

Legal Net

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The *Ryan's Commander* Appeal: Can Workers Compensation Still Protect Employers from Worker Law Suits?

When the Newfoundland commercial fishing vessel, *Ryan's Commander*, capsized with the loss of two lives in 2004, it set in motion a legal challenge with potentially dramatic consequence for workers, employers, and insurers in B.C. That legal challenge, brought by the families of the deceased crewmembers in a lawsuit against the designers and inspectors of the vessel, was for the court to render "inoperative" the provincial law that has historically prevented workers from suing other workers and employers for death and injury caused by negligence in the workplace.

On June 15, 2011, Newfoundland's highest court, the Court of Appeal, confirmed the earlier trial court decision, holding the provincial ban against workers suing for their injuries did not operate to stop their lawsuit because it directly conflicted with federal maritime negligence law, which did allow such a law suit. While the Newfoundland court decision is not binding on B.C. Courts, it is persuasive authority that mariners injured at sea by the negligence of other workers or employers are able to advance claims against those parties for monies that are not paid by workers compensation. While this shift in the law may mean a greater array of rights for injured mariners and their families, it also means greater financial risk to employers and their insurers.

The *Ryan's Commander* Case:

The Newfoundland Court of Appeal opened its summary of the case by saying: "*The Northwest Atlantic can be a cruel place. So it was for David and Joseph Ryan in September 2004 when their vessel, Ryan's Commander, capsized in heavy seas off Cape Bonavista. Were their deaths simply a peril of the sea? Were they punished by an unforgiving ocean for errors of seamanship? Or were they sailing a floating coffin, a vessel that was negligently designed or built or inspected? This appeal is not about the answers to those questions. Rather, it is about whether those questions are to be answered*".

By saying the *Ryan's Commander* appeal was about "*whether those questions are to be answered*", the court was referring to the fact that similar cases, where mariners who were injured by the workplace negligence of other workers or employers, rarely had previously made it before the court because provincial workers compensation legislation prohibited the workers from suing. This was because the mandatory provincial worker compensation scheme, often referred to as the "historic trade-off", eliminated a worker's right to sue and replaced it with [some] wage loss and rehabilitation benefits, even if the worker was at fault for his own injuries. From the employer's perspective, the trade-off offered by the provincial scheme was that, although the employer had to pay monthly premiums for workers even if workers were not injured, they benefited from a legislated ban against workers suing them, or their other employees, for workplace accidents.

While the Court's analysis of the issues is long and complex, its conclusion can be most clearly summarized by saying: where federal law, with its exclusive jurisdiction over navigation and shipping, provides for a legal right, and provincial law purports to take that legal right away, the provincial law will be held not to apply.

In the *Ryan's Commander* case, the federal law was *maritime negligence law* developed by judges over centuries, and the *Marine Liability Act*. *Maritime negligence law* provides a right for mariners to sue those parties whose negligence causes them injury, and the *Marine Liability Act* provides an express right of the dependants of those mariners to claim as well, which is exactly what the Ryan family did. On the other hand, the Newfoundland workers compensation law, similar to that in B.C., prohibited the family (or the crewmen, had they lived) from suing any other worker, or any employer.

In other recent cases where provincial law appeared to interfere with federal law in the area of navigation and shipping, the courts have tried to encourage "cooperative federalism" and allow the two levels of governance to co-exist, unless there was a direct conflict between the two. An example of such a case is *Pattison Enterprises v. WCB (2011)*, where a B.C. vessel owner challenged B.C. WorkSafe's jurisdiction over commercial fishing vessels that were inspected by Transport Canada. In that case the B.C. Court of Appeal found insufficient conflict between the provincial and federal law, and refused to read-down the provincial law. In the *Ryan's Commander* case, however, the court found a direct and unavoidable conflict, and so the court held that the provincial law did not apply. Because of the significant impact on the marine industry, this decision will likely be appealed to Canada's highest court, and heard within the next 18 to 36 months.

What does Newfoundland's *Ryan's Commander* Mean for Western Mariners?

While the B.C. workers compensation scheme appears to have taken from mariners the right to sue for injuries caused by the negligence of another worker or employer, it has replaced it with wage loss and rehabilitation benefits during the worker's recovery, and disability pensions if they suffer a permanent impairment. Many workers correctly complain that the benefits are not assessed or delivered fairly, and in any event, do not provide full reimbursement, or any compensation for pain and suffering. The law provides that an injured party cannot double-recover for damages they suffer, so if benefits have been received from WCB, the worker may not sue for those same benefits again. However, if the reasoning in *Ryan's Commander* is applied by B.C. courts, it is open to mariners to claim for wages and other financial losses that have not been paid by WCB, as well as pain and suffering for the injury (which in Canada does not currently exceed approximately \$325,000).

For the time being, nothing about the law in B.C. has changed as a result of the *Ryan's Commander* decision. The leading B.C. case on the issue of whether a worker injured on a vessel can sue another worker or employer was decided in 2003, and involved an explosion on a moored vessel that injured a welding contractor. In that case (*Laboucane v. Brooks*) the judge found the accident was not sufficiently connected to maritime negligence law to avoid the provincial legislation's prohibition against suing. *Laboucane* has been regarded by many lawyers as wrongly decided, but even if it was correctly decided, cases where the injured worker is a crewmember of the vessel and injured while the vessel is at sea are more akin to the *Ryan's Commander* case, and therefore more likely to succeed. Although the *Ryan's Commander* decision is not binding on a B.C. court (meaning a B.C. judge is not obliged to follow the decision), it is of higher authority than the court which decided *Laboucane*, and

given the B.C. workers compensation system is similar to that in Newfoundland, it should be persuasive authority in B.C. Employers and insurers should expect that cases for significant injuries will be advanced in B.C., and our courts will be asked to adopt the reasoning in *Ryan's Commander*.

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