



LETTER OF DISALLOWANCE

2025-03-04

Ottawa, Ontario
SOPF File: 120-1002-C1

BY EMAIL

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*Via email to DFO.CCGCostRecoveryRSP-
RecouvrementdescoutsGCC.MPO@dfo-mpo.gc.ca*

RE: P/C *Celebrity* – La Prairie, Québec
Incident date: 2021-06-17

SUMMARY AND DISALLOWANCE

- [1] This letter responds to a submission from the Canadian Coast Guard (“CCG”) for an incident involving a 31-foot pleasure craft known as the *Celebrity* (“Vessel”). The Vessel sank at a wharf in La Prairie on 17 June 2021 (“Incident”).
- [2] On 13 June 2024, on behalf of the Administrator, the Ship Fund of Ship and Rail Compensation Canada (“Fund”) received a submission from the CCG. The submission advanced a claim pursuant to sections 101 and 103 of the *Marine Liability Act*, SC 2001, c 6 (“MLA”), seeking compensation for costs and expenses arising from measures taken in response to the Incident, totaling \$4,970.64.
- [3] The submission has been reviewed and a determination with respect to its claims has been made. It is determined that the limitation period under paragraph 103(2)(a) of the MLA arose prior to the submission of this claim to the Administrator. The submission is therefore not admissible under subsection 103(1) of the MLA.
- [4] The reasons for the disallowance are set forth below.

THE SUBMISSION RECEIVED

- [5] The claim submission includes a narrative that describes events relating to the Incident. It also includes a summary of the costs and expenses that the CCG claims and corroborating documents. To the extent that the narrative and corroborating documents are relevant to the determination, they are reviewed below.

Narrative Summary

- [6] According to the narrative, on 17 June 2021 at 16h01, the CCG was notified that a 31-foot pleasure craft known as the *Celebrity* was sinking while at a wharf. The owner of the craft apparently first reported the sinking and shortly thereafter confirmed that the Vessel was now resting on the bottom with approximately 600 liters of oil on board.
- [7] The cause of the sinking was apparently that the owner had neglected to secure a plug prior to disembarking the vessel.
- [8] The owner did not report any visible oil pollution.
- [9] The CCG carried out a response after the owner indicated he lacked both insurance and the capacity to raise the Vessel himself.
- [10] The Vessel was refloated the same day, with the aid of a contractor hired by the CCG. The refloating was carried out using lights, as night had fallen by the time the effort got underway.
- [11] According to the narrative, the chief of operations of the contractor “a confirmé qu’il n’y a eu aucune pollution avant et durant les activités de renflouement” [confirmed that there was no pollution before and during the refloating].

DETERMINATIONS AND FINDINGS

The CCG submission presents potentially eligible claims under section 103 of the MLA

- [12] The Incident resulted in oil pollution damage within the territorial seas or internal waters of Canada and in costs and expenses to carry out measures to address that oil pollution damage and mitigate further damage. As a result, claims arising from the Incident are potentially eligible for compensation.
- [13] The CCG is an eligible claimant under section 103 of the MLA.
- [14] The submission was received within the limitation periods set out under subsection 103(2) of the MLA.
- [15] Some of the claimed costs and expenses arise from what appear to be reasonable measures taken to “prevent, repair, remedy or minimize” oil pollution damage from a ship, as contemplated under Part 6, Division 2 of the MLA. Alternatively, those costs and expenses arise from “preventive measures,” as contemplated under the International Convention on Civil Liability for Bunker Oil Pollution Damage. In either case, some of the claimed costs and expenses are potentially eligible for compensation.

- [16] The claim is therefore admissible, subject to the intervention of any applicable limitation period. The applicable period is the one set out at subsection 103(2) of the MLA.

Findings on the evidence submitted by the CCG

- [17] Subsection 103(1) of the MLA, as it was at the time of the Incident, provides:¹

Claims filed with Administrator

103 (1) In addition to any right against the Ship-source Oil Pollution Fund under section 101, a person who has suffered loss or damage or incurred costs or expenses referred to in section 51, 71 or 77, Article III of the Civil Liability Convention or Article 3 of the Bunkers Convention in respect of actual or anticipated oil pollution damage may file a claim with the Administrator for the loss, damage, costs or expenses.

Dépôt des demandes auprès de l'administrateur

103 (1) En plus des droits qu'elle peut exercer contre la Caisse d'indemnisation en vertu de l'article 101, toute personne qui a subi des pertes ou des dommages ou qui a engagé des frais mentionnés aux articles 51, 71 ou 77, à l'article III de la Convention sur la responsabilité civile ou à l'article 3 de la Convention sur les hydrocarbures de soute à cause de dommages — réels ou prévus — dus à la pollution par les hydrocarbures peut présenter à l'administrateur une demande en recouvrement de créance à l'égard de ces dommages, pertes et frais.

- [18] Claims made under subsection 103(1) of the MLA are subject to the limitation periods set out in subsection 103(2):

Limitation period

(2) Unless the Admiralty Court fixes a shorter period under paragraph 111(a), a claim must be made

(a) within two years after the day on which the oil pollution damage occurs and five years after the occurrence that causes that damage; or

(b) if no oil pollution damage occurs, within five years after the occurrence in respect of which oil pollution damage is anticipated.

Délais

(2) Sous réserve du pouvoir donné à la Cour d'amirauté à l'alinéa 111a), la demande en recouvrement de créance doit être faite :

a) s'il y a eu des dommages dus à la pollution par les hydrocarbures, dans les deux ans suivant la date où ces dommages se sont produits et dans les cinq ans suivant l'événement qui les a causés;

b) sinon, dans les cinq ans suivant l'événement à l'égard duquel des dommages ont été prévus.

- [19] To apply the limitation period, it must be determined whether there was a discharge of oil that caused oil pollution damage. If so, then a claim must be submitted within two years of the occurrence of the damage and five years of the occurrence.

There are few facts to consider with respect to the limitation period

- [20] This claim involves a single day incident and response. The claim was submitted to the Administrator more than two years after the incident. Pursuant to the case law, including that arising from the *Miss Terri* claim, the claim should be disallowed for having been submitted after the applicable limitation period expired if a discharge of oil pollution occurred during the incident.
- [21] The claim includes minimal evidence relevant to the discharge of oil, notwithstanding that this is a well-established threshold that must be met for a claim to succeed.
- [22] The claim narrative includes two photographs of the Vessel. Neither photograph is helpful. If a discharge were to have occurred, the most likely time was after the Vessel sank, before it was successfully refloated. The two photographs were both taken outside of the relevant period of time. The first was taken while the Vessel was sinking, but before it had bottomed out and it does not appear to be underwater in any meaningful way. The second photograph

¹ All references to the MLA herein are to the version that was in force at the time of the Incident.

was taken after the Vessel was refloated. The photographs therefore have minimal value in determining whether a discharge occurred.

- [23] There are no documented observations included in the evidence.
- [24] The narrative asserts that the contractor's chief of operations confirmed that no oil occurred prior to or during the raising operation.
- [25] In this case, the narrative cannot be accepted as evidence. Its authorship is unknown. The date on which it was prepared is unknown. The source of its information, where it does not refer to evidence included in the submission, is not identified. The narrative is helpful where it serves as a guide to the evidence provided and fills in fine details which might otherwise be shown only through burdensome efforts. But where the narrative seeks to fill evidentiary gaps on key issues, it is not helpful.
- [26] With respect to whatever the contractor's chief of operations said, whatever the narrative is basing its assertion on ought to have been included in the submission. Did the chief of operations send an email? Leave a phone message? If it was a call or verbal advice, surely it was years ago and therefore must have been written down to be accurately transcribed today. Whatever the source of the information included in the narrative, it could not be found in the submission.
- [27] And even the assertion that no oil was seen was accepted as accurately conveying the chief of operations' evidence, the reliability of that evidence must be questioned. According to the narrative, the chief of operations arrived at the wharf several hours after the Vessel had sunk, after sunset². Which is to say, a discharge of oil before he arrived may have occurred, but not been visible because of the lighting available by the time he arrived at the scene.
- [28] All of which leads back to the conclusion that there is no adequate evidence about whether a discharge occurred or not in this case.
- [29] It is considered appropriate to presume that where a pleasure craft, including the Vessel, sinks or becomes substantially submerged, while laden with fuel, a discharge will occur. It is noted that the evidence provided does include notes from the chief of operations to the effect that the Vessel's engines were improperly installed. This would, at a minimum, not decrease the risk of a discharge of oil.
- [30] In short, because it is appropriate to presume a discharge occurred, and there is a total absence of evidence on the point which might displace that presumption, for the purposes of this decision a discharge is concluded to have occurred.
- [31] The claim is therefore submitted after the relevant limitation date. This claim submission is disallowed.

- [32] In considering this Letter of Disallowance, please observe the following options and time limits that arise from section 106 of the MLA.

² According to the reference material at timeanddate.com, sunset for La Prairie on 17 June 2021 was 20h45. The narrative indicates that the chief of operations arrived at the scene at 21h14.

[33] Pursuant to s. 106(2) of the MLA, an appeal may be taken from a disallowance of a claim to an Admiralty Court within 60 days of receipt of the disallowance. This letter includes a disallowance of a claim. If you wish to appeal the disallowance, pursuant to Rules 335(c), 337, and 338 of the *Federal Courts Rules*, SOR/98-106 you may do so by filing a Notice of Appeal on Form 337. You must serve it upon the Administrator, who shall be the named Respondent. Pursuant to Rules 317 and 350 of the *Federal Courts Rules*, you may request a copy of the Certified Tribunal Record.

Yours sincerely,

Mark A.M. Gauthier, B.A., LL.B.
Administrator, Ship-source Oil Pollution Fund