

Interplay of federal and provincial jurisdiction over maritime disputes (Fraser Point Holdings Ltd. v. Vision Marine Technologies Inc.)

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Disputes which are predominantly maritime in nature have traditionally been federally regulated under Canadian maritime law and have therefore been under the jurisdictional purview of the Federal Court.

The above statement proved uncontroversial until 2019, when the Supreme Court of Canada rendered its decision in *Desgagnés Transport Inc v Wärtsilä Canada Inc.*, 2019 SCC 58 ("*Desgagnés*").

In *Desgagnés*, the Supreme Court of Canada held that the Civil Code of Quebec ("**Code**") was the statutory regime which ought to appropriately govern the purchase and sale of a pleasure craft. In what represented a surprising departure from jurisdictional standards, the Court concluded that a transaction which was unambiguously marine in its nature, and by extension federally regulated, did not on those grounds alone remove the applicability of the provincial legislative regime, being the Code.

Ostensibly, the Court found that in circumstances where there is no applicable statutory federal maritime law, then it is the statutory provincial regime which would prevail over the applicable maritime common law.

The ruling in *Desgagnés* represented a marked departure from the established lineage of both Federal and Supreme Court jurisprudence which regularly held that provincial law was inapplicable to marine matters on account of same being federal in nature.

This issue was revisited by the Federal Court in *Fraser Point Holdings Ltd. v. Vision Marine Technologies Inc.*, 2023 FC 738 ("*Fraser Point Holdings*").

In *Fraser Point Holdings*, the Plaintiff purchased a pleasure craft from the Defendant in the fall of 2017 and placed it into storage. Notably, the contract at issue did not contain a governing law, jurisdiction, or forum selection clause, and was entered into in Quebec, where the Code applied.

The following year, the Plaintiff took the pleasure craft out of storage and placed it on the water, only to discover that the pleasure craft's deck, finishing, wood inlay, and fiberglass, were deficient. On top of that, the engine failed to start. On account of these numerous complications, the Plaintiff approached the Defendant shipbuilder and sought to have the sale annulled. The Plaintiff was not successful in this respect.

Accordingly, the Plaintiff proceeded to have the vessel repaired at his own cost and thereafter commenced an action against the Defendant shipbuilder in Federal Court, seeking financial compensation for the cost of the repairs. In making his claim, the Plaintiff invoked Canadian maritime law governing the sale of ships as well as articles 1726 and 1729 of the Code.

The Defendant shipbuilder brought a motion to strike the Plaintiff's claim, without leave to amend.

The sole issue to be considered on the motion was whether the Federal Court had valid jurisdiction over the claim.

Citing *Desgagnés*, the Defendant argued that to engage the Federal Court's maritime jurisdiction, the Plaintiff's claim must be integrally connected to the federal head of power over navigation and shipping. The Defendant further argued that the Federal Court's jurisdiction did not extend to a contract of purchase and sale of a pleasure craft, which more appropriately involved an individual's property and civil rights, which the Defendant argued more correctly fell under provincial jurisdiction.

The Defendant further contended that it was immaterial that the subject matter of the contract was a pleasure craft, or that the consequence of the alleged breach of the contract and/or the seller's warranty concerned the unseaworthiness of the pleasure craft. The Defendant argued that the substance of the Plaintiff's claim was purely contractual, and that federal maritime law governing the sale of ships could not prevail over provincial legislation which was otherwise applicable the subject matter at issue.

Put differently, it was the Defendant's position that because civil law (i.e. the Code) applied to the dispute in *Desgagnés*, the Code would similarly apply to the present situation, and that the Federal Court had no jurisdiction to hear the case.

It was the Plaintiff's view, however, that the only question to be considered on the motion was whether their claim, if deemed true, would be sufficient to attract the Federal Court's jurisdiction given the subject matter at hand. The Plaintiff submitted that the sale of a pleasure craft was clearly subject to Canadian maritime law and/or was "integrally connected to shipping and navigation".

The Court ultimately rejected the Defendant's arguments and ruled in favour of the Plaintiff, concluding that the Federal Court retains jurisdiction over marine and maritime matters, even when those matters are governed by provincial law.

In her reasons, the motion judge stated that where there is a "double aspect scenario" (as there was here), and provided that Canadian maritime law is one of the applicable bodies of law, then the Federal Court retains jurisdiction to hear the matter. The motion judge affirmed that this was true even in cases where there provincial legislation may prevail over non-statutory Canadian maritime law.

In light of the above decision, vendors and purchasers alike are well advised to consider in agreements, which are either marine or quasi-marine in nature, whether they wish to include a "choice of law" provision which unambiguously sets out that Canadian maritime law will apply and prevail over any other applicable provincial legislation.

As echoed by the motion judge, had the parties in *Fraser Point Holdings* referred explicitly to the *Civil Code of Quebec* in the clause of their contract dealing with the choice of law, there would be no question that it would govern the dispute. The Court would not be required to conduct a division of powers analysis.

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