Mariner Life - October 2005

"Salvage" versus "Recovery" - The End of Marine Log Salvage in British Columbia?

Mariners have been trying to salvage items from the sea for as long as people have been losing them. The first salvage claim may have been made on a run-away papyrus raft floating down the Euphrates. The first vessel subject to a salvage claim in the Pacific Northwest may have been a dug-out canoe, sucked off the beach by a bitter winter storm and blown into a bay far down the coast. Claims in salvage are not limited to vessels however, cargo and other property that have escaped the control of their owners all can be the target of a salvor's ambition.

Ownership of the item that is salved is a key factor in determining a salvor's right in that property. In most cases, ownership of an item can be determined with some diligence. The dug-out canoe likely had carvings on it unique to its owners. Modern vessels, containers and other cargo rarely are devoid of names, serial numbers or other marks that identify the owner (though chain of ownership is often an issue). The salvor's claim to the salved property is subject to the interest of the proven owner, but the property in turn becomes subject to the salvor's claim, provided the salvor has succeeded in removing the item from peril. These principles are universal. Recognizing the boundless nature of the high seas, modern law makers have promoted uniformity in salvage law with tools such as the *International Salvage Convention*, to which Canada is a signatory.

Despite the objective of uniformity in maritime laws, there is some property, in some jurisdictions, that is treated differently than other salved property. The salvage of timber, a practice that is unique to the few places in the world that transport large quantities of wood by water, is an interesting example. The sheer volume of timber that is transported by water along the B.C. coast, although less now than before, makes it inevitable that some timber, both marked and unmarked, will be lost.

Marine log salvage has been a hotbed of debate, particularly in respect of unmarked logs. Independent log salvors have argued that their activities of removing logs from waterways and beaches improves marine safety and protects shoreline ecosystems that may be damaged by beached logs, and that they should not be prevented from doing so or discouraged by regulations that provide compensation that is not economical. They say their activities are governed by international convention, maritime common law, and Federal law, and that Provincial law does not apply. Forestry interests argue that, among other things, the recovery of lost timber is best managed under a system of permits and specified compensation, and that unmarked logs should not be subject to a traditional salvage claim because, in the absence of a timber or marine mark, ownership vests in the Province and the salvors are subject to Provincial law governing forestry.

Recently the Federal Court of Canada was asked to resolve the debate of whether a log salvor could make a traditional salvage claim on an unmarked log, or whether their right to salvage logs, and what compensation they received, was dictated by Provincial forestry

law. The debate echoed the longstanding question of what activities are within, and regulated by, the Federal government's constitutional jurisdiction over *navigation and shipping*, and what activities are regulated by the Province's power over *property* and *forestry*. The case was called *Early Recovered Resources Inc. v. B.C.* In it's July 2005 judgment the Court described the issue as this:

"The activity in issue is the recovery of logs left behind in coastal waters and rivers as a result of logging operations. The Province has enacted a scheme which provides for licensing of those who engage in log recovery, the establishment of a body to receive and dispose of the logs, and the distribution of the proceeds of the sale of the recovered logs to those who recovered them, and to those who claim an interest in them".

"The [plaintiff/salvor] believes that the amounts paid to those who recover logs under the provincial scheme are too low and, by way of a declaration of invalidity of the provincial legislation, seeks to bring itself within the more generous scheme contemplated by the International Convention on Salvage".

The plaintiff claimed they were owed $639.62 for the 17 subject logs, based on the Schedule of Three-Month Average Domestic Log Selling Prices issued by the Province for stumpage purposes (for non-salvaged logs). The defendants claimed the plaintiff was bound by the Provincial Log Salvage Regulation and that they were only entitled to $271.90, based on the calculation of the market value of salvaged logs. The stakes were much higher than the difference between these two amounts portrays.

In a significant win for the forestry industry, the Federal Court upheld the Provincial scheme, finding that the *Log Salvage Regulation* was within the Province's powers to regulate property and forestry, and that the *International Salvage Convention* was not applicable. In doing so the Court made the following observations:

"[The Marine Log Salvage Regulation] is clearly a framework for dealing with that part of the Province's forestry resource that has become drift timber, and so needs to be salvaged or recovered so that its value can be realized."

"If the Province's economic stake in those logs is to be realized, there has to be some way to manage, recover and sell cut logs that are adrift in the Fraser River."

"In my view, Part 9 [Marine Log Salvage] of the Forest Act has nothing to do with navigation or shipping. It can be said, for instance, that navigation and shipping are connected to water, and Part 9 deals with the retrieval and sale of logs that have become adrift in water. But the fact that cut logs have somehow found their way into water does not mean that they have ceased to be part of the forestry resource, or that the Province should lose the right to continue managing that resource in the manner contemplated by Part 9. Just because the logs are recovered from navigable waters does not mean that the impugned provisions must be related to navigation and shipping.

The fact that retrieving a log from the water and delivering it to a receiving station may also have the incidental effect of removing a hazard to shipping does not mean that the pith and substance of Part 9 of the Forest Act is related to navigation or shipping."

Interestingly, in finding that the *International Salvage Convention* was not applicable to marine log salvage in British Columbia, the Court stated, "*The [Log Salvage Regulation] describes all of this in terms of log salvage but on my reading of it, the legislative purpose could have been accomplished just as easily had the word "recovery" been used instead of the word "salvage". All of which is to say that I attach no significance to the use of the word "salvage" in the legislation"*. Ironically, the Court preferred the same language as used in the Plaintiff's corporate name, that is "recovery" of logs rather than salvage. The net result, in my opinion, was that the Court dismissed the traditional use of the term "salvage" as a descriptor for that activity within British Columbia, replacing it with "recovery".

The decision disappointed many people on the Coast, most of all beachcombers and log salvors who had hoped the Provincial scheme would be struck down in favour of greater flexibility in selling, and getting paid for, unmarked logs. However, these parties will appreciate that the Federal Court's decision was limited in effect to cases arising *within* the Vancouver Log Salvage District ("VLSD"), which is bounded at about Sooke Basin in Juan de Fuca Strait and runs up the inside of Vancouver Island to Cape Sutil, northwest of Port Hardy (including all the waters of Georgia Strait). Waters outside of this area, arguably, are not covered by the decision, unless by regulation the area is within the Province and is designated under the Log Salvage Regulation (such as an inlet on the West Coast of Vancouver Island or the Central Coast). However, because the Province can only apply its laws within the borders of the Province, waters outside of headlands that are not in the VLSD are, in my opinion, not covered by these regulations and traditional salvage applies. Disposal of these truly "salvaged" logs is another matter.

Unfortunately for salvors, because the vast majority of logs available for recovery/salvage are found within the VLSD, or otherwise within the Province because they are found within the headlands of a bay or inlets (that is, there are relatively few logs floating on the high seas) there is little hope, in my opinion, of an economically feasible log salvage venture that operates outside of the Provincial regulations. To this end, the decision in *Early Recovered* case has set the last nail in the coffin of true log salvage *within* British Columbia.

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