime dont il a besoin, qui le soutienne efficacement dans la réalisation de ses objectifs socioéconomiques nationaux, régionaux et locaux aussi bien que commerciaux, et l'aide à promouvoir et préserver sa compétitivité;

(a.1) promote the success of ports for the purpose of contributing to the competitiveness, growth and prosperity of the Canadian economy;

(b) base the marine infrastructure and services on international practices and approaches that are consistent with those of Canada's major trading partners in order to foster harmonization of standards among jurisdictions;

(c) ensure that marine transportation services are organized to satisfy the needs of users and are available at a reasonable cost to the users;

(d) provide for a high level of safety and environmental protection;

(e) provide a high degree of autonomy for local or regional management of components of the system of services and facilities and be responsive to local needs and priorities;

(f) manage the marine infrastructure and services in a commercial manner that encourages, and takes into account, input from users and the community in which a port or harbor is located;

(g) provide for the disposition, by transfer or otherwise, of certain ports and port facilities; and

(h) promote coordination and integration of marine activities with surface and air transportation systems.

7. (1) Subject to subsection (3), a port authority is an agent of Her Majesty in right of Canada only for the purposes of engaging in the port activities referred to in paragraph 28(2)(a).

Not an agent of Her Majesty

a.1) promouvoir la vitalité des ports dans le but de contribuer à la compétitivité, la croissance et la prospérité économique du Canada;

b) fonder l'infrastructure maritime et les services sur des pratiques internationales et des approches compatibles avec celles de ses principaux partenaires commerciaux dans le but de promouvoir l'harmonisation des normes qu'appliquent les différentes autorités;

c) veiller à ce que les services de transport maritime soient organisés de façon à satisfaire les besoins des utilisateurs et leur soient offerts à un coût raisonnable;

d) fournir un niveau élevé de sécurité et de protection de l'environnement;

e) offrir un niveau élevé d'autonomie aux administrations locales ou régionales des composantes du réseau des services et installations portuaires et prendre en compte les priorités et les besoins locaux;

f) gérer l'infrastructure maritime et les services d'une façon commerciale qui favorise et prend en compte l'apport des utilisateurs et de la collectivité où un port ou havre est situé;

g) prévoir la cession, notamment par voie de transfert, de certains ports et installations portuaires;

h) favoriser la coordination et l'intégration des activités maritimes avec les réseaux de transport aérien et terrestre.

7. (1) Sous réserve du paragraphe (3), les administrations portuaires ne sont mandataires de Sa Majesté du chef du Canada que dans le cadre des activités portuaires visées à l'alinéa 28(2)a).

Non-mandataire de Sa Majesté

(2) A wholly-owned subsidiary of a port authority is not an agent of Her Majesty in right of Canada unless, subject to subsection (3),

(a) it was an agent of Her Majesty in right of Canada on June 10, 1996; and

(b) it is an agent of Her Majesty in right of Canada under an enactment other than this Act.

Borrowing restriction

(3) A port authority or a wholly-owned subsidiary of a port authority may not borrow money as an agent of Her Majesty in right of Canada.

49. (1) The Minister may, subject to any regulations that the Treasury Board may make for the purposes of this section, fix fees in respect of regulatory processes or approvals provided under this Act by the Minister, the Department or any board or agency of the Government of Canada for which the Minister has responsibility.

(2) Fees that are fixed under subsection (1) shall in the aggregate not exceed an amount sufficient to compensate Her Majesty in right of Canada for any reasonable outlays incurred by Her Majesty for the purpose of providing the regulatory processes or approvals.

67. (1) The Minister may fix the fees to be paid in respect of

(a) ships, vehicles, aircraft and persons coming into or using a public port or public port facility;

(2) Les filiales à cent pour cent des administrations portuaires ne sont pas mandataires de Sa Majesté du chef du Canada sauf si, sous réserve du paragraphe (3) :

a) d'une part, elles l'étaient au 10 juin 1996;

b) d'autre part, elles le sont en vertu d'une loi autre que la présente loi.

Réserve

(3) Ni les administrations portuaires ni les filiales à cent pour cent des administrations portuaires ne peuvent emprunter de fonds à titre de mandataires de Sa Majesté du chef du Canada.

49. (1) Le ministre peut, sous réserve des règlements d'application du présent article éventuellement pris par le Conseil du Trésor, fixer les prix à payer pour la fourniture de procédés réglementaires ou l'attribution d'autorisations réglementaires au titre de la présente loi par lui-même ou le ministère, ou tout organisme fédéral dont il est, du moins en partie, responsable.

(2) Les prix fixés dans le cadre du paragraphe (1) ne peuvent dépasser, dans l'ensemble, un montant suffisant pour indemniser Sa Majesté du chef du Canada des dépenses entraînées pour elle par la fourniture des procédés réglementaires ou l'attribution des autorisations réglementaires.

67. (1) Le ministre peut fixer les droits à payer à l'égard :

a) des navires, véhicules, aéronefs et personnes entrant dans les ports publics ou faisant usage des ports publics ou d'installations portuaires publiques;

(b) goods loaded on ships, unloaded from ships or transshipped by water within the limits of a public port or stored in, or moved across, a public port facility; and

(c) any service provided by the Minister, or any right or privilege conferred by the Minister, in respect of the operation of a public port or public port facility.

Interest

(2) The Minister may fix the interest rate to be charged on overdue fees.

Application to Crown

(3) The fees and the interest rate may be made binding on Her Majesty in right of Canada or a province.

Application to military and police ships

(4) The fees fixed under paragraphs (1)(a) and (b) do not apply in respect of a Canadian warship, naval auxiliary ship or other ship under the command of the Canadian Forces, a ship of a visiting force within the meaning of the Visiting Forces Act or any other ship while it is under the command of the Royal Canadian Mounted Police.

b) des marchandises soit déchargées de ces navires, chargées à leur bord ou transbordées par eau dans le périmètre portuaire, soit stockées dans ces installations portuaires ou passant par elles;

c) des services fournis par le ministre, ou des avantages qu'il accorde, en rapport avec l'exploitation des ports publics ou des installations portuaires publiques.

Intérêts

(2) Le ministre peut fixer le taux d'intérêt frappant les droits impayés.

Application à Sa Majesté

(3) Les droits et le taux d'intérêt peuvent être rendus obligatoires pour Sa Majesté du chef du Canada ou d'une province.

Navires militaires ou étrangers

(4) Les droits fixés en vertu de l'alinéa (1) a) ou b) ne s'appliquent pas aux navires de guerre canadiens, aux navires auxiliaires de la marine, aux navires placés sous le commandement des Forces canadiennes, aux navires de forces étrangères présentes au Canada au sens de la Loi sur les forces étrangères présentes au Canada, ni aux navires sous le commandement de la Gendarmerie royale du Canada.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-1683-05

STYLE OF CAUSE: Her Majesty the Queen
And the M.V. Stormont and The M.V. Paul E No. 1
And Mckeil Marine Inc.
Detroit-Windsor Truck Ferry Inc. and
CMT Canadian Maritime Transport Ltd.

PLACE OF HEARING: Halifax

DATE OF HEARING: April 12, 2011

REASONS FOR JUDGMENT: BEAUDRY J.

DATED: May 9, 2011

APPEARANCES:

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Mr. Philip M. Chapman FOR THE DWTF

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