

# MARITIME



We handle maritime law matters that include a Canadian aspect for a worldwide client base. Our lawyers represent clients in nearly all areas of maritime law.

Our clients include domestic and foreign ship owners, charterers, shippers, receivers, ports and terminals, tug and tow operators, marine construction and dredging companies, marine insurers and P&I clubs, freight forwarders and NVOCCs, salvors as well as banks, bankruptcy trustees and law firms in other jurisdictions.

## OUR SERVICES

Our litigation work includes enforcement and defence of maritime claims, ship arrest, charterparty and commercial contract disputes, vessel collision and transportation casualties, carriage of goods and passengers, vessel and cargo loss/damage, marine insurance and P&I matters, bodily injury claims, towage and salvage, ship design and repair, marine pollution, marine property disputes (debtor/creditor including bankruptcy), maritime regulatory matters, and the liabilities of harbours, terminals and marinas.

Our commercial work comprises drafting and advising on commercial contracts including charterparties and towage agreements, marine mortgages, insurance policies, financings and other transportation industry documents including bills of lading, ship sale agreements, shipbuilding and repair contracts and contracts of affreightment. We also advise clients on other maritime matters including vessel ownership, registration and importation and legislative matters including regulatory compliance.

In all of our work we are committed to service excellence and emphasize a results-oriented approach that focuses on desired client outcomes.

Our lawyers have been recognized in peer-reviewed publications as leading Canadian practitioners in the area of maritime law. Our team is experienced at all levels of court in both British Columbia, Ontario and in the Canadian Federal Court system including the Supreme Court of Canada. Our lawyers have also brought and defended actions for clients in the courts of Ontario, Alberta and Manitoba, and are experienced in administrative and regulatory proceedings including the Canadian Transportation Safety Board, as well as in commercial arbitration and mediation.

## INDUSTRY INVOLVEMENT

Members of the Maritime Practice Group have participated at the executive

## TEAM LEADER



JASON  
**KOSTYNIUK\***  
PARTNER

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## TEAM MEMBERS

- Ian Breneman
- Mathew Crowe
- David Garner
- Christopher Hirst
- Jason Lattanzio
- Loren Mallett

level or spoken at leading Canadian and international maritime conferences and seminars, and are actively involved in a number of associations including:

- Canadian Maritime Law Association
- Canadian Bar Association National Maritime Law Section
- Vancouver Maritime Arbitrators Association
- Chamber of Shipping of British Columbia
- Canadian Board of Marine Underwriters
- Marine Insurance Association of British Columbia
- Transportation Lawyers Association
- Canadian Transportation Lawyers Association.

## REPRESENTATIVE EXPERIENCE

- Acting for foreign ship owners in multi-party Federal Court litigations arising from global collapse of Korean shipping line
- Advising Canadian mineral exporter in dispute involving carriage by sea of \$80 million shipment of ore
- Regularly acting for clients in ship-sourced oil pollution litigation
- Representing Canadian marine terminal in large fire casualty with marine and land based pollution components
- Acting for marine underwriters in \$1.6 million barge capsized
- Defending foreign steel and power company in Federal Court in complex multi-party litigation involving large shipment of steel to Canada
- Defending Canadian naval architect firm in US \$4 million cruise ship retrofit project dispute
- Acting for Canadian marine terminals in commercial disputes and claims regarding damage to berths, ships and cargo
- Drafting and revision of vessel charter parties and towage agreements
- Representing owners in \$10 million sale of large container ship and bunkers
- Acting for ship owners and their insurers in a variety of marine casualty matters involving damage to property and persons
- Assisting clients with Transportation Safety Board (TSB) and Transport Canada investigations
- Advising marine industry clients on statutory and regulatory requirements
- Advising marine insurers on policy wordings and coverage issues

### Recent Cases Include:

- *Royal Bank of Canada v. the "Ocean Marauder" et al*, 2019 FC 1043.

Orders obtained for Trustee in bankruptcy to stay claim of creditor of bankrupt former owner of fishing vessel and for payment out of court to the Trustee of remaining vessel sale proceeds.

- ***British Columbia v The Administrator of the Ship-source Oil Pollution Fund***, 2018 BCSC 793, affirmed 2019 BCCA 232. Restoration by Province of a corporate owner of a derelict vessel was allowed but without prejudice to the subrogated rights the Administrator had acquired against the Province while the corporate owner was dissolved.
- ***Canada (Ship-source Oil Pollution Fund) v. Beasse***, 2018 FC 39. Summary judgment obtained for Administrator of SOPF for recovery of pollution clean-up expenses due to sinking of tugboat.
- ***Oddy v. Waterway Houseboat Equities Inc.***, 2017 BCSC 1879, affirmed 2019 BCCA 185. Successful defence at trial and at appeal of a personal injury action against an insured houseboat rental company alleging a faulty mooring system on a chartered houseboat.
- ***Canpotex Shipping Services Limited v. Marine Petrobulk Ltd.***, 2018 FC 957. Successful defence of vessel charter against competing claims for payment in respect of outstanding bunkers supplied to multiple vessels
- ***Snow Valley Marine Services Ltd. v. Seaspan Commodore (Tug)***, 2015 FC 304. Subrogated recovery of damages for total loss of commercial tug from sinking due to defendant's failure to properly secure a safety line. Proper measure of damages found to be the value of the tug to the plaintiff as a going concern at the time of the loss.
- ***Wells Fargo Equipment Finance Company and Others v. The Owners and All Others Interested in the Barge "MLT-3" and Others***, 2012 FC 738. The first and only decision on section 43(2) of the Marine Liability Act, which held that the Hague-Visby Rules do not apply to contracts of carriage within Canada unless there is a written contract.
- ***Timberwest Forest Corp. v. Pacific Link Ocean Services Corporation***, 2009 FCA 119. Subrogated claim for loss of logs from deck of a barge. Hague-Visby Rules found not to apply in light of bill of lading terms. Waiver of subrogation clause in policy found to apply.
- ***Nelson Marketing International Inc. v. Royal & Sun Alliance Insurance Co. of Canada***, 2006 BCCA 327. Claim under "all risks" cargo insurance for damage to shipments of laminated wood flooring. Appeal court overturning trial judge and agreeing with underwriters that there was no evidence of a fortuity and that loss was attributable to the nature of the goods, an excluded peril.
- ***566935 B.C. Ltd. d.b.a. West Coast Resorts v. Allianz Insurance Co. of Canada (The P.W.D. No. 315)***, 2006 BCCA 469. Appeal Court upholding trial ruling in favour of underwriters' position that there was no "peril of the sea" cover under a hull policy for barge sinking from a failure of planking due to worm infestation. Loss was from wear and tear or vermin, and was excluded.
- ***North King Lodge Ltd. v. Gowlland Towing Ltd.***, 2005 BCCA 557. Court of Appeal decision that restates the limited duty of care that an owner or occupier of maritime property owes to a trespassing vessel.

- ***Bayside Towing Ltd. v. Canadian Pacific Railway Co.***, [2001] 2 F.C. 258. The first decision in Canada on the new limitation of liability regime.
- ***Norsk Pacific Steamship Co. Ltd. v. Canadian National Railway Company (Jervis Crown)***, [1992] 1 S.C.R. 1201. Broadened the ambit of recovery for pure economic loss.
- ***J.A. Johnston Company Ltd. v. The Ship Tindfiell***, (1973) 2 F.C. 1003. The first decision outside the United States to hold that a shipping container was not a “package” within the Hague Rules.

