

# **CBMU Spring Conference 2025**

## **Canadian Maritime Law Association Report**

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# Topics

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- 1. CMI
  - Collision Convention
  - MASS
  - Lex Maritima
- 2. Cases of Interest
- 3. CMLA AGM and Annual Seminar



# Comite Maritime International (CMI)

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## Tokyo 2025: Collision Convention – International Working Group

- **Definitions**
  - **Vessel** – should it include all floating structures?
  - **Collision** is not defined. Should it be? - If so, should it include cases where damage is caused to one vessel by the manoeuvre of another even though there was no physical contact between the two? Should it include vessels engaged in a towing situation? Should it include collisions where both vessels are owned by the same beneficial owner?
- **Liability** – The 1910 convention's liability concept is based on the fault of the vessel. IWG – should remain

# Comite Maritime International (CMI)

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## Tokyo 2025: Collision Convention – International Working Group

- Defects in vessel: Under the 1910 convention, the vessel owner will not be liable if the collision was caused by some defect in the vessel which the owner, by applying due diligence in all respects, was unable to detect. Should there be an exception to the effect that the vessel should be strictly liable for such defects irrespective of fault?
- Should the revised Convention define recoverable damages?
- Should a revised Convention include international private law rules on the law otherwise applicable to all claims, seeking to identify one law that is relevant? If so, should the revised Convention adopt the choice of law provisions

# Comite Maritime International (CMI)

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## Tokyo 2025: Collision Convention – International Working Group

- Should a revised Convention provide for jurisdiction?
- Should a new convention include regulations on the recognition and enforcement of judgments in collision matters
- Should the revised Convention include specific rules for collisions involving autonomous and unmanned ships

# Comite Maritime International (CMI)

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## Tokyo 2025: MASS International Working Group

- Maritime Autonomous Surface Ships (MASS) are ships that operate with varying degrees of autonomy, meaning they can function with minimal or no human intervention
- Development of a MASS Code
- MAIN PRINCIPLES FOR MASS AND MASS FUNCTIONS [AND REMOTE
- CHAPTER 5                      CERTIFICATE AND SURVEY
- CHAPTER 6                      APPROVAL PROCESS
- CHAPTER 7                      RISK ASSESSMENT
- CHAPTER 8                      OPERATIONAL CONTEXT

# Comite Maritime International (CMI)

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Tokyo 2025: MASS International Working Group

- CHAPTER 9                SYSTEM DESIGN
- CHAPTER 10             SOFTWARE PRINCIPLES
- CHAPTER 11             MANAGEMENT OF SAFE OPERATIONS
- CHAPTER 12             CONNECTIVITY
- CHAPTER 13             RADIOCOMMUNICATIONS
- CHAPTER 14             ALERT MANAGEMENT
- CHAPTER 15             HUMAN ELEMENT
- ...
- CHAPTER 18             REMOTE OPERATION

# Comite Maritime International (CMI)

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## Tokyo 2025: Lex Maritima

- CMI Plenary Session adopted the final draft of Lex Maritima
- The CMI Lex Maritima is an articulation of the general principles of maritime law.
- This instrument aims to facilitate the understanding of maritime law, as a special branch of the law. Moreover, the instrument can assist in education, interpretation, drafting of national rules and case law. If the ‘positive maritime law’ allows a Court to rely on the general principles of (maritime) law (which indeed occurs), he or she may even use the CMI Lex Maritima as a source of law.



# Comite Maritime International (CMI)

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## Tokyo 2025: Lex Maritima

- The CMI Lex Maritima consists of 5 'Rules' and 25 'Principles'.
- Rule 1 – Objective: The objective of the CMI Lex Maritima is to identify and disseminate the universally applied principles of maritime law, thereby clarifying its specificities and promoting its international uniformity.
- Rule 5 – Application of Principles. The Principles may be applied:
  - (1) whenever the positive maritime law refers to the general principles of maritime law, the Lex Maritima or the lex mercatoria;
  - (2) whenever a Court decides to seek guidance in the general principles of maritime law, the Lex Maritima or the lex mercatoria;
  - (3) whenever the parties to a contract have agreed to incorporate the Principles, the general principles of maritime law, the Lex Maritima or the lex mercatoria into their contract.

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# Comite Maritime International (CMI)

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Tokyo 2025: Lex Maritima

- Principle 3 – Identification, nationality and flag
  - (1) All ships are identified by a name and a home port.
  - (2) Ships have the nationality of the State whose flag they are entitled to fly. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. There must exist a genuine link between the State and the ship.
- Principle 7 – The Rules of the Road

The International Regulations for Preventing Collisions at Sea, 1972, are as such part of the Lex Maritima.

# Comite Maritime International (CMI)

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Tokyo 2025: Lex Maritima

- Principle 11 – General tonnage limitation

It is common for the positive maritime law to implement the Principle that shipowners, ship operators and salvors have the right to limit their liability for specific categories of claims. To this end it may implement, inter alia, the following Principles:

- (1) Limits of liability are based on the tonnage of the ship and distinguish between general limits and limits for passenger claims.
- (2) A person liable shall not be entitled to limit his liability if it is proved that the loss resulted from his personal act or omission, committed with the intent to cause such loss, or recklessly and with knowledge that such loss would probably result ,,,

# Cases of Interest

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## Navtech Inc. v. Chantier Davie Canada Inc., 2025 FC 833

Davie retained Navtech to perform vessel design and naval architecture services related to a project – a ship conversion. After Navtech produced a number of drawings Davie informed Navtech that another engineering company, Navis Consult [Navis], a Croatian firm, would be involved in the engineering work necessary for the Vessel Conversion. Davie advised Navtech would not receive the information necessary for it to be able to complete the remaining deliverables under the contracts and therefore would not be required to complete those deliverables. Navtech commenced an action against the Defendants by Statement of Claim alleging unpaid royalties due to Navtech. It also sued FFS, a bareboat charterer of the vessel and it sued the vessel.

# Cases of Interest

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## Navtech Inc. v. Chantier Davie Canada Inc., 2025 FC 833

Held: 1. Navtech's claim did not give rise to a maritime lien against the Defendant Ship, the in rem action against the Ship was dismissed.

2. The case against one of the defendants FFS was dismissed as there was no privity of contract.

3. Granted summary judgment in favour of Navtech for the amount of \$2,258,437.83 claimed for royalties, plus interest to be quantified as this action proceeds, but will stay enforcement of the judgment pending determination of the Davie Claim (against Navtech alleging that Navtech's work was not performed in

# Cases of Interest

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## Navtech Inc. v. Chantier Davie Canada Inc., 2025 FC 833

accordance with industry standards and contained errors and deficiencies, resulting in such work having to be re-performed or corrected by Navis,) trial will be required to adjudicate the merits of the Davie Claim.

4. On summary judgment dismissing Navtech's claim under the Copyright Act.

# Cases of Interest

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## **Heidelberg Materials Canada Limited v. Toronto Port Authority (PortsToronto), 2025 FC 543**

Heidelberg operated a cement terminal facility at the eastern end of the Port of Toronto Ship Channel (“Toronto Ship Channel”). Heidelberg used the Toronto Ship Channel to move cement to its facility for storage before being shipped to customers throughout eastern Canada and the northern United States. In order for Heidelberg and its commercial vessel operator to access their cement terminal facility, the vessels must pass through the Cherry Street Bridge (the “Bridge”).

Ports Toronto announced that the bridge needed repairs and provided notice that it would be left down for periods of time and closed to vessel traffic.

# Cases of Interest

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## **Heidelberg Materials Canada Limited v. Toronto Port Authority (PortsToronto), 2025 FC 543**

Heidelberg claimed that the announcement was “unexpected” and that it had “insufficient notice” of PortsToronto’s plans.

On January 16, 2025, a Navigation Protection Program Officer, acting on behalf of the Minister, approved the application under subsection 7(6) of the CNWA. The Minister’s approval was subject to the condition that “scaffolding must be removed and the bridge shall be operational by April 15 of any year.” On judicial review the court found the decision reasonable.



# Cases of Interest

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## **12563789 Canada Inc. et al. v. Tiki Tours International Corp., 2025 ONSC 1846**

The claimants found information on the internet about a business in Ottawa that marketed “Tiki” boats. Tiki boats are essentially flat boats on aluminum pontoons with a bar, enclosed toilet and a straw roof that move slowly on the water and can hold a dozen or so people.

The claimants and seller of the boats began negotiations on a joint venture for Wasaga beach.

The claimants ordered and paid for two boats.

Although drafted and reviewed by the parties, no Operator Agreement was ever executed. In March 2022 the claimant announced they did not want to continue pursuing a business relationship with the sellers. The sellers, acting pursuant to the unexecuted Operator Agreement, sent the plaintiffs a notice of termination, and requested return of the boats. The plaintiffs refused. Litigation ensued.

# Cases of Interest

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## **12563789 Canada Inc. et al. v. Tiki Tours International Corp., 2025 ONSC 1846**

The sellers TTI tried to prevent the plaintiffs from using the boats during the summer of 2022. Although the boats had been registered with Transport Canada in August 2021 as being jointly owned by the plaintiff company and TTI, in May 2022, TTI unilaterally changed the ownership registration to it alone and accused the plaintiffs of operating illegally on social media. After the plaintiffs learned of this, Transport Canada reversed the change, which allowed the plaintiffs to operate the boats.

The plaintiffs sought damages for defamation and breach of fiduciary duty arising from the TTI's conduct in 2022 and 2024, conduct they say caused them damage and for which the defendants should be sanctioned with punitive damages.

# Cases of Interest

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## **12563789 Canada Inc. et al. v. Tiki Tours International Corp., 2025 ONSC 1846**

Court: The parties did not reach a final agreement on a joint venture.

The only clear contract between the parties was the sale of the boats.

TTI defamed the plaintiffs in 2022 and acted in breach of their fiduciary duty to the plaintiffs in 2024 in cancelling the registration for the boats, for which the plaintiffs are entitled to damages including punitive damages.

Award: \$30,000 for breach of fiduciary duty;

\$30,000 for defamation; and

\$30,000 in punitive damages.

# Cases of Interest

## **O'Brien-Hornsey v. British Columbia Ferry Services Inc., 2025 BCHRT 72**

Erin O'Brien-Hornsey alleged that her former employer, British Columbia Ferry Services Inc. [BC Ferries], discriminated against her on the basis of physical disability and sex contrary to s. 13 of the Human Rights Code. She says that a culture of discrimination emerged in the last 18 months of her employment and that led to her being accused of misconduct, her version of events being dismissed, and ultimately to the suspension and termination of her employment.

BC Ferries denies discriminating and asserts that it terminated Ms. O'Brien-Hornsey's employment for reasons completely unrelated to her sex or physical disability. It says the decision was based strictly on repeat misconduct

# Cases of Interest

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## **O'Brien-Hornsey v. British Columbia Ferry Services Inc., 2025 BCHRT 72**

Adjudicator: there is no reasonable prospect that Ms. O'Brien-Hornsey can prove at a hearing that her disability or sex were factors in the negative impacts she experienced in her employment. Dismissed.

The allegations related to a culture of sexism in the workplace was allowed to proceed to a hearing.

# Cases of Interest

## **ETG Commodities Inc. v. Hapag-Lloyd (Canada) Inc., 2025 FC 474**

In ETG Commodities Inc. v. Hapag-Lloyd (Canada) Inc., 2025 FC 474 the Federal Court of Canada had to consider two issues:

- a) Did a geographical deviation defeat the one-year time bar in the Hague-Visby Rules
- b) Was the agent of a carrier entitled to the protection of the terms of the bill of lading issued by the carrier.

Held: The one-year time limitation set out in Article III, Rule 6 of the Hague-Visby Rules is to be interpreted broadly and applied generally. The Court found that “In my opinion, the geographic deviation here falls within the meaning of the words “in any event”. The geographic deviation does not defeat the time bar limitation raised by [Hapag Canada].”

# Cases of Interest

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## **ETG Commodities Inc. v. Hapag-Lloyd (Canada) Inc., 2025 FC 474**

The Court then dealt with the agency issue. The Court found that:

“[107] The forbearance of suit clause is clear. It is not uncommon. This Court and the Federal Court of Appeal have upheld such clauses. I see no reason to depart from the jurisprudence of this Court concerning such clauses.

[108] The named Defendant [Hapag Canada] is an agent of [Hapag Lloyd lines]. I agree with the submissions of the Defendant that in these circumstances, Hapag-Lloyd (Canada) Inc. is protected against suit.”

# CMLA AGM and Annual Seminar

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June 11-13 Toronto

June 11 – Reception 6pm Courtyard Marriot – Yonge St.

June 12 – AGM – Morning

June 12 – Seminar – Afternoon

June 12 – Dinner – Royal Canadian Yacht Club

June 13 – Seminar – Morning

Full Registration : \$895 plus HST

(includes reception, breakfasts, lunches and dinner at RCYC)

Deadline for Rooms and Registration (that includes dinner RCYC) May 25<sup>th</sup> 2025





# Thank you

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