

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20120606

Docket: A-479-11

Citation: 2012 FCA 167

**CORAM: EVANS J.A.
SHARLOW J.A.
GAUTHIER J.A.**

BETWEEN:

**HER MAJESTY THE QUEEN IN RIGHT OF THE
PROVINCE OF ALBERTA as represented by
THE MINISTER OF SUSTAINABLE RESOURCE DEVELOPMENT**

Appellant

and

**ALAN TONEY, YVONNE TONEY and COURTENAY TONEY &
REBECCA TONEY as represented by their litigation guardian ALAN TONEY**

Respondents

and

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA in the name of
THE ROYAL CANADIAN MOUNTED POLICE and THE CANADIAN
SHIP BEARING LICENSE NO. AB1275024**

Defendants in action, not party to appeal

Heard at Edmonton, Alberta, on June 06, 2012.

Judgment delivered from the Bench at Edmonton, Alberta, on June 06, 2012.

REASONS FOR JUDGMENT OF THE COURT BY:

GAUTHIER J.A.

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**REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Edmonton, Alberta, on June 6, 2012)**

GAUTHIER J.A.

[1] Her Majesty the Queen in right of the Province of Alberta (the Province) appeals from the decision of the Federal Court (reported as 2011 FC 1440) dismissing the Province's motion to strike the Respondents' claim for lack of jurisdiction.

[2] The Respondents claim damages from the Province (among others) for loss arising from the death of their young daughter and sister after the vessel then owned and operated by the Province capsized during a rescue operation. The Respondents allege among other things that the Province failed to assess whether the vessel was appropriate and safe for this purpose given her characteristics, the weight of the occupants and weather conditions, and that it failed to assess and correct the course of the vessel.

[3] It is not disputed that such claim falls within the subject of navigation and shipping and within the express terms of paragraphs 22(2)(d) and (g) of the *Federal Courts Act*, RSC 1985, c F-7 (the Act), that Canadian Maritime Law as defined at sections 2 and 42 of the Act would apply, including the *Marine Liability Act*, S.C. 2001, c. 6, which expressly deals with damages for death and the right of dependants of the deceased person(s) and states at section 3 that it is binding on her Majesty in Right of Canada or a province.

[4] What the Appellant is saying is that the Federal Court has no personal jurisdiction over the Province.

[5] Having reviewed the case law relied upon by the Appellant, we note that none of the cases decided by this Court involved section 22 of the Act. They all focused one way or another on the definition of "the Crown" in section 17 or 23 of the Act. It is clear that section 17 only applies to claims by or against the Federal Crown and would not cover a claim against the Province. That said, as mentioned by the Motion Judge in the present proceeding, the Respondents do not need to rely on section 17. The arguments presented by the Respondents to the motion based on the wording of section 22 and subsection 43(7) have not been considered expressly in the past. Nor has the Court considered the impact of exclusive grants of jurisdiction to the Federal Court in respect of certain matters. We are not persuaded that it is plain and obvious that the Federal Court does not have personal jurisdiction over the Province in this matter.

[6] The Appeal will be dismissed with costs in this Court to the Respondents.

"Johanne Gauthier"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-479-11

STYLE OF CAUSE: HER MAJESTY THE QUEEN IN RIGHT OF
THE PROVINCE OF ALBERTA v. ALAN
TONEY ET AL

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: June 6, 2012

**REASONS FOR JUDGMENT
OF THE COURT BY:** EVANS J.A.
SHARLOW J.A.
GAUTHIER J.A.

DELIVERED FROM THE BENCH BY: GAUTHIER J.A.

APPEARANCES:

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Mr. Darren Williams FOR THE RESPONDENTS

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