

# 2024 TLA Annual Conference & CTLA Mid-Year Meeting

**May 1 – 4, 2024**

Wyndham Grand Rio Mar Puerto Rico  
Golf and Beach Resort  
Rio Grande, Puerto Rico



Transportation Lawyers  
Association

**CTLA**





# The Supply Chain and the Transportation of Goods: A Canadian Perspective

The following presentation overviews the law germane to dispute resolution in Canadian maritime law, admiralty law and shipping law matters.



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# **Agenda**

- 1. Federal Court Decisions**
- 2. Ontario Decisions**
- 3. Non-Ontario Provincial Decisions**
- 4. Tribunal Decision**

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# Federal Decisions:



## ***Schnarr v. Markle, 2023 FC 1004:***

Establishing a Limitation Fund under the *Marine Liability Act*:

### **Facts:**

- Parties were involved in boat collision. Plaintiff commenced action against defendant seeking establishment of limitation fund and related relief in respect of collision between two pleasure craft.

### **Positions:**

- Defendant denied liability and filed counter claim against plaintiff. Defendant moved for stay.
- Plaintiff moved for a guarantee bond and time limitations on the Limitation Fund claims, as well as an enjoining of other potential claimants among other forms of relief.





## ***Schnarr v. Markle, 2023 FC 1004:***

Establishing a Limitation Fund under the *Marine Liability Act*:

### **Issues:**

- Three issues arose from the Motions before the Court. The first was whether a limitation fund should be established; the second was whether the Federal Court proceedings should be dismissed or stayed; and the third was whether the proceedings in any other Court should be enjoined.'



## ***Schnarr v. Markle, 2023 FC 1004:***

Establishing a Limitation Fund under the *Marine Liability Act*:

### **Disposition:**

- One Limitation Fund was permitted to answer the aggregate of all claims. The court also held that the MLA grants a presumed right to limit liability.
- The Defendant's motion for a stay was denied under the *Mon-Oil Ltd.* Test.
- The FC granted Plaintiff's motion to enjoin other parties in concurrent provincial proceedings.

## ***Andrie LLC v. Bluewater Ferry Limited, 2023 FC 155:***

Sufficiency of Evidence in determining negligent navigation:

### **Action:**

- Facilities belonging to B Ltd. were damaged by ice flowing down river — On that same morning, convoy of five vessels streamed down river and passed by B Ltd.'s facilities — B Ltd. claimed that transit of convoy down river caused thick slabs of ice to float downstream along Canadian shoreline, and damaged infrastructure of its ferry terminal



## ***Andrie LLC v. Bluewater Ferry Limited, 2023 FC 155:***

### **Key Finding: Expert Evidence fatal to the claim:**

- Evidence was insufficient to enable conclusion that passage of one or more of vessels caused pieces of ice on Canadian side of river to dislodge and damage causeway, and B Ltd. failed to demonstrate that shipowners caused damage to causeway
- As a result, no genuine issue for trial as to cause of dislodgment of ice.

# ***Brink's Global Services Korea Ltd. v. Binex Line Corp., 2022 FC 571, affirmed on appeal:***

Silver Ingot Theft in International Carriage & Federal Court Jurisdiction:

- Admiralty matter regarding cargo damage. The issue in this case was who was liable for the loss of the cargo of 18,276.02 kg of silver ingots valued at approximately USD \$10,262,242.37. The Cargo was in transit from Korea to New York via Montreal. The shipping container disappeared from a Canadian National (“CN”) railyard in Montreal.



## ***Brink's Global Services Korea Ltd. v. Binex Line Corp., 2022 FC 571, affirmed on appeal:***

- Jurisdiction simpliciter had been established – essence of the claim is for loss incurred as a result of the carriage of goods pursuant to a multimodal through bill of lading, which brought the claim within ss 22(1) of the *Federal Courts Act*.
- *Federal court granted jurisdiction under S 46(1)(a)* - prima facie applies to the case: Paragraph 46 (1) (a) applied because the actual port of discharge on the carriage by water component of the multimodal Bill of Lading was Canada. The carriage of the goods was not limited by the Bill of Lading to only the water carriage component.



## ***Berenguer v. Sata Internacional - Azores Airlines, S.A., 2023 FCA 176***

- Appeal of lower court decision granting
  - **(1)** motion to strike out amended statement of claim and **(2)** dismiss motion to certify action as class proceeding.
- Proposed class action concerned relief for passengers of foreign airline who experienced flight delays on flights to or from Canada.
- Held: Allowed appeal on (1) – passenger complaints are likely within Federal Court jurisdiction, dismissed on (2) – there is a tribunal (CTA) that exists to handle passenger complaints, and so the preferable procedure test was not met. (vs. superior to other available methods)



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# Ontario Decisions:



# ***Conrad Refrigerated Trucking Inc., v. 7123019 Canada Inc. dba Etlas Freight, 2023 ONSC 5433:***

Once a customer's cargo claim is paid, can one recover from the responsible carrier?

- Conrad Refrigerated Trucking (CRT) acted as a freight forwarder and agent for Goodmark Poultry (Toronto) Inc.
- Goodmark needed to import chicken from the US, which is regulated in accordance with *Canada's Export and Import Permits Act*, RSC 1985.
- CRT contracted with Etlas Freight for transportation. No written broker-carrier agreement was signed, aside from a Carrier Confirmation Sheet.
- The goods were stolen upon transportation. CRT paid Goodmark an amount of money that reflected Goodmark's claimed loss.



## ***Conrad Refrigerated Trucking Inc., v. 7123019 Canada Inc. dba Etlas Freight, 2023 ONSC 5433:***

- CRT sued Etlas to recover its payment to Goodmark. Etlas denied liability to CRT, taking the position on the court application that CRT had no standing to sue.
- Etlas argued that CRT was acting only as an agent in introducing Goodmark to Etlas, which resulted in a contract of carriage being made between Goodmark and Etlas. Accordingly, CRT was not a party to that contract and CRT was seeking to be indemnified for losses that were not sustained by it.
- Etlas argued that CRT's payment to Goodmark was as a volunteer, motivated by wanting to "keep a good customer content".

# ***Conrad Refrigerated Trucking Inc., v. 7123019 Canada Inc. dba Etlas Freight, 2023 ONSC 5433:***

## **Court's decision and impact:**

- Court agreed with Etlas.
- Absent a contractual obligation to pay a cargo claim to a shipper as a means to acquire standing to sue, the broker should consider taking an assignment of rights from its indemnified customer so as to be able to claim against the carrier.



## ***Thind v. Polycon Industries, 2022 ONSC 2322:***

Determining jurisdiction of the Ontario Superior Court:

The plaintiff truck driver became injured after his cargo dislodged while being unstrapped on arrival in Ohio. He claimed that the cargo was negligently loaded onto his vehicle in Guelph, leading to the accident at his destination. One of the defendants, MPW Industrial Services, operating the facility in Ohio where the plaintiff was injured contested the jurisdiction of the Ontario Superior Court.



## ***Thind v. Polycon Industries, 2022 ONSC 2322:***

### **Establishing jurisdiction:**

- *Van Breda* test applied to establish jurisdiction simpliciter – requiring a substantial connection to the jurisdiction. The alleged tort was also multi-jurisdictional based on a wrongful act: the plaintiff relied on all defendants, including MPW Industrial Services, to have the cargo properly loaded onto his vehicle in Ontario.



## ***Thind v. Polycon Industries, 2022 ONSC 2322:***

### **Establishing jurisdiction:**

- In a *forum non conveniens* analysis, MPW Industrial Services had not shown that Ohio was clearly the more appropriate forum. Both Ontario and Ohio courts might be appropriate to hear the action, and factors were neutral. Fairness and efficiency, however, favoured Ontario. The court recognized that a connection existed between the tort claim and Ohio. Nevertheless, fairness for the parties had to be considered — the plaintiff resided in Ontario where his trucking business was located and the tortious acts in cargo occurred. If jurisdiction were refused, the plaintiff would be required to litigate in Ohio, which would likely be more onerous.



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# Non-Ontario Provincial Decisions:



## ***Knight v. Black, 2022 BCCA 130:***

### Entitlement to Limitation:

#### **Action:**

- Defendant Ministry of Transportation and Infrastructure and its contractor planned to undertake road stabilization work along river, which raised concerns at Department of Fisheries and Oceans (DFO) about the habitat
- Contractor arranged for reconnaissance to identify sites needing work, inviting plaintiff DFO biologist to attend trip on B's boat. Ministry reimbursed contractor for B's invoiced charge after trip on which plaintiff fell when B's boat hit sandbank
- Plaintiff brought action against B and defendants, but their application for determination that their liability for damages was subject to limit set by Marine Liability Act was granted.
- Plaintiff appealed



## ***Knight v. Black, 2022 BCCA 130:***

### Entitlement to Limitation:

#### **Appeal allowed in part:**

- Application judge correctly found that plaintiff was passenger under contract of carriage (even though it was a charterparty) and that B was carrier whose liability for damages was limited, but erred in finding that contractor and Ministry were carriers .
- Agreement between B and contractor, even if time charter as plaintiff claimed, came within Act's definition of contract of carriage.

## ***Knight v. Black, 2022 BCCA 130:***

### Entitlement to Limitation:

#### Appeal allowed in part:

- Plaintiff did not have to be privy to contract of carriage in order to be passenger under s. 27(2)(a) of Act (Athens Convention - states that a passenger is any person carried in a ship “under a contract of carriage”)
- However, entering into contract to have people transported by boat doesn’t make contracting party a “carrier”. Athens Convention, adopted in the Act, is intended to protect shipowners’ right to limit.





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# Tribunal Decisions:



***Application by Autumn Evoy, Erin Maxwell, Hunter Troup, Lara Plokhaar, Kandi Smiley, Edwina Brooks against Air Canada, WestJet, Air Transat, K.L.M. Royal Dutch Airlines (KLM) and VIA Rail Canada Inc. (VIA), pursuant to the Canada Transportation Act, Decision No. 105-AT-C-A-2023, 22-41428***

- Canadian Transportation Agency ruled on six applications in which applicants sought to travel by air with an animal that is or could be an emotional support animal (ESA). Agency distinguished ESAs, which are not regulated, from emotional support dogs (ESDs), which are.



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- Distinction between ESDs and ESAs: a service dog is “a dog that has been individually trained by an organization or person specializing in service dog training to perform a task to assist a person with a disability with a need related to their disability”; an ESA does “not perform a task; rather, their presence provides comfort and emotional support to persons with mental health-related disabilities.”



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- As in Canada, air carriers in the US have long been required to carry service animals. Carriers were also legally required to transport ESAs in the US from 2008 until January 2021. The US DOT determined that regulatory change was required due to:
- increases in service animal complaints by passengers with disabilities and by air carriers;
- inconsistent definitions of “service animal” among US Federal agencies;
- disruptions caused by requests to transport unusual species of animals on board aircraft, which eroded public trust in legitimate service animals;
- incidents of passengers fraudulently representing their pets as service animals; and
- the reported increase in the incidence of misbehaviour by ESAs.



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- The Final Rule defines a service animal as “a dog, regardless of breed or type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability”. This definition excludes all non-task-trained animals, such as ESAs, comfort animals and service animals in training.



- Agency heard from passengers and interested groups in support of ESAs
- Airlines argued that it is critical that any animal on board an aircraft to support a person with a disability is trained to meet the safety and health standards for air transportation. Aggressive and disruptive behaviour and waste elimination by ESAs are highly likely to occur during flight because of their lack of training.
- As for fraud, in the US from 2018 to 2019, the number of passengers travelling with trained service animals increased modestly by 2.8%, the number of passengers travelling with pets increased by 5.97%, and the number of passengers travelling with ESAs increased by more than 10.7%. One of its members experienced an increase of 27.9% in ESAs, while the increase in its total passengers was just 6.1% over the same period.



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- **Guidance:** acceptance of species other than dogs as an ESA would cause undue hardship for carriers; the unrestricted carriage of ESDs would cause undue hardship for carriers; with appropriate conditions and safeguards, carriers could carry some ESDs without undue hardship. Conditions include proof of need, notice to airline in advance, vet certification.



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# QUESTIONS?

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