PERKS & PITFALLS IN

(MARINE) PERSONAL INJURY CLAIMS

TRIAL LAWYERS ASSOCIATION OF B.C.

PERSONAL INJURY UPDATE CONFERENCE

VANCOUVER B.C.

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A. INTRODUCTION:

1. Marine Law[1] – Ancient, the Origin of Insurance

Written marine law has been dated back to 800 BC, and has developed through Greek and Roman laws in the fourth and sixth centuries AD, and Byzantine/Rhodian laws in the eighth century AD[2].

Marine law is the origin of modern insurance. Eighth century AD Italian ships' loans developed into early contracts of insurance that spread into northern Europe as trade in gold and spices spread around the globe in the Middle Ages. By the 1600s overseas trading speculators populated London's coffee houses forming the indemnity clubs that gave birth to modern insurance.

As commerce became more sophisticated and globalized, insurance law continued to develop alongside, indeed outpacing, the development of more traditional marine law. Much of the law that is regularly relied on in the practice of marine injury claims dates back to the 1800s and earlier. It is a practice area rich in history, and like other areas of tort law such as motor vehicle law, is constantly changing.

2. A Collection of International and Domestic Laws

Modern *Canadian marine law* is a melting pot of:

- international conventions;
- Common Wealth common law;
- Canadian federal legislation and common law; and lastly
- provincial legislation and common law.

Marine law in Canada's federalist government framework is remarkable in the interaction between federal and provincial laws.

While the constitutional responsibility for "navigation and shipping" is exclusively within federal legislative jurisdiction under s.91(10) of the *Constitution Act 1982*, recent case law [3] has recognized that the "cooperative federalism" approach to resolving constitutional conflicts allows provincial law to incidentally effect federal marine law provided there is no direct conflict with federal law. Despite this cooperative federalism,

[1] The terms "marine law", "maritime law" and "admiralty law" are often used interchangeably. "Marine law" is synonymous with "maritime law" and is most simply described as the law relating to the interaction of water, ships/cargo and people. Admiralty law is the application and practice of marine law in courts.
[2] *Maritime Liens and Claims (2d) Teltley.*
[3] *Jim Pattison Enterprises v. WCB (2011 BCCA).*

there remains an underlying friction between federal and provincial jurisdiction in marine law.

The Federal Court of Canada has traditionally been the court in which marine claims have been pursued. Indeed, *Canadian maritime law* is a term defined by s.2 of the *Federal Courts Act*[4]:

> *"Canadian maritime law" means the law that was administered by the Exchequer Court of Canada on its Admiralty side by virtue of the Admiralty Act, chapter A-1 of the Revised Statutes of Canada, 1970, or any other statute, or that would have been so administered if that Court had had, on its Admiralty side, unlimited jurisdiction in relation to maritime and admiralty matters, as that law has been altered by this Act or any other Act of Parliament;*

The Federal Court, being a statutory court without inherent jurisdiction, has been provided by Parliament legislated jurisdiction over marine personal injury claims by s.22 of the *Federal Courts Act*, where it is stated:

> ***Navigation and shipping***
>
> ***22.*** *(1) The Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under or by virtue of Canadian maritime law or any other law of Canada relating to any matter coming within the class of subject of navigation and shipping, except to the extent that jurisdiction has been otherwise specially assigned.*
>
> *(2) Without limiting the generality of subsection (1), for greater certainty, the Federal Court has jurisdiction with respect to all of the following:*
>
> *(d) any claim for damage or for loss of life or personal injury caused by a ship either in collision or otherwise;*
>
> *(g) any claim for loss of life or personal injury occurring in connection with the operation of a ship including, without restricting the generality of the foregoing, any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of the ship are responsible, being an act, neglect or default in the management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;*

[4] *R.S.C. 1985, c.F-7*

Some provinces however, most notably B.C., have imported the Federal Court admiralty jurisdiction into their provincial superior court rules. This puts the benefits of admiralty rules at the fingertips of trial lawyers in B.C., but it has not been without hiccups as the B.C. Supreme Court has struggled to familiarize itself with its new jurisdiction.

3. Marine Law in B.C. – *Rule 21-1*[5]

Bluntly put, while the Federal Court is preferable for its experience in handling marine claims (especially the arrest procedures discussed below), the B.C.S.C. may be preferable to most injury practitioners because of their familiarity with the B.C.S.C. interlocutory rules, and because the Federal Court strictly enforces litigation timelines which may not be well suited to a slowly evolving injury claim.

The BC Supreme Court had adopted admiralty jurisdiction by virtue of *Rule 21-1,* which provides:

> *Actions to which rule applies*
>
> *(1) This rule applies if an action may be brought in rem against a ship or other property.*
>
> *What actions may be brought in rem*
>
> *(2) Except to the extent that jurisdiction has been otherwise specially assigned,* ***an action may be brought in rem against a ship or other property that may be brought in rem in the Federal Court of Canada in all cases in which a claim for relief is made under or by virtue of Canadian maritime law or any other law of Canada relating to navigation and shipping.***

While trial lawyers always have the option of commencing an injury action in the Vancouver registry of the Federal Court, they also have the option of commencing the same admiralty action in B.C. Supreme Court under *Rule 21-1*.

4. "*In Rem*" Claims – A Hallmark of Marine Injury Claims

A unique feature to marine injury claims is the right of "*in rem*" action referred to in the *Federal Court Rules,* and Rule 21-1 of the B.C. *Supreme Court Civil Rules*[6].

The "*in rem*" right refers to the ability to sue the vessel (or cargo of a vessel) as if it were a person. This concept was historically useful because often vessels involved in accidents would be abandoned by their owners, and if the owners could not be found the claimant

[5] *B.C. Reg 168/2009*

[6] *B.C. Reg 168/2009*

had no recourse. Instead of suing the owner, the vessel itself can be named, arrested, and even sold to satisfy a claim. There are more advantages then these, and some are described below.

An important aspect of the "*in rem*" right is the right of arrest, and the right to demand bail for the amount of damages, costs and interest, in exchange for release of the vessel. This is discussed in section 6 below. This remedy in some ways is akin to being retained on a motor vehicle claim, and being able to call the ICBC adjuster and require them to pay into court the amount of the reasonably best arguable case (plus interest, costs and disbursements) for your client. While in all cases the right of arrest must be used in good faith, unlike an injunction no undertaking for damages must be given. Arrest can have a profound effect in swinging settlement negotiations in the favour of your client.

5. What makes an Injury Claim a "Marine" Injury Claim?

There are certainly perks to framing an injury claim as a marine injury claim, if the shoe fits, and these are discussed below. There are also pitfalls to avoid. So what makes for a "marine injury claim"?

A marine injury claim is not simply an injury that occurs on a vessel or on the ocean. In this author's view, a marine injury claim is an injury that occurs in direct connection with the use of navigable waters in Canada.

Navigable waters include the ocean, lakes and rivers, and even creeks or a pond. However the smaller the body of water the less likely the cause of action arises out of actual navigation of that water. One doesn't navigate a puddle.

That said, there are clearly cases that are marine injury claims, those that are clearly not, and many in between. Clear marine injury claims would include injuries sustained aboard a vessel (or adjacent to the vessel if caused by the vessel) while it is navigating (running or docking).

Clear non-marine injury claims include injuries suffered in relation to trailered vessels (on a roadway).

Case Example - *Isen v. Simms* (*2006 SCC 41*)

The Plaintiff lost an eye when a bungee-cord being used to secure a boat cover (while the boat was on a trailer near the lake) snapped. Damages were claimed in excess of $1,000,000. The court found there was not sufficient connection between the mechanism of the injury and navigation and shipping to make the claim subject to Canadian maritime law. The court found the securing of the cover was more in relation to preparation to move the vessel on a provincial highway than it was to navigate the vessel.

Despite occurring on a dock, an injury claim may also be found to be non-marine where the injury does not occur in direct connection with a vessel.

Case Example - *Jackson v DFO (2006 BCSC 1492)*

The Plaintiff sued for injuries sustained when they slipped walking down a ramp to a dock owned by the Department of Fisheries and Oceans. The Judge noted that the Defendants needed to show that the subject matter of the Plaintiff's claim "*is so integrally connected to maritime matters as to be legitimate Canadian Maritime law within federal competence*" and held that they had failed to do this.

As a rule there must be a nexus between the mechanism of the injury and the activity of navigation and shipping for the court to find the claim involves *Canadian maritime law*[7] and is therefore a marine injury claim.

While the marine-nature of some cases is inescapable[8], in most cases there is room to argue whether the case should be subject to *Canadian maritime law*. Whether a claim ought to be characterized as a marine injury is a question for the parties' respective trial lawyers, depending on the perks and pitfalls to their respective clients.

C. COMMON PERKS TO MARINE INJURY CLAIMS

1. Presumption of Negligence in Injury to Passengers:

A significant perk in a marine personal injury claim is the presumption of negligence in the case of a *passenger* injured on a vessel by:

- shipwreck;
- collision;
- stranding;
- explosion;
- fire; or

[7] *ITO- International Terminal Operators Ltd. v. Miida Electornics ([1986] 1 SCR 752)*
[8] "*This is as maritime a case as one could have*" *(Toney v. Alberta & RCMP; FC 2011)* referring to a provincial wildlife service vessel dispatched to assist the Plaintiff family across a lake when the wildlife vessel capsized, drowning the infant.

- defect in the ship[9].

Obviously, this presumption means the plaintiff does not need to prove negligence on the part of the defendant and can move on to proving damages. However in order for the presumption to be triggered the claimant must prove on balance:

- the injury occurred during the course of carriage of the passenger; and
- the injury was in fact caused by shipwreck, collision, stranding, explosion, fire or defect in a ship.

In most injury cases the fact that the injury occurred during carriage and was the result of one of the causes listed above will be obvious. The presumption of negligence is often easily triggered and serves as a significant advantage to the plaintiff. For example, while fires and explosions are notoriously difficult to prove liability on (typically because the evidence of negligence is destroyed), such events automatically trigger the presumption under the *Athens Convention*.

Of course, in order for the claimant to take advantage of the presumption, they must show they were a "passenger" at the time of the loss. The definition of who is a passenger comes from two sources:

- the *Marine Liability Act (SC 2001, c.6*), and
- *Athens Convention (see footnote 6),* which forms Schedule 2 to the *Marine Liability Act*.

a. The *Athens Convention*

The presumption of negligence and the definition of "passenger" arises from the *1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (the* "*Athens Convention")* and Part 4 of the *Marine Liability Act. (SC 2001, c.6)*

The *Athens Convention* was, like many transportation conventions, designed to promote services by limiting the liability of carriers, while giving passengers certain benefits.

While the wording of the Athens Convention cannot be practicably repeated in this paper, it can be found at: http://laws-lois.justice.gc.ca/eng/acts/M-0.7/page-45.html#h-61.

The *Athens Convention* has the force of law as a result of Part 4 of the *Marine Liability Act ("MLA")*.

[9] *1974 Athens Convention relating to the Carriage of Passengers and their Luggage by Sea "Athens Convention"*

The wording of the *Athens Convention* itself restricts its application to seagoing vessels and passengers under a contract of carriage. However, when the *Athens Convention* was adopted into Canadian law its application was expanded significantly as discussed below.

b. Who is a "Passenger" under Canadian law?

While the *Athens Convention* was initially limited to international carriage of passengers under contract of carriage (ie. bought a ticket or otherwise contracted for the carriage), the *Marine Liability Act* expanded its application to:

- vessels on any Canadian waters, seagoing or not;
- all persons on any commercial vessel (whether under a contract of carriage or not except the crew and trespassers/stowaways.

The effect is that on all non-pleasure craft, and all person other than the crew are considered "passengers", whether they have a contract of carriage or not.

Case Example: *Gundersen v. Finn Marine (2008 BCSC 1665)*

This case is a useful demonstration of the expanse of the definition of "passenger", and shows why it is sometimes in the interest of the Plaintiff not to be a "passenger". As seen below a Plaintiff "passenger" is subject to a lower limit of liability than a non-passenger.

The Plaintiff was the invited guest of the captain of a small commercial water taxi. She was badly hurt when the captain fell asleep at the wheel and ran aground at high speed. The Plaintiff had not paid any fee to be on the vessel. The Defendant owner and operator of the vessel applied for an order that they were entitled to limit under the *Athens Convention* (about $275,000), alleging the Plaintiff was a "passenger". The Plaintiff argued that she was did not come within the definition of passenger and that the applicable limitation was found in Part 3 of the *MLA*, a substantially higher limitation ($1,000,000). The judge found in favour of the Defendants on the issue, noting that s.37(2) of the *MLA* extends the *Athens Convention* "to domestic gratuitous passengers on a vessel operated for a commercial purpose".

Besides adventure tourism participants that are discussed below, there are several types of people who are excluded from the definition of passenger, and these are:

- stowaways or trespassers or any other person who boards a ship without the consent or knowledge of the master or the owner (*MLA* s.37(2)(b)(iv)); and

- persons *carried on a vessel in pursuance of the obligation on the master to carry shipwrecked, distressed or other persons or by reason of any circumstances that neither the master nor the owner could have prevented (s.2 Canada Shipping Act 2001).*

Again, the advantage to the Plaintiff in being a "passenger" is the presumption of fault and the non-applicability of exclusion clauses (noted below), but the disadvantage is the defendant can limit their liability to a lesser amount than if the victim was not a "passenger".

c. Adventure Tourism Exception

Importantly, section 37.1 of the *MLA* excludes "adventure tourism activities" from the provisions of Part 4 (*Athens Convention*) of the *Act*.

Adventure tourism is defined by the *MLA* as an activity that:

a. exposes participants to an aquatic environment;

b. normally requires safety equipment and procedures beyond those normally used in the carriage of passengers;

c. participants are exposed to greater risks than passengers are normally exposed to in the carriage of passengers;

d. its risks have been presented to the participants and they have accepted in writing to be exposed to them; and

e. any condition prescribed by regulation (of which there are currently none).

Where these conditions are met, Part 4 of the *MLA* does not apply. There are several important results from this exemption:

- there is no presumption of liability for injuries sustained while participating in an adventure tourism activity;

- adventure tour operators can rely on waivers and exclusion clauses in their passenger contracts; and

- tour operators lose the right to limit their liability to the lower limits contained in the *Athens Convention*, and have to rely on the higher limits set out in Part 4 of the *MLA (*discussed below).

2. Non-applicability of Exclusion/Waiver Clauses in Passenger Claims

While B.C. is a good jurisdiction for enforcing waivers and exclusion clauses, these contractual provisions are void if included in a contract of carriage for a *passenger* on a vessel under the Part 4 of the *MLA*. Article 18 of the *Athens Convention* provides:

Article 18

Invalidity of contractual provisions

> *Any contractual provision concluded before the occurrence of the incident which has caused the death of or personal injury to a passenger or the loss of or damage to his luggage, purporting to relieve the carrier of his liability towards the passenger or to prescribe a lower limit of liability than that fixed in this Convention except as provided in paragraph 4 of Article 8, and any such provision purporting to shift the burden of proof which rests on the carrier, or having the effect of restricting the option specified in paragraph 1 of Article 17, shall be null and void, but the nullity of that provision shall not render void the contract of carriage which shall remain subject to the provisions of this Convention.*

Importantly, this provision indicates that not only are waivers of negligence inapplicable, but so are provisions that:

- lower the limit of liability of a carrier; or
- shift the burden of proof from the carrier to the plaintiff.

3. 3 Year Limitation Period?

The following limitation periods apply to marine related injury and death claims:

- **Injury** resulting from a collision **between two vessels** is two years

  Marine Liability Act, s.23(1)

- **Injury** to a ***passenger*** **in a single vessel accident** is two years

  Athens Convention Article 16 (Marine Liability Act, Schedule II)

- **Injury** to a **non-passenger in a single vessel** accident is three years

  Marine Liability Act, s.140

- **Death** resulting in dependants relief claim is two years.

Marine Liability Act, s.14(2)

The category of **non-passenger (on a recreational vessel) in a single vessel accident** would include the most common type of marine injury claims, being accidents on recreational vessels where the accident is not a collision with another vessel, such as:

- groundings or striking another object (such as a wave) that is not a vessel (such as a dock or a wave)
- waterskiing accidents;
- slips and falls on vessels; and
- fires, explosions, sinking and groundings.

4. No Workers Compensation Bar?

While the "historic trade-off" of provincial workers compensation schemes has provided a quality of life for many workers injured by their own negligence or in the case of a pure accident where no fault can be assigned, it has also meant relative deprivation for many who have been injured by the negligence of others. It is, after all, a trade-off where workers gain the prospect of no-fault benefits and the employer gains tort immunity, but employers must remit premiums and in trade workers give up the opportunity to recoup compensation for pain and suffering and loss of capacity adjudicated by an independent body on the balance of probabilities. As many find workers compensation unfair, as find it fair.

The *Ryan's Commander*[10] decision has recently brought the applicability of the provincial workers compensation bar into question for injuries suffered at sea. On judicial review of a decision of the Workplace Health, Safety and Compensation Commission of Newfoundland, the Newfoundland Superiour Court found the claims of the families of two deceased fisherman were not barred by the Newfoundland workers compensation bar.

At trial, the Court noted that questions of liability in a marine context "*clearly and obviously fall within federal jurisdictions*" and said that the issue was whether the statutory bar in the *Workplace Health, Safety and Compensation Act* was "*merely casual or incidental*" such that it would not give rise to the doctrine of interjurisdictional immunity.

[10] *Ryan Estate v. Universal Marine, 2009 NLTD 120, affd. 2011 NLCA 42*

The Court noted that the interjurisdictional immunity doctrine would be invoked where a provincial statute intrudes on the "core" of a federal power to the extent that it "impairs" that power. The Court further said that "there can be no greater level of impairment of the power to sue than to bar the exercise of that power" and held that the *Workplace Health, Safety and Compensation Act* must be read down so as not to apply.

On appeal, the Newfoundland Court of Appeal upheld the judgement of the Trial Judge but with a dissenting Justice. The majority began its analysis by applying the pith and substance doctrine and had no difficulty finding that the *Workplace Health, Safety and Compensation Act* was valid provincial legislation. It then considered the interjurisdictional immunity doctrine noting that this involved answering two questions: (i) does the provincial law trench on the core of a federal power? and (ii) is the provincial law's effect on federal power sufficiently serious? (i.e. does it impair and not merely affect the federal power?).

Relying heavily upon the Supreme Court of Canada's decision in *Ordon v Grail*[11], the majority held that the doctrine of interjurisdictional immunity applied and the statute should be read down. The majority also considered and applied the paramountcy doctrine holding that "*if a maritime claimant wishes to avail of the right to sue, he or she will be precluded from doing so. He or she cannot comply with the federal law without violating the provincial. The two provisions cannot, in an operative sense, co-exist*."

As a result the bar in Newfoundland was held to be inapplicable to the dependent's claim.

In British Columbia, it is submitted, the result should be no different.

Leave to appeal to the Supreme Court of Canada was granted in *Ryans' Commander* in the Spring of 2012, but argument has yet to be scheduled.

5. Broader definition of "Dependant" in Family Compensation Claims

There are significant differences in how the provincial *Family Compensation Act* (the "*FCA*")[12] and the *Marine Liability Act* treat family members of the injured and deceased. Regardless of the differences in the legislation, the respective benefits do not need to be pursued in Federal Court simply because they arise from a marine accident, they can be pursued in B.C. Supreme Court as well.

Counsel should consider carefully which Act they plead and rely on.

[11] Ordon Estate v. Grail, [1998] 3 S.C.R. 437
[12] *Family Compensation Act*, RSBC 1996, c. 126.

The key differences in the Acts are summarized in the following table:

Benefits for/to:	**BC *Family Compensation Act***	**Federal *Marine Liability Act***
Death:	✓	✓
Injury:	not available under *FCA*	✓
Spouse by marriage	✓	✓
Common law Spouse (for at least one year)	Must be spouse for at least 2 years	✓
Common law Spouse (for at least two years)	✓	Only one year as spouse to qualify
Common law spouse at time of loss	✓	✓
Common law spouse within 1 year of loss	✓	Must be spouse at date of loss
Natural parents:	✓	✓
In loco parentis:	✓	✓
Grand-parents	✓	✓
Step-parents	✓	✓
Children	✓	✓
Step-Children	✓	✓
Grandchildren	✓	✓
Adopted Children	✓	✓
Step-children	✓	✓
Parents	✓	✓
Siblings	not available under *FCA*	✓

In support of this table, a brief description of the relevant section of each Act are as follows.

The B.C. *Family Compensation Act*

Section 2 of the B.C. *FCA p*rovides that:

> *If the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not resulted, have entitled the party injured to maintain an action and recover damages for it, any person, partnership or corporation which would have been liable if*

death had not resulted is liable in an action for damages, despite the death of the person injured, and although the death has been caused under circumstances that amount in law to an indictable offence.

It is noteworthy that the *FCA* operates exclusively in situations where the death of a person has been caused. No compensation for the dependants of an injured person are provided.

Section 3(1) of the *FCA* states:

> *The action must be for the benefit of the spouse, parent or child of the person whose death has been caused, and must be brought by and in the name of the personal representative of the deceased.*

Section 1 of the *FCA* provides the following definitions for child, parent and spouse:

> *"child" includes*
> *(a) a person to whom the deceased stood in the role of a parent, and*
> *(b) a person whose stepparent was the deceased;*
>
> *"parent" includes a grandparent and a stepparent;*
>
> *"spouse" means a person who*
> *(a) was married to the deceased at the time of death, or*
> *(b) lived and cohabited with the deceased in a marriage-like relationship, including a marriage-like relationship between persons of the same gender, for a period of at least 2 years ending no earlier than one year before the death;*

While the *FCA* does not expressly indicate it applies to adopted children, the definition of child can be read as meeting this condition. Accordingly, the *FCA* grants the ability to pursue an action to the following people, in the event of a wrongful death:

1. children of a deceased;
2. stepchildren of a deceased;
3. grandchildren of a deceased;
4. adopted children of a deceased;
5. children to whom the deceased stood in the role of a parent;
6. children of step-parents;
7. parents of a deceased;
8. grandparents of a deceased;

9. stepparents of a deceased;
10. a spouse of a deceased, including a same-sex spouse; and
11. an individual that has lived in a marriage-like relationship (including same-sex) with the deceased for at least 2 years within one year of the death.

On the other hand, the *Marine Liability Act* provides for a broader range of dependants and damages.

The *Marine Liability Act*

Section 6 of the *MLA* provides the following:

> *(1) If a person* ***is injured by the fault or neglect of another under circumstances that entitle the person to recover damages****, the dependants of the injured person may maintain an action in a court of competent jurisdiction for their loss resulting from the injury against the person from whom the injured person is entitled to recover.*
>
> *(2) If a person* ***dies by the fault or neglect of another under circumstances that would have entitled the person****, if not deceased, to recover damages, the dependants of the deceased person may maintain an action in a court of competent jurisdiction for their loss resulting from the death against the person from whom the deceased person would have been entitled to recover.*

Section 6 of the *MLA* provides compensation for dependants of a family member not only in the event of death, but also injury.

Section 4 of the *MLA* defines dependants as:

> *In this Part, "dependant", in relation to an injured or deceased person, means an individual who was one of the following in relation to the injured or deceased person at the time the cause of action arose, in the case of an injured person, or at the time of death, in the case of a deceased person:*
>
> *(a) a son, daughter, stepson, stepdaughter, grandson, granddaughter, adopted son or daughter, or an individual for whom the injured or deceased person stood in the place of a parent;*
>
> *(b) a spouse, or an individual who was cohabiting with the injured or deceased person in a conjugal relationship having so cohabited for a period of at least one year; or*

> *(c) a brother, sister, father, mother, grandfather, grandmother, stepfather, stepmother, adoptive father or mother, or an individual who stood in the place of a parent.*

The *MLA* provides a remedy to a broader range of people, providing the ability to pursue action to the following:

1. children of a deceased or injured;
2. stepchildren of a deceased or injured;
3. grandchildren of a deceased or injured;
4. adopted children of a deceased or injured;
5. children for whom the deceased or injured stood in the place of a parent;
6. a spouse of a deceased or injured;
7. an individual who was cohabiting with the deceased or injured in a conjugal relationship, having done so for at least a year;
8. parents (including adopting parents) of a deceased or injured;
9. stepparents of a deceased or injured;
10. anyone who stood in the place of a parent to the deceased or injured;
11. grandparents of a deceased or injured;
12. siblings of a deceased or injured;

It is worth noting that the *MLA* provides a broader range of people to whom a remedy is available, but can be more limiting for dependants that are cohabiting together. The *MLA* requires that the couple have been cohabiting for a year (less time than the *FCA*), but they must have been doing so at the time the cause of action arose, whereas the *FCA* grants a one-year window between the end of cohabitation and the cause of action.

The *FCA* and the *MLA* grant similar actions to dependants of victims of fault or negligence. In general, the *MLA* provides coverage for a wider range of dependants than the *FCA*, and will thus be the preferable act. The *MLA* also provides an action to dependants of people that have merely been injured as a result of a tortuous action, rather than killed. The only instance in which the *FCA* may be the preferable act to rely on is that of a common-law spouse for which cohabitation had ceased less than a year prior to the cause of action arising.

Case Example - *Wilcox v. The Miss Megan (2008 FC 506)*

In this action the Federal Court considered dependants relief for the widow, adult children and siblings of the deceased drowned in the capsizing of a fishing vessel. The Prothonotary considered damages for loss of care, guidance and companionship and noted that the *MLA* provided no guidance as to how these damages should be calculated and looked to provincial legislation for guidance. The Prothonotary held Ontario legislation was most similar to the *MLA* and adopted the Ontario case by case approach. Applying Ontario decisions the Prothonotary awarded the widow and a disabled daughter $75,000 each for loss of care, guidance and companionship, two other children were awarded $25,000 each **and the siblings were each awarded $15,000.** An appeal upheld the Prothonotary's decision entirely.

6. Pre-Trial Security for the Damages, Interest and Costs

Marine injury law is remarkable for its right of pre-trial security. In particular, the remedy of arrest of a ship, or a part of a ship including cargo, provides for a quick and inexpensive way to secure property for evidence purposes and to take financial security for an unproven claim.

To many practitioner's surprise, the security is the lesser of the value of the vessel, or the "reasonably best arguable case" for damages, plus interest and costs[13]. While this rule comes from the Federal Court, it is equally applicable in B.C. Supreme Court.

The BC *Supreme Court Civil Rules* provide:

Rule 21-1 — Admiralty Matters

Arrest – "Affidavit to Lead Warrant"
(8) A party may, at any time after an action in rem has been started, apply for a warrant for the arrest of the property named by filing with a registrar an "Affidavit to Lead Warrant" in Form 83.
Issue of warrant

(9) If an affidavit to lead warrant is filed under subrule (8), a registrar may, after reading the affidavit,

(a) issue the warrant, or

(b) refer the matter to the court and the court may issue the warrant, subject to any directions that the court may give.

[13] *Canadian Sub Sea Hydraulics v. "Cormorant" 2006 FC 1051*

Although the wording of the above *Rule* states the Registrar "may" issue a warrant or refer the matter to the court, the issuance of an arrest warrant is largely regarded as a matter of right[14] if the formal requirements of the *Rule* are adhered to.

Similarly, the *Federal Courts Act* provides:

> *Arrest of Property*
>
> *Warrant for the arrest of property*
>
> ***481.*** *(1) A designated officer may issue a warrant for the arrest of property in an action in rem, in Form 481, at any time after the filing of a statement of claim.*
>
> *(2) A party seeking a warrant under subsection (1) shall file an affidavit, entitled "Affidavit to Lead Warrant", stating*
>
> > *(a) the name, address and occupation of the party;*
> >
> > *(b) the nature of the claim and the basis for invoking the in rem jurisdiction of the Court;*
> >
> > *(c) that the claim has not been satisfied;*
> >
> > *(d) the nature of the property to be arrested and, where the property is a ship, the name and nationality of the ship and the port to which it belongs; and*
> >
> > *(e) where, pursuant to subsection 43(8) of the Act, the warrant is sought against a ship that is not the subject of the action, that the deponent has reasonable grounds to believe that the ship against which the warrant is sought is beneficially owned by the person who is the owner of the ship that is the subject of the action.*

An *in rem* claim for personal injury may only be pursued against the vessel if the owner of the vessel is the same owner as when the claim arose. Some claims, which form special liens called maritime lien do not require the owner to be the same, but a claim for personal injury is not one of these.

[14] *North Sask. Riverboat Co. v. 573475 Alta Ltd. [1985] 1 FC 459.*

a. How to Effect an Arrest in B.C. Supreme Court

An arrest of a vessel is affected by filing:

i. a Notice of Civil Claim *in rem*

(see Appendix A for a B.C. Supreme Court precedent (Form 82))

(see Appendix C hereto for a Federal Court precedent (Form 477))

ii. an affidavit to lead warrant (Form 83) (this can be sworn by the solicitor upon information and belief); and

(see Appendix B hereto for a B.C. Supreme Court precedent)

iii. draft warrant of arrest (Form 84).

(see Appendix B hereto for a B.C. Supreme Court precedent)

The claim must specifically state what the basis of the *in rem* jurisdiction is. That jurisdiction must be one of the heads named in section 22 of the *Federal Courts Act*, even if the warrant is being applied for in B.C. Supreme Court.

While the warrant will usually be automatically issued by a District Registrar on behalf of the Registrar, the warrant may be set aside if there is no basis for the *in rem* jurisdiction. The *in rem* jurisdiction comes from fitting the claim within one of the subject matters in s.22(2) of the *Federal Court Act*, which have been imported into B.C.S.C. *Civil Rule 21-1*.

It is wise to plead the sub-section of s.22 of the FCA that you rely on. In a personal injury case this will be either s.22(2)(d) or (g).

The materials are reviewed by the District Registrar and the warrant is usually issued without appearance before a judge, master or Registrar. If the Registry staff is familiar with the forms the warrant will usually issue within one hour. It is helpful to file a letter explaining if there is urgency to the warrant being issued, such as the vessel being a flight risk.

Unlike a *mareva injunction*, no undertaking for damages need be provided. Damages for wrongful arrest of a vessel can only flow if the party arresting the vessel did so with malice or was grossly negligent in doing so.

Also the application for a warrant is properly brought without notice. A vessel owner that is aware a warrant is being applied for will often remove the vessel from the jurisdiction. A B.C.S.C. arrest warrant cannot be served outside of B.C., and a Federal

Court arrest warrant cannot be filed outside of Canada.

The warrant is provided to the bailiff and counsel should instruct the bailiff where to find the vessel. The sheriff does not take possession of the vessel but serves the warrant on the vessel and thereafter the vessel cannot move or be altered.

The person arresting the vessel does not need to pay for the cost of the vessel being retained where it is.

Interestingly, marine law also provides for the arrest of a sister-ship[15] to the offending vessel. A sister-ship is a vessel owned by the same owner of the vessel involved in the personal injury claim. This is useful if the value of one vessel alone is not sufficient to provide security for the claim.

If the defendant does not have an insurer and the security for the claim lies only in the vessel arrested, the vessels may be sold prior to trial if they are a wasting asset. This called to as a sale *pendente lite*, and is rare except in cases where the defendant has essentially walked away from the vessel and no receiver or trustee has an interest in the vessel.

b. What Arrest of a Vessel Does:

The arrest of a vessel or its equipment or cargo does not prevent the sale of the items, but it does prevent the altering or movement of the items. In this way it can be a quick and inexpensive way of preserving evidence.

c. What happens After an Arrest

The rule is that upon arrest the defendant can seek the release of the vessel by posting bail or other security such as a bond or a letter of undertaking from an underwriter.

The security must be equivalent to the lesser of the value of the vessel or the value of the "reasonably best arguable case"[16] plus interest and costs.

As stated below, interest should be calculated at admiralty rates, which are in the court's discretion and not fixed by provincial or federal interest legislation. In most cases they are at banker's prime rate.

In most cases where there is a liability insurer involved on behalf of the vessel owner, the insurer can provide a "letter of undertaking" which, simply put, is a form of surety for payment of bail commonly accepted in marine law practice

[15] *S.43(8) of the Federal Courts Act*
[16] *Canadian Sub Sea Hydraulics v. "Cormorant" 2006 FC 1051*

7. Higher Pre-judgment Interest Rates

Pre-judgment interest is often substantially higher in admiralty cases than non-admiralty cases. Trial lawyers should review their marine related cases to ensure they have pled "pre-judgment interest at admiralty rates" to ensure their clients take advantage of this.

For example, as of October 5, 2012, the interest rate available under the B.C. *Court Order Interest Act* is 1%, whereas pre-judgment interest for admiralty claims is 3%[17].

The case law that has brought us to this point has varied. In *Holt Cargo Systems Inc. v. Brussel (The)*[18], the Federal Court stated

> *"In cases where the parties have not agreed on interest provisions, if the cause of action arose in a Canadian jurisdiction, this Court* ***could*** *take cognizance of any provincial laws concerning pre-judgment interest.".*
>
> *"It has been held that the Federal Court in its admiralty jurisdiction has discretion to award pre- and post-judgment interest at a rate which in the view of the Court is most appropriate given the circumstances of the claim and the positions of the claimants".*

In *Wells Fargo Equipment Finance Company v. Barge "MLT-3"*[19], the court stated "*I am told that "Admiralty Interest" is to apply to this claim, but that such interest is simply prevailing bank lending rates. Such interest will apply at prevailing bank interest rates, compounded semi-annually since December 4, 2007."*

While more applicable to commercial claims than personal injury claims, the Federal Court decision in the *Governor and Company of the Bank of Scotland v. Nel (The)*[20] held*:*

> *Various interest calculations applied with the claims. In the case of pre-judgment interest I have drawn guidelines which are summarized in The Brussel, supra:*
>
> *1. Where a contract specifies a rate, that will be applied to the date of the sale of the Nel;*
>
> *2. Where there is no agreed rate applicable to a Canadian cause of action, provincial pre-judgment interest rates* ***may*** *be effected;*
>
> *3. Where there is no agreed contractual rate applicable to an off-shore claim, the federal Interest Act [R.S.C., 1985, c. I-15] may be relevant; and*

[17] Royal Bank of Canada prime lending rate.
[18] *2000 CanLII 14954 (FC).*
[19] *2012 FC 738 (CanLII).*
[20] *[2001] 1 FC 408.*

> *4. **None of these general principles detract from the Federal Court's admiralty jurisdiction discretion** to award pre and post-judgment interest at a rate which the Court views as appropriate given the circumstances of the claim and the positions of the claimants.*

It is clear that in admiralty cases pre-judgment interest is actually an item of damages, and the Court has broad discretion[21].

More recently the B.C. Court of Appeal[22], has confirmed the Federal Court's admiralty interest discretion is imparted to the B.C.S.C. with its adoption of admiralty jurisdiction. In considering damage caused by a vessel to a fish farm the B.C.C.A. stated

> *On the question of the rate of interest, the learned judge said, in part:*
>
> > *[40] **The parties agree that the Court Order Interest Act, R.S.B.C. 1996, c. 79, does not apply to maritime claims** and that Omega is entitled to pre-judgment interest on damages arising from the collision at admiralty rates.*
> >
> > *[41] Omega seeks interest at 8.4 per cent compounded semi-annually. Omega argues that there is no specific rate of admiralty interest; that interest is awarded wholly at the court's discretion in maritime law; that the rate of interest should be determined by the evidence; and that compound interest should be awarded when the evidence shows it is necessary to fully compensate the plaintiff.*
> >
> > *[42] The defendants agree that admiralty interest is discretionary but submit that the usual practice in this province is to award simple interest at prime or near-prime. They further argue that the insurance monies received by Omega should be considered in setting the interest rate.*
>
> ***It has, from time to time, been said that the award of interest in admiralty is discretionary. But all discretion must be exercised on the relevant principles. As I have said, the simple issue here is whether the personal financial circumstances of a successful plaintiff in an action arising from a collision at sea are properly taken into account.** If "yes", then the learned judge's answer cannot be said to be in error; if "no", then the defendants are entitled to succeed.*
>
> *There is no suggestion in Halsbury or in the two judgments to which I have referred, that the rate of interest was other than conventional, by which I*

[21] *(Federal Courts Act, section 36 (7)) and Bell Telephone Co of Canada v Mar-Tirenno (The), [1974] 1 FC 294, affirmed [1976] 1 FC 539, 71 DLR (3d) 608.*
[22] *Omega Salmon Group Ltd. v. Pubnico Gemini (The), 2007 BCCA 33 (CanLII)*

mean that it did not depend upon circumstances peculiar to the successful plaintiff.

In many of the authorities cited to us from Canadian courts, the rate has been set at prime. See, e.g. Algoma Central Railway v. The "Cielo Bianco", reflex, [1987] 2 F.C. 592 (F.C.A.).

The practice of awarding a conventional rate of interest obviates any judicial investigation into financial circumstances peculiar to the plaintiff, and therefore leads to efficiency in litigation.

I would therefore allow the appeal and fix the rate of interest at prime from the date of the collision to the date of judgment below.

The upshot of these decisions is:

- the B.C. *Court Order Interest Act* does not apply to marine injury claims;
- admiralty interest rates apply to marine injury claims;
- admiralty interest rates are within the discretion of the court depending on the circumstances peculiar to the successful plaintiff, although the court will avoid judicial investigation if possible; and
- admiralty interest rates are at minimum the key bankers prime lending rate.

In light of the above case law, it is submitted by this author that in personal injury cases, particularly where there is no contributory negligence on the part of the plaintiff, and the plaintiff has been forced through loss of income or lack of income benefits to borrow to replace pecuniary losses during the litigation, that those losses should be replaced at the level of interest actually paid by the successful plaintiff.

D. COMMON PITFALLS TO MARINE INJURY CLAIMS

1. Limitations on Liability for Injury/Death Claims

A limitation of liability in marine injury claim is a "pitfall" because:

- plaintiff's counsel may charge headlong into the file, assuming or incurring substantial disbursements without appreciating the amount of damages may be limited by legislation; or

- plaintiff's counsel may overlook argument that would put the client is a category of marine claimant with a higher limitation; or

- defence counsel may fail to recognize and argue the plaintiff ought to be in a category of claimant where the limitation of liability is lower.

There are two primary types of limitations to damages in marine personal injury and death claims.

a. the **general limitation** amount under Part 3 of the *MLA*[23] which applies to:

    - persons on pleasure craft anywhere in Canada; and

    - passengers aboard adventure tour vessels anywhere in Canada;

b. the **passenger-specific limitation** under Part 4 of the *MLA,* which apply to*:*

    - passengers aboard commercial vessels anywhere in Canada.

These general limitations are partially dependent on the gross tonnage[24] of the ship.

"SDR" as a unit of Limitation?

Both limitations (passenger and general limits) are established with reference to a Special Drawing Right ("SDR").

An SDR is based on "*supplementary foreign exchange reserve assets defined and maintained by the International Monetary Fund (IMF). Created in 1969 to supplement a shortfall of preferred foreign exchange reserve assets, namely gold and the US dollar, the value of a SDR is defined by a weighted currency basket of four major currencies: the US dollar, the euro, the British pound, and the Japanese yen*"[25].

The daily value of an SDR can be found at the International Monetary Funds website at: www.imf.org/external/np/fin/data/rms_five.aspx

On October 5, 2012 - 1 SDR = $1.513 CDN

[23] Part 3 of the *MLA* implements the *1976 Convention on Limitation of Liability for Maritime Claims* and the 1996 Protocol but with Canadian amendments.
[24] "Gross tonnage" is a unitless index related to a vessel overall internal volume. It is defined by *The International Convention on Tonnage Measurement of Ships, 1969*, adopted by the International Maritime Organization in 1969.
[25] Wikipedia, http://en.wikipedia.org/wiki/Special_drawing_rights.

The following table demonstrates these limitation amounts for personal injuries provided for Part 3 and Part 4 (*Athens Convention*) of the *MLA*:

Ships Tonnage	**Injury or Death of Non-Passenger**[26] (persons aboard pleasure vessels)	**Injury or Death of Passenger**[27] (passengers aboard commercial vessels, including gratuitous passengers)
Less than 300 tonnes	CDN$1,000,000 (aggregate limit for all claims)	For a single injury claim the maximum liability of the owner is 175,000 SDR. Maximum liability of the vessel **for multiple claims arising from a single occasion** is 175,000 SDR multiplied by the number of passengers the vessel is authorized to carry under its Certificate. If the vessel does not carry a Certificate the maximum liability of the vessel **for multiple claims arising from a single occasion** is the greater of 2,000,000 SDR and 175,000 SDR multiplied by the number of passengers aboard the ship. However, for multiple claims from a single occasion the owner may elect to rely on the Part 3 limit (see left column). This is preferable if there are many claims and the vessel is small.
300 – 2,000 tonnes	2,000,000 SDR (aggregate limit for all claims)	
2,011 – 30,000 tonnes	2,000,000 SDR + 600 SDR for every tonne over 2,000 (aggregate limit for all claims)	
30,000 – 70,000 tonnes	24,400,000 + 600 SDR for every tonne over 30,000 (aggregate limit for all claims)	
+70,000 tonnes	48,400,000 SDR + 400 SDR for every tonne over 70,000 (aggregate limit for all claims)	

Who is entitled to limit?

The following people are entitled to limit their liability[28] under the general limitation of liability:

- owner or charter of any vessel (wherever in Canada);

[26] *Part 3 Marine Liability Act and 1976 Convention on Limitation of Liability for Maritime Claims*
[27] *Part 4 of the Marine Liability Act and the Athens Convention (Sched 3 to MLA)*
[28] Article 1 *1976 Convention on Limitation of Liability for Maritime Claims* and Section 25(1)(b) of the *MLA*

- operator of any vessel;
- employees and agents of the above including;
- any person with an interest in (such as an insurer) or possession of a ship.

Determining which Limitation amount applies:

It is not clear in all cases whether an plaintiff is a passenger or not. In more serious injury cases where liability is in favour of the plaintiff (and a presumption of negligence is of no real benefit), defence counsel will want to characterize the plaintiff as a passenger in order to limit the defendant's liability.

Case Example: - ***Cuppen v. Queen Charlotte Lodge Ltd. (2006 BCCA 443)***

This case stands for the principle that a bare boat charter, being a person who rents a boat without a crew, is not a passenger for the purposes of limiting liability.

The Plaintiff was a guest at the Defendant's fishing lodge and was provided with a fishing boat by the Defendant and was injured while operating the boat through no fault of the Plaintiff (it was believed there was a malfunction with the steering assembly). The trial judge found that the accident was caused by a defect in the boat but was not able to determine the particular defect but held the Defendant liable for failure to warn. The trial judge held that the limitation in Part 4 of the *MLA* only applied where there was a contract of carriage and that in this case there was no such contract (and the vessel was a not a commercial vessel in that it was operated by the Plaintiff for pleasure), the Defendant having merely provided the Plaintiff with a boat to fish. Accordingly, the applicable limitation was $1 million as provided in Part 3 of the MLA and not 175,000 SDR.

Importantly, the defendant sued by a claimant passenger can only limit their liability under Part 4 if that passenger was on their own vessel at the time. In other words, when two vessels collide, the owner of one vessel cannot limit their liability from claims for people on other vessels. See *Buckley v. Buhlman (2012 FCA 9).*

Loss of Right to Limit Liability:

To date there has been no Canadian case where a passenger claim has successfully broken the limit of liability. The general limit of liability has only been broken once and that was where the captain of a fishing vessel caught his fishing gear on a submarine telephone cable and after pulling it to the surface, intentionally cut it, twice, with an

electric saw[29].

In very rare cases it may be possible to break the limit of liability. Article 13 of the Athens Convention provides that the carrier will lose his right to limit liability where it is proved that the damage resulted from an act or omission done with intent to cause damage or recklessly and with the knowledge that such damage would probably result.

Case Example: *Gundersen v. Finn Marine (2008 BCSC 1665)*

The Plaintiff was the invited guest of the captain of a small commercial water taxi. She was badly hurt when the captain fell asleep at the wheel and ran aground at high speed.

The trial judge held the Plaintiff was a passenger under the Athens Convention, even though she was there gratuitously, because the vessel was a commercial vessel. In the result the Defendant was able to limit its liability to 175,000 SDR. However, the Plaintiff argued that the Defendants conduct was such that they had lost the right to limit.

The Judge considered whether the Defendants had lost the right to limit by reason that "the damage resulted from an act or omission of the carrier done with the intent to cause such damage, or recklessly and with knowledge that such damage would probably result". The Judge noted that the onus of proof on the Plaintiff was a "heavy" onus, and that the requirement of recklessness entailed gross negligence and actual knowledge that the loss would probably result. The Judge ultimately held that the accident was not intentional, that the conduct of the operator was not gross negligence and that the Plaintiff failed to establish that the operator knew the Plaintiff's injuries would probably result. In result, the Defendants were entitled to limit their liability to the 175,000 SDR.

2. No Suspension of Limitation Period for Disability, but Discoverability?

Article 16(3) of the *Athens Convention* provides that "*the law of the court seized of the case shall govern the grounds of suspension or interruption*" of the limitation period.

Several cases have found that for marine injury claims the "*law of the court seized of the case*" means *Canadian maritime law* and not simply the law of the province in which the action is brought, and have held that there is no discretionary power to extend the limitation period under maritime law except with respect to a multi-vessel collision action governed by s. 23 of the *MLA*.

Section. 23 of the *MLA* provides:

Limitation period for claim or lien

[29] *Peracomo Inc. v. Societe Telus 2012 FCA 199.*

***23.** (1) **No action may be commenced later than two years after the loss or injury arose to enforce a claim or lien against a ship in collision or its owners in respect of any loss to another ship, its cargo or other property on board, or any loss of earnings of that other ship, or for damages for loss of life or personal injury suffered by any person on board that other ship**, caused by the fault or neglect of the former ship, whether that ship is wholly or partly at fault or negligent.*

(2) A court having jurisdiction to deal with an action referred to in subsection (1)

(a) may, in accordance with the rules of court, extend the period referred to in that subsection to the extent and on the conditions that it thinks fit; and

(b) shall, if satisfied that there has not during that period been a reasonable opportunity of arresting the ship within the jurisdiction of the court, or within the territorial waters of the country to which the claimant's ship belongs or in which the claimant resides or has their principal place of business, extend that period to an extent sufficient to provide that reasonable opportunity.

(3) In this section, "owner", in relation to a ship, includes any person responsible for the navigation and management of the ship or any other person responsible for the fault or neglect of the ship.

The wording of s.23 limits cases in which the limitation period might be extended to cases of **collisions between vessels**. Allisions, which are single vessel accidents, are not cases where such an extension could be considered under the MLA, even if the court in which the case was brought had jurisdiction to do so. Allisions are likely the most common mechanism of marine injury.

Case example - *Russell et al. v. MacKay, 2007 NBCA 55*

The Plaintiff was injured in August of 2003 when she tripped over a cooler while leaving the head (washroom) on the whale watch vessel on which she was a passenger. The action was not commenced until July 2006. The Defendants brought an application to dismiss the Plaintiff's claim on the grounds that it was statute-barred by the two year limitation period in the *Athens Convent*ion. The Plaintiff argued that the applicable limitation period was six years under the New Brunswick *Limitation of Actions Act*, and alternatively that the Court had the discretion to suspend or interrupt the running of the limitation period.

The trial Judge concluded that the Plaintiff's claim was governed by *Canadian maritime law* as it was in pith and substance in relation to navigation and shipping and not the provincial limitations statute. The trial Judge then considered whether the court had discretion to suspend or interrupt the running of the limitation period by looking to Article

16(3) of the *Athens Convention.* That Article provides that "*The law of the court seized of the case shall govern the grounds of suspension and interruption of limitation periods...*".

The trial Judge held that the phrase "law of the court seized of the case" referred to *Canadian maritime law* and not the law of New Brunswick. The trial Judge then applied a three-part test under the former Canada Shipping Act to determine if the limit should be extended, and held it was in the best interests of justice that the limitation period be interrupted or extended. On appeal the New Brunswick Court of Appeal agreed with the trial Judge that the case was to be governed by federal maritime law and further agreed that the limitation period was to be found in the *Athens Convention* but disagreed with respect to the powers of the court to suspend or extend the limitation period.

The Court of Appeal found the trial Judge erred in relying upon and applying the test flowing from the old *Canada Shipping Act* which dealt with collisions between ships not injuries to passengers. The Appeal Court said that Article 16 of the *Athens Convention* did not include any power to extend the limitation period and held that superior courts do not have inherent powers to extend limitation periods. The Court held that there was no federal legislation that would provide grounds for suspension or interruption.

Case Example – *Frugoli v. Services Aériens (2009 QCCA 1246)*

Similar to the *Russel* case above, this case stands for the proposition that a true marine injury claim will be governed by federal limitation law, not provincial, and that except in cases of collisions between vessels, there is no inherent jurisdiction for the court to extend the limitation period.

The Plaintiffs were two dependents of a person presumed drowned sued after a vessel capsized in Quebec. The court considered whether the limitation period was the two year period prescribed the *MLA* (s.14(2)), or a three year period prescribed by the *Quebec Civil Code*. This issue arose because the solicitor had not filed within the two year period.

The trial judge held the action was subject to *Canadian maritime law* and not the Quebec Civil Code, however the judge went on to consider whether the two year period could be extended under Art. 16(3) of the *Athens Convention* that states "*the law of the court seized of the case shall govern the grounds of suspension or interruption*" of the limitation period. The trial judge held that the "law of the court seized of the case" meant Canadian maritime law and held that there was no discretionary power to extend the limitation period under maritime law except for in a collision action governed by s. 23 of the *MLA*, and there was no inherent jurisdiction to extend the limitation period. The Court of Appeal agreed.

Case Example – *Nicholson v. Canada ([2000] 3 FC 225)*

The Plaintiffs were the dependents of the deceased who died when his vessel hit a rock and sank; they alleged breaches on the part of the Coast Guard for approving a poor construction sketch of the vessel. The accident occurred in April 1992, and the action was commenced in March of 1994. The Defendant argued that the applicable limitation period was one year from the time of death (then section 649 of the now repealed *Canada Shipping Act [it is now two years]*), and applied to have the action dismissed summarily.

The Plaintiffs argued, *inter alia*, that discoverability operated to extend the time bar under the circumstances of the case, that the court had inherent jurisdiction to extend the limitation period, that there was a non-statutory cause of action to which section 649 did not apply, that the tolling provision of the Ontario Limitations Act applied, and that, in any event, the claim of the estate was not covered by section 649.

The court did not accept the discoverability argument finding the Plaintiffs were aware of the material facts at the conclusion of the inquest into the death of the deceased yet they did not commence their action within one year from that date. With respect to the inherent jurisdiction of the court to extend the limitation period, the court held that, in the absence of a clear statutory authority it had no such jurisdiction.

3. Jurisdiction clauses

Counsel must be cautious when considering where to commence an action in the B.C. Supreme Court or Federal Court. Simply because the client is injured on waters along the B.C. coast, or is headed to or from a B.C. port does not necessarily mean the passenger can sue in B.C.

For passengers on non-pleasure vessels, the *Athens Conventions* (Article 17) requires the action to be brought in either:

a. the place where the defendant has his permanent residence or principal place of business;

b. the place of departure or of destination under the contract;

c. the place where the claimant is domiciled or has permanent residence provided the defendant also has a place of business in that State; or

d. the place where the contract of carriage was made if the defendant has a place of business in that State.

Case Example - *Nicolazza v. Princess Cruises (2009 CanLII 28217)*

In this case the Plaintiff booked a cruise through an agent in Hamilton Ontario. They embarked in Italy and disembarked in England. During the cruise $5,000 was stolen from the safe in the Plaintiffs' stateroom. The Plaintiffs commenced this action to recover the stolen money in Ontario Superior Court. The Defendant brought a motion to dismiss the claim on the basis that the court lacked territorial jurisdiction over the action. The motion was denied at first instance. On appeal, the appeal Judge held that the *Athens Convention* applied and that pursuant to Article 17 of the Convention the action could not be brought in Canada as the Defendant had no place of business in Canada. The appeal was allowed and the action was dismissed.

4. No Exemplary/Aggravated/Punitive damages for *Athens Convention* Claims

Counsel should be cautious in pleading exemplary, punitive or aggravated damages in the case of a client covered by the *Athens Convention* (Part 4 of the *MLA*). Recent case law arising from the sinking of the BC Ferries vessel *Queen of the North* has confirmed the court's view that punitive, exemplary and aggravated damages are not available under the *Athens convention*.

Counsel ought, where the facts merit, plead exemplary, punitive or aggravated damages in cases of personal injury aboard non-commercial vessels because the Athens Convention does not apply to these vessels.

Case Example - *McDonald v. Queen of the North (2008 BCSC 1777)*

The court was asked whether punitive and aggravated damages are recoverable in a wrongful death action brought by dependents pursuant to the *Marine Liability Act* and the *Athens Convention*. The Court reviewed the case law relating to the recovery of punitive and aggravated damages under various wrongful death statutes, and concluded that claims under the *Athens Convention* and the *Marine Liability Act* were compensatory in nature and do not provide for the recovery of punitive, exemplary or aggravated damages.

APPENDIX A

Note: this pleading is not intended to be an exhaustive pleading of causes of action and heads of damage, but is intended to generally demonstrate an in rem marine injury claim.

No _____
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Admiralty Action *in Rem* Against:

The Ship "*S.S MINNOW*"

And *in Personam*

Between:

GILLIGAN and GINGER GRANT

PLAINTIFFS

And:

THE OWNERS AND ALL OTHERS INTERESTED IN THE DEFENDANT SHIP,
"*S.S MINNOW*", OFFICIAL NUMBER #U1435668, and
JONAS GRUMBY also known as "SKIPPER" and
THURSTON HOWELL III

DEFENDANTS

NOTICE OF CIVIL CLAIM – ADMIRALTY
(*IN REM* AND *IN PERSONAM*)

Name and Address of each plaintiff:	Gilligan and Ginger Grant 123 Saltchuck Way, Salt Spring Island, B.C.
Description of the Ship:	60' white fiberglass Catalina yacht, bearing licence #U1435668
Name and address of the defendants:	Jonas Grumby, a.k.a "Skipper" 1300 Sea Ridge Street, Vancouver B.C. Thurston Howell III 1101 Caviar Dreams Drive West Vancouver B.C.

TAKE NOTICE that this action has been started against you by the plaintiff(s) for the claim(s) set out in this notice of civil claim.

IF YOU INTEND TO RESPOND TO this action, or if you have a set-off or counterclaim that you wish to have taken into account at the trial, YOU MUST FILE a response to civil claim in Form 2 in the above registry of this court within the time for response to civil claim described below and SERVE a copy of the filed response to civil claim on the plaintiff's(s') address for service.

YOU OR YOUR LAWYER may file the response to civil claim.

APPLICATION FOR JUDGMENT AGAINST THE SHIP OR OTHER PROPERTY MAY BE MADE AND JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

Service on ship:

The time for response to civil claim is 21 days from the service of this notice of civil claim on the ship or other property described in this notice of civil claim (not including the day of service).

Service on defendant in personam:

A response to civil claim must be filed and served on the plaintiff(s),

(a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

(b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

(c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

(d) if the time for response to civil claim has been set by order of the court, within that time.

A response to civil claim filed on behalf of a ship or other property must set out the nature of the interest that you claim in the ship or other property.

CLAIM OF THE PLAINTIFFS

Part 1: STATEMENT OF FACTS

1. The Plaintiff Gilligan (hereafter "Gilligan"), resident of Salt Spring Island B.C. has as an address for service at 531 Quadra Street, Victoria B.C. V8V 3S4.

2. The Plaintiff, Ginger Grant (hereafter "Ginger"), resident of Salt Spring Island B.C. has as an address for service at 531 Quadra Street, Victoria B.C. V8V 3S4.

3. The Defendant vessel "*S.S. Minnow*" is a 60' white fiberglass Catalina yacht, built in 1947, bearing licence # U1435668 (hereafter the "*Minnow*").

4. The Defendant Jonas Grumby, also known as "Skipper" (hereafter "Skipper"), is a resident of Vancouver B.C.

5. The Defendant Thurston Howell III (hereafter "Howell") is a resident of West Vancouver B.C.

6. At all material times Howell was the registered owner of the *Minnow*.

7. At all material times Skipper was the master of the *Minnow*, and an employee of Howell.

8. At all material times Howell and Skipper were in care and control of the *Minnow*.

9. At all material times the *Minnow* was a pleasure vessel and not a commercial vessel.

10. On about November 10, 2008 the *Minnow* departed from Victoria B.C. to proceed to Vancouver (the "Voyage").

11. Aboard the *Minnow* for the Voyage were the Plaintiffs Ginger and Gilligan, as well as the Defendants Howell and Skipper.

12. During the Voyage:

    a. Gilligan was an employee (deckhand) of Howell; and

    b. Ginger was a gratuitous guest of Howell.

13. During the Voyage, Howell served Skipper numerous navy rum cocktails and Skipper consumed said cocktails.

14. Howell was aware that on all previous occasions when Skipper had been served navy rum cocktails Skipper had fallen asleep at the helm and collided with another vessel or an island causing injury.

15. At approximately 19:45 on November 10, 2008, after consuming numerous navy rum cocktails served to him by Howell, Skipper fell asleep at the helm, causing the *Minnow* to collide with the ferry vessel *Spirit of Vancouver Island* while transiting Active Pass *(*the "Collision"). The *Minnow* was damaged but did not sink. Displayed aboard the vessel at the time of the accident was Howell's art collection valued at $1,500,000.

16. As a result of the Collision:

    a. Gilligan's right leg was severed above the knee and his right arm above the elbow; and

    b. Ginger suffered three fractured vertebrae, a broken nose, soft tissue injury, and nervous shock.

17. As a result of the Collision the Plaintiffs have suffered loss of income.

18. As a further result of the Collision the Plaintiffs have suffered a loss of capacity to earn income.

19. As a further result of the Collision the Plaintiffs have suffered a loss of capacity to maintain their households.

20. As a further result of the Collision described, the Plaintiffs have incurred and will continue to incur special damages.

21. The Plaintiffs, beneficiaries under the *Medicare Protection Act*, have and will receive health care services as defined by the *Health Care Costs Recovery Act*, and therefore claim the cost of those health care services pursuant to the *Health Care Costs Recovery Act*.

22. Ginger and Gilligan are step-siblings. Prior to the Collision Ginger was reliant on financial support provided by Gilligan during lulls in her modeling career.

Part 2: RELIEF SOUGHT

A. Gilligan seeks the following relief:

    i. a declaration that the Defendants' liability is not limited under the *Marine Liability Act (S.C. 2001 c.6);*

ii. general damages for personal injury;

iii. damages for loss of past income;

iv. damages for cost of future care;

v. punitive or exemplary damages;

vi. health care costs pursuant to the *Health Care Cost Recovery Act;*

vii. pre-judgment interest at admiralty rates;

viii. arrest and condemnation of the Defendant Ship and its bail;

ix. a declaration that s.10 of the *Workers Compensation Act (RSBC 1996 c.492)* is inapplicable to the Plaintiff Gilligan's claim;

x. costs; and

xi. such further and other relief as this court deems just.

B. Ginger seeks the following relief:

i. a declaration that the Defendants' liability is not limited under the *Marine Liability Act (S.C. 2001 c.6);*

ii. dependants relief pursuant to s.6 of the *Marine Liability Act (S.C. 2001 c.6);*

iii. general damages for personal injury;

iv. damages for loss of past income;

v. damages for cost of future care;

vi. punitive or exemplary damages;

vii. health care costs pursuant to the *Health Care Cost Recovery Act;*

xii. pre-judgment interest at admiralty rates;

viii. arrest and condemnation of the Defendant Ship and its bail;

ix. costs; and

x. such further and other relief as this court deems just.

Part 3: LEGAL BASIS

1. The Skipper and Howell owed the Plaintiffs a duty of care to manage and operate the "*Minnow*" in a reasonably prudent manner.

2. The Skipper and Howell owed the Plaintiffs a statutory duty to operate the "*Minnow*" in compliance with *Canadian maritime law*, including in compliance with the *Small Vessel Regulations* under the *Canada Shipping Act 2001*.

3. The Defendants breached their common law and statutory duties when Howell served, and Skipper consumed, several navy rum cocktails causing Skipper to fall asleep at the helm and fail to avoid a collision with the *Spirit of Vancouver Island.*

4. As a result of the Defendants' breaches and the consequential collision the Plaintiffs have suffered foreseeable damages for which the Defendants are liable.

5. The Plaintiff Gilligan's action is not barred by s.10 of the *Workers Compensation Act (RSBC 1996 c.492)* as that Act is constitutionally inapplicable to this case.

6. The Plaintiff Ginger, step-sibling to Gilligan, is a "dependant" within the meaning prescribed in s.6 of the *Marine Liability Act (S.C. 2001 c.6)* and, having suffered loss of financial support due to Gilligan's injuries and resulting disability, claims for damages.

7. The Defendants may not limit their liability for damages arising out of the said Collision as the loss resulted from their personal acts and omissions, committed recklessly and with knowledge that such loss would probably result.

8. Rule 21-2(4) of the *Rules of Supreme Court Civil Rules.*

9. Section 22(2)(d)(g) of the *Federal Courts Act.*

10. *Canadian Maritime Law* as a substantive area of law over which this court has jurisdiction

Plaintiff's' address for service: Darren Williams, Barrister & Solicitor
531 Quadra Street
Victoria, BC V8V 3S4
Tel: 250-385-7777

Fax number address for service: Fax: 250-478-9943

E-mail address for service:	dw@MarineLaw.ca
Place of trial:	Victoria
The address of the registry is:	850 Burdett Avenue Victoria, BC V8W 1B4

Date: October 5, 2012

_____

Darren Williams, solicitor for the Plaintiffs

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM

Claim for damages in personal injury arising from the November 10, 2008 collision of the Defendant vessel and the *Spirit of Vancouver Island*.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING

A personal injury arising out of:

[ ] a motor vehicle accident
[ ] medical malpractice
[x] another cause: vessel collision

A dispute concerning:

[ ] contaminated sites
[ ] construction defects
[ ] real property (real estate)
[ ] personal property
[ ] the provision of goods or services or other general commercial matters
[ ] investment losses
[ ] the lending of money
[ ] an employment relationship
[ ] a will or other issues regarding probate of an estate

Part 3: THIS CLAIM INVOLVES

[ ] a class action
[x] maritime law
[ ] aboriginal law
[ ] constitutional law
[ ] conflicts of law
[ ] none of the above
[ ] do not know

Part 4: ACTS RELIED ON: *Federal Courts Act (RSC 1985 c.F-7), Marine Liability Act (S.C. 2001 c.6), Health Care Cost Recovery Act (RBC 2008 c.27).*

APPENDIX B

No _____
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Admiralty Action *in Rem* Against:

The Ship "*S.S MINNOW*"

And *in Personam*

Between:

GILLIGAN and GINGER GRANT

PLAINTIFFS

And:

THE OWNERS AND ALL OTHERS INTERESTED IN THE DEFENDANT SHIP,
"*S.S MINNOW*", OFFICIAL NUMBER #U1435668, and
JONAS GRUMBY also known as "SKIPPER" and
THURSTON HOWELL III

DEFENDANTS

AFFIDAVIT TO LEAD WARRANT

I, Darren Williams, of 531 Quadra Street, Victoria B.C. V8V 3S4, HEREBY SWEAR AS FOLLOWS:

1. I am the solicitor to the Plaintiffs herein, and having reviewed documents and interviewed the Plaintiffs in regards to the collision that is the subject of this action, I have knowledge of the facts to which hereinafter I depose save and except where such are stated to be on information and belief in which case I have stated the basis for this belief.

2. The party making application for a warrant for the arrest of the ship or other property named herein is

    Darren Williams, solicitor
    531 Quadra Street, Victoria B.C. V8V 3S4

on behalf of: Gilligan and Ginger Grant
123 Salt Chuck Way
Salt Spring Island, B.C.

3. The nature of the claim which is the subject of the action against the ship or other property named herein is:

> one for damages arising from personal injuries suffered in the November 10, 2008 collision between the defendant vessel "*S.S. Minnow*" and the ferry vessel *Spirit of Vancouver Island*.

4. The claim has not been satisfied.

5. The property to be arrested is: the "*S.S. Minnow*" a 60' white fiberglass Catalina yacht, built in 1947, bearing licence # U1435668.

6. No notice of the action is required.

SWORN BEFORE ME at Victoria, British Columbia on October 5, 2012.	)	
_____	)	_____
A Commissioner for taking Affidavits for British Columbia	)	DARREN WILLIAMS

No _____
Victoria Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Admiralty Action *in Rem* Against:

The Ship "*S.S MINNOW*"

And *in Personam*

Between:

GILLIGAN and GINGER GRANT

PLAINTIFFS

And

THE OWNERS AND ALL OTHERS INTERESTED IN THE DEFENDANT SHIP,
"*S.S MINNOW*", OFFICIAL NUMBER #U1435668, and
JONAS GRUMBY also known as "SKIPPER" and
THURSTON HOWELL III

DEFENDANTS

WARRANT TO ARREST SHIP

YOU ARE COMMANDED to arrest the "*S.S. Minnow*" a 60' white fiberglass Catalina yacht bearing licence # U1435668, her cargo and freight etc. and to keep the same under arrest until you are otherwise ordered.

Dated: _____ Issued by: _____
Registrar

THIS WARRANT is taken out by G. Darren Williams of 531 Quadra Street, Victoria British Columbia V8V 3S4. Telephone 250-478-9928 (cell 250-888-0002) Facsimile 250-478-9943. EMAIL: dw@MarineLaw.ca

APPENDIX C

Note: this pleading is not intended to be an exhaustive pleading of causes of action, heads of damage and relief sought, but is intended to generally demonstrate an in rem marine injury claim.

Vancouver Registry
File no. :_____

FEDERAL COURT

ADMIRALTY ACTION

IN REM and *IN PERSONAM*

Between:

GILLIGAN and GINGER GRANT

PLAINTIFFS

And:

THE SHIP "*S.S MINNOW*",
THE OWNERS AND ALL OTHERS INTERESTED IN
THE DEFENDANT SHIP "*S.S MINNOW*" and
JONAS GRUMBY also known as "SKIPPER" and
THURSTON HOWELL III

DEFENDANTS

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served

within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

October 4, 2012

Issued by:_____
(Registry Officer)

Address of local office: Federal Court
3rd Floor, 701 West Georgia Street
Vancouver B.C. V7Y 1B6

TO: Jonas Grumby, also known as "Skipper"

AND: Thurston Howell III

AND: The Defendant Ship "SS Minnow"

CLAIM

1. The Plaintiffs claim for:

   i. a declaration that the Defendants' liability is not limited under the *Marine Liability Act (S.C. 2001 c.6).*

   ii. dependants relief pursuant to s.6 of the *Marine Liability Act (S.C. 2001 c.6).*

iii. general damages for personal injury;

iv. damages for loss of past income;

v. damages for cost of future care;

vi. punitive or exemplary damages;

vii. health care costs pursuant to the *Health Care Cost Recovery Act;*

viii. pre-judgment interest at admiralty rates;

ix. arrest and condemnation of the Defendant Ship and its bail;

x. a declaration that s.10 of the *Workers Compensation Act (RSBC 1996 c.492)* is inapplicable to the Plaintiff Gilligan's claim;

xi. costs; and

xii. such further and other relief as this court deems just.

2. The Plaintiff Gilligan (hereafter "Gilligan"), resident of Salt Spring Island B.C. has as an address for service at 531 Quadra Street, Victoria B.C. V8V 3S4.

3. The Plaintiff, Ginger Grant (hereafter "Ginger"), resident of Salt Spring Island B.C. has as an address for service at 531 Quadra Street, Victoria B.C. V8V 3S4.

4. The Defendant vessel "*S.S. Minnow*" is a 60' white fiberglass Catalina yacht, built in 1947, bearing licence # U1435668 (hereafter the "*Minnow*").

5. The Defendant Jonas Grumby, also known as "Skipper" (hereafter "Skipper"), is a resident of Vancouver B.C.

6. The Defendant Thurston Howell III (hereafter "Howell") is a resident of West Vancouver B.C.

7. At all material times Howell was the registered owner of the *Minnow*.

8. At all material times Skipper was the master of the *Minnow*, and an employee of Howell.

9. At all material times Howell and Skipper were in care and control of the *Minnow*.

10. At all material times the *Minnow* was a pleasure vessel and not a commercial vessel.

11. On about November 10, 2008 the *Minnow* departed from Victoria B.C. to proceed to Vancouver (the "Voyage").

12. Aboard the *Minnow* for the Voyage were the Plaintiffs Ginger and Gilligan, as well as the Defendants Howell and Skipper.

13. During the Voyage:

    a. Gilligan was an employee (deckhand) of Howell; and

    b. Ginger was a gratuitous guest of Howell.

14. During the Voyage Howell served Skipper numerous navy rum cocktails and Skipper consumed said cocktails. Howell was aware that on all previous occasions when Skipper had been served navy rum cocktails Skipper had fallen asleep at the helm and collided with another vessel or an island causing injury.

15. At approximately 19:45 on November 10, 2008 Skipper fell asleep at the helm, causing the *Minnow* to collide with the ferry vessel *Spirit of Vancouver Island* while transiting Active Pass *(*the "Collision"). The *Minnow* was damaged but did not sink. Displayed aboard the vessel at the time of the accident was Howell's art collection valued at $1,500,000.

16. As a result of the Collision:

    a. Gilligan's left leg was severed above the knee; and

    b. Ginger suffered three fractured vertebrae, a broken nose, soft tissue injury, and nervous shock;

17. As a result of the Collision the Plaintiffs have suffered loss of income.

18. As a further result of the Collision the Plaintiffs have suffered a loss of capacity to earn income.

19. As a further result of the Collision the Plaintiffs have suffered a loss of capacity to maintain their households.

20. As a further result of the Collision described, the Plaintiffs have incurred and will continue to incur special damages.

21. The Plaintiffs, beneficiaries under the *Medicare Protection Act*, have and will receive health care services as defined by the *Health Care Costs Recovery Act*, and therefore claims the cost of those health care services pursuant to the *Health Care Costs Recovery Act*.

22. Ginger and Gilligan are step-siblings. Prior to the Collision Ginger was reliant on financial support from Gilligan during lulls in her modeling career.

23. The Skipper and Howell owed the Plaintiffs a duty of care to manage and operate the "*Minnow*" in a reasonably prudent manner.

24. The Skipper and Howell owed the Plaintiffs a statutory duty to operate the "*Minnow*" in compliance with *Canadian maritime law*, including in compliance with the *Small Vessel Regulations* under the *Canada Shipping Act 2001*.

25. The Defendants breached their common law and statutory duties when Howell served, and Skipper consumed several martinis causing Skipper to fall asleep at the helm and fail to avoid a collision with the *Spirit of Vancouver Island.*

26. As a result of the Defendants' breaches and the consequential collision the Plaintiffs have suffered foreseeable damages for which the Defendants are liable.

27. The Plaintiff Gilligan's action is not barred by s.10 of the *Workers Compensation Act (RSBC 1996 c.492)* as that Act is constitutionally inapplicable to this case.

28. The Plaintiff Ginger, step-sibling to Gilligan, is a "dependant" within the meaning prescribed in s.6 of the *Marine Liability Act (S.C. 2001 c.6)* and having suffered loss of financial support due to Gilligan's injuries and resulting disability claims for damages.

29. The Defendant may not limit their liability for damages arising out of the said Collision as the loss resulted from their personal acts and omissions, committed recklessly and with knowledge that such loss would probably result.

30. The amount claimed exceeds $50,000 and this action is not being proceeded with as a simplified action.

The Plaintiffs propose that this action be tried at Victoria B.C.

October 5, 2012

_____

Darren Williams, Solicitor
531 Quadra Street, Victoria B.C. V8V 3S4
Tel: 250-385-7777
Fax: 250-478-9943
Email: dw@MarineLaw.ca

END OF DOCUMENT