

*A.G. Ontario v. Pembina Exploration Canada Ltd***William Tetley***

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In *A.G. Ontario v. Pembina Exploration Canada Ltd*,¹ the S.C.C. held that an Ontario Small Claims Court has jurisdiction over Admiralty matters. According to the author, this holding is sound, in light of the essentially unitary nature of Canada's court system, and in view of the potential absurdity of granting concurrent jurisdiction in actions involving large sums of money, and of denying such jurisdiction in actions involving small claims.

I. Small Claims Courts and Admiralty

Does a provincial small claims court have jurisdiction over Admiralty matters? In particular, does the Ontario Small Claims Court have jurisdiction to hear a case concerning the entanglement of a trawling net with an unmarked gas well on Lake Erie? The answer is "yes" according to the Supreme Court of Canada, and the conditions given for such jurisdiction, and the logical explanation furnished by La Forest J., make this yet another useful decision defining Canadian Admiralty jurisdiction.

II. The Constituents to Federal Court Jurisdiction over Admiralty

Before considering La Forest J.'s reasoning, I will comment briefly on Admiralty jurisdiction in Canada, which has been slowly but methodically developing since 1976, through the landmark decisions of *McNamara Construction (Western) Ltd v. R.*,² *Quebec North Shore Paper Co. v. Canadian Pacific Ltd*³ and *ITO (International Terminal Operators Ltd) v. Miida Electronics Inc. (The Buenos Aires Maru)*.⁴

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¹[1989] 1 S.C.R. 206.

²[1977] 2 S.C.R. 654, 75 D.L.R. (3d) 273, 13 N.R. 181.

³[1977] 2 S.C.R. 1054, 9 N.R. 471.

⁴[1986] 1 S.C.R. 752, 28 D.L.R. 641, 34 B.L.R. 251 [hereinafter *Buenos Aires Maru*, cited to S.C.R.].

McIntyre J. in the *Buenos Aires Maru* summarized the findings of the foregoing decisions by holding that there were three requirements for Federal Court jurisdiction:

1. There must be a statutory grant of jurisdiction by the federal Parliament" [*i.e.*, the federal statute establishing the court pursuant to s. 101 of the *Constitution Act, 1867*⁵ must confer upon it jurisdiction over the matter in issue].
2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction" [*i.e.*, there must be applicable federal law in place].
3. The law on which the case is based must be "a law of Canada' as the phrase is used in s. 101 of the *Constitution Act, 1867* [*i.e.*, Parliament must have legislative authority over the subject matter involved in the dispute].⁶

Subsections 22(1) and 22(2) of the *Federal Court Act*⁷ grant the Trial Division "concurrent original jurisdiction" over Admiralty matters. There is, of course, federal legislative jurisdiction pursuant to s. 91(10) of the *Constitution Act, 1867*.

III. Five Step Process

A five step process is used by La Forest J. in arriving at jurisdiction in the case at hand. (In addition to the three steps outlined above, the jurisdiction of a provincial inferior court was also at issue.)

First, since judicial jurisdiction is *not* coextensive with legislative jurisdiction, the Court notes that s. 92(14) of the *Constitution Act, 1867* grants the provincial legislature jurisdiction over "the Administration of Justice in the Province", thereby giving each province the right to invest its superior courts with jurisdiction over Admiralty and other federal matters. La Forest J. notes that the jurisdiction of provincial superior courts over Admiralty matters arising in a province is dependent upon "the essentially unitary nature⁸ of the Canadian court system",⁹ rather than on any historical considerations.

Secondly, this right may exist only if there is no specific exclusivity in federal law which accords jurisdiction to the Federal Court. Of course, the Federal Court is the major exception to the unitary court system. Subsection 22(1) of the *Federal Court Act*, however, makes the *concurrent* right abun-

⁵*Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3.

⁶*Supra*, note 4 at 766.

⁷R.S.C. 1970 (2nd Supp.), c. 10 [now R.S.C. 1985, c. F-7].

⁸What of course is meant here is that the Canadian court system is *not* a federal one such as exists in the United States, where there is corresponding judicial authority for each level of legislative competence.

⁹*Supra*, note 1, at 217.

dantly clear. The Federal Court, then, unquestionably shares concurrent Admiralty jurisdiction with provincial superior courts.

The third aspect of the judgment is key. Since provincial superior courts derive their jurisdiction from s. 92(14) of the *Constitution Act, 1867*, not solely from their particular *nature* as superior courts, or because Canada's court system is essentially unitary, it follows that the provinces may also invest their *inferior* courts with a general jurisdiction which includes areas of federal legislative authority such as Admiralty matters.

Fourthly, it is necessary that the Ontario *Small Claims Court Act*¹⁰ includes Admiralty matters in its general terms and does not specifically exclude them. La Forest J. determines that the Ontario statute is broad enough to include Admiralty matters through its conferral of jurisdiction in s. 55 over "any action" within the prescribed monetary limits.

The fifth step arises in respect to s. 96 of the *Constitution Act, 1867* which gives the federal Parliament sole authority to appoint judges of the Superior, District and County Courts in each province. Since Small Claims Court judges are appointed provincially, the argument was raised that s. 96 precludes them from exercising Admiralty jurisdiction. La Forest J. notes, in response, that Admiralty Courts are not listed in s. 96 and are consequently not subject to this provision. Therefore, the Small Claims Court judges of Ontario named by the Ontario provincial government are competent to hear Admiralty matters.

IV. Overruling *Heath v. Kane*

A.G. Ontario v. Pembina Exploration Canada Ltd clearly overrules *Heath v. Kane*.¹¹ In that case, the Ontario Court of Appeal affirmed the trial judge's holding that the County Court had no jurisdiction in Admiralty matters. Mr. Justice La Forest notes that the historical jurisdiction relied upon in *Heath v. Kane* is irrelevant, and with great care and skill, goes on to demonstrate the validity of the reasoning in *Balfour Guthrie (Canada) Ltd v. Far Eastern Steamship Co.*¹² In *Guthrie*, the British Columbia Court of Appeal refused to follow *Heath v. Kane*, instead holding that the County Courts of that province were included in the grant of concurrent jurisdiction over Admiralty matters. La Forest J. then correctly grounds his reasoning in the case at hand upon statutory principles, which are the primary source of law in Admiralty and jurisdictional matters. That being so, I shall not burden the reader with any further details of the earlier decisions.

¹⁰R.S.O. 1980, c. 476.

¹¹(1975), 10 O.R. (2d) 716 (C.A.); leave to appeal to S.C.C. dismissed (1975), 10 O.R. (2d) 716n (S.C.C.).

¹²(1977), 82 D.L.R. (3d) 414, 5 B.C.L.R. 60 (C.A.) [hereinafter *Guthrie* cited to D.L.R.].

V. Collisions on Internal Waters

Another noteworthy aspect of the case at hand is its clear declaration that Canadian maritime law covers collisions (or allisions) on inland waters, and not merely those on the high seas (see s. 22(3)(c) of the *Federal Court Act*). This declaration is interesting in light of *The Goring*,¹³ where the House of Lords recently took a restrictive view of Admiralty jurisdiction, holding that pursuant to British statute, there was no right to salvage in England in non-tidal waters.

VI. Interesting Comments by La Forest J. on Statutory Interpretation

Mr. Justice La Forest intersperses his reasoning on the foregoing matters with interesting comments concerning the practical benefit of the expansion of Admiralty jurisdiction. He notes, for example, that provincial inferior courts routinely dispose of disputes involving federal matters, such as bills of exchange and commercial paper, and that superior courts would be severely overworked if they were the only courts which could hear matters falling within federal legislative competence without regard to the sum in dispute.¹⁴ In addition, he declares that in light of the essentially unitary nature of Canada's court system, it would be illogical to limit provincial grants of jurisdiction when any grant of jurisdiction to a federal court is already limited¹⁵ by the strict tests set out in the *Buenos Aires Maru*¹⁶ and its predecessors.

La Forest J.'s observations on practicality are also useful as rules of statutory interpretation. For example, he expresses his agreement with Farris C.J. in *Guthrie*,¹⁷ that it would not make sense to interpret Parliament as having given the Federal Court and the provincial superior courts concurrent jurisdiction in actions involving large sums of money, yet as having declined to grant the same convenience regarding small claims.¹⁸ It is arguable that this is not merely a practical consideration, but rather an attempt to divine the intention of the legislator. At any rate, a clear reference to legislative intent appears in La Forest J.'s comment that "Small Claims Courts were established to lessen the burden on superior courts in cases involving relatively small amounts of money and to give greater access to justice to the public."¹⁹

¹³[1988] 1 All E.R. 641 (H.L.).

¹⁴*Supra*, note 1 at 225.

¹⁵*Ibid.* at 226-27.

¹⁶*Supra*, note 4 at 766.

¹⁷*Supra*, note 12.

¹⁸*Supra*, note 1 at 227.

¹⁹*Ibid.* at 225.

VII. Summary

In summary, it may be said that the decision is not only useful in conferring concurrent Admiralty jurisdiction on another court (in this case, an inferior small claims court), but it also confirms the concurrent nature of jurisdiction over Canadian maritime law. Furthermore, it reasserts that collisions on Canadian internal waters constitute part of shipping and navigation.
