

T-260-94

BETWEEN: LAURENTIAN PILOTAGE AUTHORITY,  
Plaintiff,

AND: TECHNO-NAVIGATION LTÉE,  
-and-  
TECHNO-BARGES INC.,  
Defendants (*in personam*),

AND: THE SHIPS:  
M.T. "TECHNO-VENTURE"  
BARGE "JEAN-RAYMOND",  
Defendants (*in rem*).

**J U D G M E N T**

DENAULT J.:

The plaintiff's action is dismissed with costs.

OTTAWA, December 11, 1996

J.F.C.C.

Certified true translation

C. Delon, L.L.L.



In the course of the trial, pursuant to an agreement between the parties, the plaintiff discontinued its action *in rem* against the tug *Techno-Venture* and the barge *Jean-Raymond* for failure to serve, and also in respect of the interest claimed. The plaintiff further amended its statement of claim, with the consent of the defendant, to raise it to \$38,653.98, taking into account new invoices for trips made since the proceedings were commenced.

The evidence established that the *Techno-Venture*, which is owned by Techno-Barges Inc., is a tug 138 feet long and 30 feet wide, with a net tonnage of 469.65 tons. The barge *Jean-Raymond*, a non-propelled barge, measures 409 feet long and 57 feet wide, and has a net tonnage of 3,724.510 tons; it also belongs to Techno-Barges Inc.

According to the plaintiff, the pilotage services for which the plaintiff is claiming were provided on various dates on the St. Lawrence River at locations within Districts No. 1 and No. 2 between Les Escoumins and Portneuf.<sup>2</sup>

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<sup>2</sup>Section 3 of the *Laurentian Pilotage Authority Regulations* divides the pilotage area into districts which are described in Schedule II to the Regulations.

The pilotage service forms and corresponding invoices may be divided into three categories. The first category of invoices in fact covers two trips made by the *Techno-Venture* and the *Jean-Raymond*, the first on June 19, 1991, between Les Escoumins and Québec, and the second on June 22, 1991 between Québec and Les Escoumins. On both occasions, the pilotage service forms were signed by the master and the pilots, but it appears from the pilotage service forms of June 22, 1991 (LPA 1(5) and LPA 1(7)), that the owner protested the requirement that a pilot be taken on board. These invoices total \$3,195.34.<sup>3</sup> The

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<sup>3</sup>The invoice for the *Techno-Venture* was for \$570.96 and the invoice for the barge *Jean-Raymond* was for \$874.20 (Exhibit LPA 2, case No. 3).

second category of invoices relates to a trip on September 24, 1991, where the pilot alone signed the pilotage service form for the tug and the barge (LPA 1(9) and LPA 1(11)). The pilotage service form for the barge *Jean-Raymond* shows that the master refused to allow the plaintiff's pilots on board. These invoices total \$1,445.16.<sup>4</sup> The final category — which represents \$34,013.48<sup>5</sup> out of a total

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<sup>4</sup>The invoice for the *Techno-Venture* is for \$570.96 and the invoice for the barge *Jean-Raymond* is for \$874.20 (Exhibit LPA 2, case No. 3).

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<sup>5</sup>The parties agreed on this amount. See [TRANSLATION] "Agreement between the parties in respect of discontinuances, admissions and amendments".



claim of \$38,653.98 — covers pilotage service forms and invoices prepared by the plaintiff's accounting department, relating to trips allegedly made by the tug and barge belonging to the defendant Techno-Barges Inc., for which no pilotage service was supplied; this portion of the claim is based on section 44 of the Act.

The plaintiff claims to be entitled to payment of these invoices by virtue of the powers vested in it by the *Pilotage Act*, the *Laurentian Pilotage Authority Regulations* and the Tariffs established by the Regulations.

The defendants refuse to pay the amount claimed because, they assert, they are exempt, by the very terms of the *Laurentian Pilotage Authority Regulations*, from the obligation to take the plaintiff's pilots on board.

The *Pilotage Act* establishes Pilotage Authorities (s. 3), including the plaintiff, whose objects are to "establish, operate, maintain and administer in the interests of safety an efficient pilotage service within the region ..." (s. 18) assigned to each Authority. To that end, the Act allows each Authority, with the approval

of the Governor in Council, to make regulations necessary for the attainment of its objects (subsection 20(1)) and, *inter alia*: (a) establishing compulsory pilotage zones; (b) prescribing the ships or classes of ships that are subject to compulsory pilotage; and (c) prescribing the circumstances under which compulsory pilotage may be waived. Accordingly, the Laurentian Pilotage Authority made Regulation 1268, section 4 of which reads as follows:

4.(1) Subject to subsection (3), every ship or class of ship

registered in Canada that

operated in District No. 1 or District No. 1-1 and is over 68.58 metres (225 feet) in length and over 1,500 net registered tons,  
or

operated in District No. 2 and is over 79.33 metres (260 feet) in length and over 2,000 net registered tons, and

registered in Canada that is over 30.48 metres (100 feet) in length

is subject to compulsory pilotage.

(2) Every scow and barge that is registered in Canada, manned by Canadian masters and officers and carrying as cargo a pollutant, as defined in section 727 of the *Canada Shipping Act*, is subject to compulsory pilotage.

(3) The following ships or classes of ships, if registered in Canada and manned by Canadian masters and officers, are not subject to compulsory pilotage:

any ship owned by the Government of Canada and not engaged in commercial trade;

any ferry operating in the passenger carrying trade on a regular schedule between two or more terminals;

any ship designed for and engaged in fishing;

any tug, floating crane or dredge; and

any self-propelled barge trading regularly between two or more terminals in the Province of Quebec in or east of District No. 2 other than a barge described in subsection (2).

(4)Notwithstanding subsection (3), where the operation of any ship described in paragraphs (b) to (e) thereof would, due to

(a)the condition of the ship,

(b)unusual conditions on board the ship, or

(c)conditions of weather, tides, currents or ice

constitute a risk to the safety of navigation, that ship shall have a licensed pilot or a holder of a pilotage certificate on board.

There is no doubt that under the provisions of para. 4(3)(d) the tug *Techno-Venture* is not subject to compulsory pilotage except in the cases set out in subs. 4(4), where the operation of the ship would constitute a risk to the safety of navigation. This decision was made by the LPA when it made its Regulations. Given that the plaintiff has not proved that one of the situations described in paras.

4(4)(a), (b) or (c) existed, the plaintiff's [*sic*] tug was not subject to compulsory pilotage and this portion of the plaintiff's action must be dismissed.

But what is the situation in the case of the barge *Jean-Raymond*? First, let us look at the provisions of the *Laurentian Pilotage Authority Regulations* in respect of barges.

The Regulations deal only with barges that trade in specific situations: (a) barges registered in Canada and manned by Canadian masters and officers and carrying as cargo a pollutant are subject to compulsory pilotage under subs. 4(2); (b) self-propelled barges, also registered in Canada and manned by Canadian masters and officers, as long as they trade regularly between two or more terminals in or east of District No. 2, are not subject to compulsory pilotage under para. 4(3)(e), except in the situations set out in subs. 4(4). The barge *Jean-Raymond*, as we know, is non-propelled and not manned by Canadian masters or officers, and the evidence did not establish that it was carrying as cargo pollutants. Must we conclude from this, as counsel for the defendants

suggested, that if a barge is not, among other conditions, manned by a master, it is not subject to compulsory pilotage? No. If a barge does not meet the requirements of subs. 4(2), this does not mean that it is exempt from compulsory pilotage; it simply does not fall within subs. 4(2).

Must we conclude from this, on the other hand, as counsel for the plaintiff suggested, that as long as the barge falls within the very broad definition of "ship"<sup>6</sup> it is subject to compulsory pilotage by virtue of its length and net tonnage (para. 4(1)(a))? I do not think this is the case either.

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<sup>6</sup>"Ship" includes any description of vessel or boat used or designed for use in navigation, without regard to the method or lack of propulsion. *Pilotage Act*, s. 2.

As we saw earlier, the *Pilotage Act* has assigned the LPA the object of establishing and administering a pilotage service in the interests of safety (s. 18 of the Act) and, to that end, has given it the power to prescribe the ships that are subject to compulsory pilotage (para. 20(1)(b)) of the Act). A crucial question arises: how can a non-propelled barge, not manned by a Canadian master or officers and not even fitted with the equipment needed for navigation, be subject to compulsory pilotage? It would seem to be physically impossible to accommodate a pilot on it. This was the decision of the Quebec Superior Court in *L'Administration de pilotage des Laurentides v. Logistec Navigation Inc. et Techno-Maritime Limitée*<sup>7</sup>, a case that also involved a barge, in which there

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<sup>7</sup>Superior Court, District of Montréal, No. 500-05-010137-808. Exhibit LPA-10.

were no facilities on board that would allow a pilot to navigate, there was no manipulable rudder or propulsion force, and the tug pulling it was also exempt, without restriction. The Court decided that although, strictly speaking, the barge was classified as a ship subject to compulsory pilotage, it was impossible to apply the Regulations. The plaintiff took the case to the Quebec Court of Appeal, where it did not achieve the desired result; the Court dismissed the appeal, without disposing of the merits since the subject matter of the case had become moot.<sup>8</sup>

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<sup>8</sup>Court of Appeal (Montréal) No. 500-09-001086-800. Exhibit LPA-11.



I am also of the view that the Regulations, which are vague and imprecise, do not operate to make non-propelled barges, which are not manned by Canadian masters and officers and not even equipped with facilities for a pilot on board, subject to compulsory pilotage.

To counter the argument that it is impossible to apply the Regulations, counsel for the plaintiff relied on sections 43 and 44 of the Act, which provide as follows:

- 43.** Where a ship in a compulsory pilotage area having on board a licensed pilot leads any ship subject to compulsory pilotage that does not have a licensed pilot or the holder of a pilotage certificate on board during any period in which the ship so led cannot, by reason of the circumstances existing at the time, be boarded, the ship so led is liable to the Authority for all pilotage charges as if a licensed pilot had been on board and piloted that ship.
- 44.** Except where an Authority waives compulsory pilotage, a ship subject to compulsory pilotage that proceeds through a compulsory pilotage area not under the conduct of a licensed pilot

or the holder of a pilotage certificate is liable, to the Authority in respect of which the region including that area is set out in the schedule, for all pilotage charges as if the ship had been under the conduct of a licensed pilot.

I do not believe that either of these sections covers the situation we have in this case. Section 43 provides for cases in which it is impossible for a pilot to board the ship being led, by reason of the circumstances existing at the time. In the instant case, the plaintiff has not proved any specific case in which such circumstances were present. Section 44 applies only to a ship subject to compulsory pilotage which proceeds not under the conduct of a pilot. Given that the barge had no facilities for a pilot, this section cannot apply.

Lastly, can it be argued, as suggested by the plaintiff's billing method,<sup>9</sup> that a tug and a barge both become subject to compulsory pilotage simply because they

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<sup>9</sup>For each trip made by the tug *Techno-Venture* and the barge *Jean-Raymond*, the plaintiff charged each of them pilotage charges and invoiced them separately.

are navigating together, and because, in short, they are being used for the purposes for which each of them was designed, the first for towing and the second for being towed?

This is nonsense. First, the Regulations make no provision for this situation. Second, it would be illogical for the Regulations to exempt tugs from being subject to compulsory pilotage and then make them subject to it when they are performing their functions of towing.

The plaintiff's action cannot be allowed, and must be dismissed with costs.

OTTAWA, December 11, 1996

PIERRE DENAULT

J.F.C.C.

Certified true translation

C. Delon, L.L.L.

FEDERAL COURT OF CANADA  
TRIAL DIVISION

NAMES OF COUNSEL AND SOLICITORS OF RECORD

COURT FILE NO: T-260-94

STYLE OF CAUSE: Laurentian Pilotage Authority

tée, and  
The Ships: M.T. "Techno-Venture" Barge "Jean-Raymond"

PLACE OF HEARING: Montréal, Quebec

DATE OF HEARING: October 29-30, 1996

REASONS FOR JUDGMENT OF MR. JUSTICE DENAULT

DATED: DECEMBER 11, 1996

APPEARANCES:

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