



Marine Services International Ltd. v. Ryan Estate: **Supreme Court of Canada upholds workplace litigation bar**

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On September 19, 2004 the fishing vessel, *Ryan's Commander*, capsized, killing both Joseph and David Ryan who were returning from fishing off the coast of Newfoundland and Labrador. Following on the tragedy, the Ryan brothers' widows and dependents (the "Estate") sued a number of different parties including companies involved in the design and construction of the vessel (alleging negligence in the design and construction of the *Ryan's Commander*) and the Government of Canada (alleging negligence in the inspection of the vessel by Transport Canada). At the time of suit, the Estate had applied for and received compensation under the *Newfoundland and Labrador Workplace Health, Safety and Compensation Act* (the "*Workplace Act*") as the death of the Ryan brothers occurred in a workplace context. The *Workplace Act* had a litigation bar which was designed to prevent employees from suing their employers, or other employers or workers, within the compensation system for work-related injuries or death.

Some of the Defendants applied to the Newfoundland Compensation Commission (comparable to Worksafe BC) in order to obtain a ruling that the Estate was prohibited by the litigation bar from carrying on with any lawsuits against employers or workers within the meaning of the *Workplace Act*. The Newfoundland Compensation Commission concluded that the litigation bar was valid and, therefore, the lawsuits could not properly proceed.

The Estate appealed the decision of the Newfoundland Compensation Commission to the Supreme Court of



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Newfoundland and Labrador arguing, essentially, that the litigation bar, as found in the *Worksafe Act* (provincial legislation), was unconstitutional because the provincial legislatures do not have the jurisdiction to make laws in relation to "navigation and shipping". Rather, it is Federal Parliament that has exclusive jurisdiction to make laws in relation to "navigation and shipping" and that Federal Parliament had done so in the context of marine negligence claims expressly in the *Marine Liability Act*. Specifically, it was argued that the provincial litigation bar restricted the scope of the right to sue granted under section 6(2) of the *Marine Liability Act* and was therefore unconstitutional. Section 6(2) of the *Marine Liability Act* is fairly straight forward and reads as follows:

Damages for death

6 (2) If a person dies by the fault or neglect of another under circumstances that would have entitled the person, if not deceased, to recover damages, the dependants of the deceased person may maintain an action in a court of competent jurisdiction for their loss resulting from the death against the person from whom the deceased person would have been entitled to recover.

The first judge hearing the case concluded that the Newfoundland Compensation Commission was wrong, holding that the determination of

liability and the creation of a right of suit in a marine context falls within exclusive federal jurisdiction under "navigation and shipping" as set out in Canada's Constitution. The judge went on to observe that the provision of the *Marine Liability Act* (specifically section 6(2) quoted above) is a core feature of that federal constitutional power. The judge therefore concluded that the litigation bar, as found in the *Workplace Act*, had to be read down so that it would not bar the action of the Estate. In other words, the litigation bar did not apply to prevent the Estate from suing the designer and others involved in the construction and inspection of the vessel even though they were employers within the system created by the *Workplace Act*.

The decision of the single judge was appealed to the Supreme Court of Newfoundland and Labrador — Court of Appeal. Three judges heard the appeal. The majority of the Court of Appeal upheld the judge's decision concluding that the litigation bar could not apply to a core element of the federal power over navigation and shipping and if allowed to prevent the Estate from pursuing their claims, would impair the core of that federal power. The Court of Appeal affirmed that the constitutional doctrine of inter-jurisdictional immunity applied, in this case to limit the application of provincial laws. The

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Court of Appeal also held that the doctrine of paramountcy applied. This is the constitutional principle whereby a valid federal law will prevail in the event of conflict with an otherwise valid provincial law.

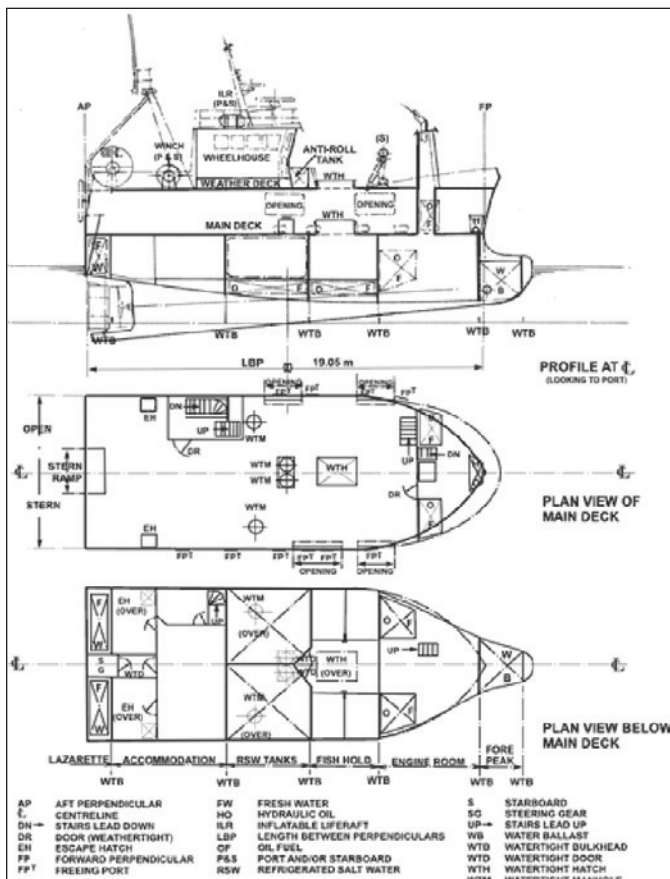
While the majority of the Court of Appeal upheld the decision to allow the lawsuits of the Estate to proceed, there was a strong dissenting judgment whereby one of the Court of Appeal judges concluded that the two key constitutional principles applied by the majority (inter-jurisdictional immunity and paramountcy) did not apply in the context of the *Workplace Act* such that the litigation bar should be upheld and the suits of the Estate should not be allowed to proceed. The Minority judgment expressed concern about the impact such a decision would have on the no-fault workplace compensation system that was in place in Newfoundland and Labrador and virtually every other Province and Territory in the country.

The Defendants in the lawsuit sought leave to appeal to the Supreme Court of Canada. The Supreme Court of Canada does not hear all cases where a party wants to appeal. Rather, the Court generally only hears cases that raise issues of public importance. It seems fairly clear the Supreme Court of Canada recognized the potential impact of the Court of Appeal decision on workplace legislation across the country. Leave to appeal was therefore granted.

The Supreme Court of Canada heard argument on the merits of the appeal on January 15, 2013 and reserved judgment, issuing its decision on August 2, 2013. In addition to the

parties to the suit, a number of other entities intervened in the case, including the Attorney General of British Columbia and the Workers' Compensation Board of British Columbia.

Not entirely surprising to maritime law practitioners, the Supreme Court of Canada overturned the Court of Appeal decision, reaffirming the decision of the Newfoundland Compensation Commission to uphold the litigation bar. Critical to the Supreme Court of Canada's decision is the recognition of the importance that Worksafe compensation regimes play in each and every province in this country. The Court, no doubt, was concerned about the fragmentation of workers' compensation systems if the provisions of the *Marine Liability Act* were upheld as being intended to regulate relations between employers and employees in a maritime workplace context. Central to the Supreme Court of Canada's decision was their realignment of the doctrine of inter-jurisdictional immunity as applied in the maritime negligence law case of *Ordon Estate v. Grail*. In that case, the Supreme Court of Canada expressed, in very broad terms, the scope of Federal Parliament's power to legislate in relation to "navigation and shipping", including the power to enact laws regulating negligent conduct in a marine context. While reiterating the broad nature of Parliament's power to enact laws in respect of "navigation and shipping" and negligent conduct in a marine context, the Court noted that when *Ordon Estate* was decided, the doctrine of inter-jurisdictional immunity was more broadly construed — the provincial law in question only had to "affect"



The general arrangement of the Ryan's Commander and the vessel, before and after capsizing. Negligence was alleged in the design and construction and a number of parties were sued as a result of its capsizing.

the core of the federal power in order for the doctrine to be applied. Since *Ordon Estate*, however, the doctrine of inter-jurisdictional immunity was refined so that, for a provincial law to be found to be inapplicable, it would have to do more than “affect” the core of the federal power, it would have to “impair” the core of the federal power. This change in constitutional law, the Court held, had to be taken into account.

While accepting that maritime negligence law is at the core of the federal power over “navigation and shipping”, the Court concluded that allowing the *Workplace Act* litigation bar to stand would not impair the exercise of the federal power over “navigation and shipping”. In coming to this conclusion, the Supreme Court of Canada recognized that allowing the litigation bar to stand would not alter the uniformity of Canadian maritime law across the country since every province has a similar bar in similar workplace-type legislation. Moreover, the litigation bar would not restrict Parliament’s ability to determine who may possess a cause of action under the *Marine Liability Act*. Specifically the Court said:

[62] Although s. 44 of the WHSCA [the Workplace Act] has the effect of regulating a maritime negligence law issue, it neither alters the uniformity of Canadian maritime law nor restricts Parliament’s ability to determine who may possess a cause of action under the MLA. Despite their inability to initiate the maritime negligence action provided for by s. 6(2) of the MLA, parties in the position of the Ryan Estate still receive compensation for the accident in question (albeit through a different mechanism and from a different source).

The Supreme Court of Canada went on to conclude that the doctrine of paramountcy is similarly not properly invoked in this case as there is no true conflict between the federal and provincial laws in issue. The Court observed that conflict in a constitutional sense means more than just a different outcome. The Court said:

“The validity of the two legislative enactments relevant in this appeal is not disputed. At issue is whether they are inconsistent. Inconsistency can

*arise from two different forms of conflict between the federal and provincial legislation...The first is described by Dickson J. in *Multiple Access Ltd.*, at p. 191, where he stated:*

In principle, there would seem to be no good reasons to speak of paramountcy and preclusion except where there is actual conflict in operation as where one enactment says “yes” and the other says “no”; “the same citizens are being told to do inconsistent things”; compliance with one is defiance of the other.

Where the federal statute says “yes” and the provincial statute says “no”, or vice versa, compliance with one statute means a violation of the other statute. It is the archetypical operational conflict. [69] The second form of conflict is when the provincial law frustrates the purpose of the federal law...”

The Court concluded that neither type of conflict existed in this instance so the doctrine of paramountcy did not apply.

In the result, the Supreme Court of Canada upheld the litigation bar in the *Workplace Act* resulting in the *Estate* being prevented from suing employers or workers within the compensation system. Importantly, the Court continued to make a clear distinction between the compensatory system created by laws such as the *Workplace Act* and the regulatory system that imposes occupational health and safety

elements. Specifically the Court noted the following:

*Provincial workers’ compensation schemes generally cover persons employed in the relevant province, even if a workplace accident occurs outside of the province: *Workmen’s Compensation Board v. Canadian Pacific Railway Co.*, [1920] A.C. 184 (P.C.) (“*Canadian Pacific Railway*”). The compensatory elements of these schemes apply to federal undertakings operating within the province, but the occupational health and safety elements do not...*

This appears to be a recognition that while the compensatory element of such workplace laws will apply in a federal context, the laws imposing health and safety standards will not. No doubt this distinction will likely be the subject of future constitutional litigation.

Marine Services International Ltd. v. Ryan Estate is an important constitutional case in the field of maritime law. It will be interesting to see to what extent provincial governments and their agencies seek to broaden their regulation of the maritime industry.

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