

**February 2012**

### **Must the Captain Always Go Down with His Ship?**

If not physically, then at least symbolically, the captain must always go down with his ship. This cold reality of our maritime culture was confirmed by the B.C. Court of Appeals' November 24, 2011 decision regarding the 2006 sinking of the *Queen of the North*. In that case, the master of the *Queen of the North* was appealing a Workers Compensation Appeal Tribunal ("WCAT") decision that found B.C. Ferries had not discriminated against the master when they fired him for raising various safety concerns, which were unrelated to the actual sinking, during the investigation into the incident. In essence, the Court confirmed the principle that, while the captain need not physically perish with his ship, he must always take ultimate responsibility for the happenings of his ship, whether they are within his control or not.

### **The Vessel Goes Down...**

It is well known that on the evening of March 21, 2006 the *Queen of the North* failed to make a scheduled course change and struck Gil Island, sinking with the presumed loss of life of two passengers. At the time of the incident, the master had retired to his quarters for the night (as he was entitled to do), and the second officer ("2/O") was on a break below, leaving the fourth officer ("4/O") and quartermaster alone on the bridge.

While an internal BC Ferries inquiry ensued, the Transportation Safety Board ("TSB") conducted its own investigation into the incident. The TSB concluded the following factors caused or contributed to the incident: various distractions likely contributed to the 4/O's failure to order the course change; for the 14 minutes after the missed course change; the 4/O did not adhere to sound watchkeeping practices and failed to detect the vessel's improper course; when the 4/O became aware that the vessel was off course, the action taken was too little too late to prevent the vessel from striking Gil Island; the navigation equipment was not set up to take full advantage of the available safety features and was therefore ineffective in providing a warning of the developing dangerous situation; the composition of the bridge watch lacked an appropriately certified third person; the working environment on the bridge of the ship was less than formal; the accepted principles of navigation safety were not consistently or rigorously applied; and, unsafe navigation practices persisted (such as listening to music) which, in this occurrence, contributed to the loss of situational awareness by the bridge team.

Meanwhile, in BC Ferries' inquiry, the 2/O and quartermaster refused to answer questions. The master, who had rightfully been in his cabin when the grounding occurred, said he was unable

to explain why the vessel had failed to change course. During this inquiry the master was asked to list serious safety concerns that might have caused the vessel to go aground, and a list of safety concerns regarding the vessel that BC Ferries had not responded to previously. The master provided a list of 54 issues he had noted over the years, but it was agreed that none of these caused or contributed to the sinking.

### **...The Captain Must Follow**

In January of 2007, following its internal inquiry, BC Ferries advised the master that due to “operational and staff requirements” it no longer required his services. A year later the master filed a complaint with the Workers Compensation Board. The complaint was based on s.150 of the *Workers Compensation Act* (known as the “whistle-blower” provision), which provides an employer must not discriminate against an employee because that employee raises, in good faith, occupational safety concerns. The master maintained he was terminated because he raised a lengthy list of safety concerns. BC Ferries, on the other hand, maintained the master was terminated because, in not addressing possible causes of the sinking (but rather a list of unrelated safety concerns), and seemingly trying to defray responsibility for the incident, the employer had lost confidence in the master’s ability to command.

*In hearing the master’s complaint the WCAT made the following important statements: We further find that when a ship sinks, the career of the on-duty exempt Master of that ship is on the line, that is, his or her future employment as a Master is at serious risk. Such a situation may seem unfair where there was no misconduct sufficient to support a just cause termination. Nevertheless the evidence satisfies us that this is a well-known consequence, even an expectation, in the maritime culture where responsibility is absolute regardless of fault.*

*Captain C testified that it is a maritime tradition that having lost a vessel, the Master of such a vessel would be “looking to move on” to another place of employment in the maritime world. He indicated that it would be his expectation if he were in that situation. Captain C said that if he had captained a ship that sunk he would expect to be relieved of his command and he “would move inland with an oar over my shoulder”.*

*We have found that the employer terminated the worker’s employment because he was the on-duty Master of a ship that sunk [sic] and in that position he was accountable for that accident; further, the employer lost confidence in the worker’s suitability as an exempt Master due to the employer’s perception that the worker failed to accept ultimate responsibility and accountability as Master for the marine accident and due to the employer’s perception that the worker did not appreciate his role as a member of its management team. We have found that these were the sole reasons for the employer’s termination of the worker’s employment.*

In reviewing the WCAT decision, and the B.C. Supreme Court judge's decision that upheld the WCAT decision, the Court of Appeal stated: *WCAT ultimately found that [the master's] raising of safety concerns before the internal inquiry had not been the reason for his termination. Rather, the Tribunal said, it was [the master's] "failure to address himself to the focus of the [inquiry] and, as requested by the [inquiry] panel, turn his mind to providing them with helpful information about the sinking of the ship.....All this, together with the very strong evidence of the maritime ethos which requires a captain to take responsibility for the sinking of his ship, and the concern of Captains C. and T. regarding [the master's] apparent failure to do so, led the Tribunal to reach the conclusion it did.*

Despite this dark reflection on maritime culture, and the tragic events involved, it must not be overlooked that the WCAT emphasized the following in respect of the master's character and conduct: *the grounding and sinking of the ship on March 22, 2006 was a tragedy that cost two people their lives. It was also a tragedy for the worker who had only recently accepted the promotion to exempt Master. By all accounts, prior to the sinking of the ship the employer viewed his performance as a Master as excellent. The worker was asleep in his cabin at the time of the ship's collision and there is no question that he was entitled to be there at the time. His role in the evacuation and rescue of the ship's passengers and crew was heroic. Our ruling in this appeal does not detract from the courage and leadership he displayed in the aftermath of the marine accident.*

*Darren Williams, leads the interprovincial Merchant Law Group office in Victoria B.C. and can be reached for question or comment at [dw@MarineLaw.ca](mailto:dw@MarineLaw.ca), toll-free at 1-866-765-7777 or by emergency phone at 250-888-0002.*