THE SHIPPING LAW REVIEW

SIXTH EDITION

Editors
George Eddings, Andrew Chamberlain
and Holly Colaço

THE LAWREVIEWS

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PREFACE

The sixth edition of this book aims to continue to provide those involved in handling shipping disputes with an overview of the key issues relevant to multiple jurisdictions. We have again invited contributions on the law of leading maritime nations, including both major flag states and the countries in which most shipping companies are located. We also include chapters on the law of the major shipbuilding centres and a range of other jurisdictions.

As with previous editions of *The Shipping Law Review*, we begin with cross-jurisdictional chapters looking at the latest developments in important areas for the shipping industry: competition and regulatory law, sanctions, ocean logistics, piracy, shipbuilding, ports and terminals, offshore shipping, marine insurance and environmental issues. A new chapter on decommissioning is also included, which seeks to demystify this interesting and fast-developing area of law.

Each jurisdictional chapter gives an overview of the procedures for handling shipping disputes, including arbitration, court litigation and any alternative dispute resolution mechanisms. Jurisdiction, enforcement and limitation periods are all covered. Contributors have summarised the key provisions of local law in relation to shipbuilding contracts, contracts of carriage and cargo claims. We have also asked the authors to address limitation of liability, including which parties can limit, which claims are subject to limitation and the circumstances in which the limits can be broken. Ship arrest procedure, which ships may be arrested, security and counter-security requirements, and the potential for wrongful arrest claims are also included.

The authors review the vessel safety regimes in force in their respective countries, along with port state control and the operation of both registration and classification locally. The applicable environmental legislation in each jurisdiction is explained, as are the local rules in respect of collisions, wreck removal, salvage and recycling. Passenger and seafarer rights are examined, and contributors set out the current position in their jurisdiction. The authors have then looked ahead and commented on what they believe are likely to be the most important developments in their jurisdiction during the coming year.

The shipping industry continues to be one of the most significant sectors worldwide, with the United Nations estimating that commercial shipping represents around US$380 billion in terms of global freight rates, amounting to about 5 per cent of global trade overall. More than 90 per cent of the world's trade is still transported by sea. The law of shipping remains as interesting as the sector itself and the contributions to this book continue to reflect that.

The maritime sector continues to take stock after experiencing a bumpy ride during the past few years and, while the industry is looking forward to continued recovery, there is still uncertainty about the effects of trade tariffs and additional regulation. Under the current US administration, the sanctions picture has become ever more complex and uncertain.

With a heightened public focus on the importance of environmental issues, a key issue within the shipping industry remains environmental regulation, which is becoming ever more stringent. At the IMO's MEPC 72 in April 2018, it was agreed that international shipping carbon emissions should be cut by 50 per cent (compared with 2008 levels) by the year 2050. This agreement may lead to some of the most significant regulatory changes in the industry in recent years and is likely to lead to greater investment in the development of zero carbon dioxide fuels, possibly paving the way for phasing out carbon emissions from the sector entirely. This new IMO Strategy, together with the stricter sulphur limit of 0.5 per cent m/m coming in from 2020, is generating increased interest in alternative fuels, alternative propulsion and green vessel technologies.

Brexit continues to pull focus, with the withdrawal agreement reached between the EU and UK having been rejected three times and an extension of the Article 50 process granted until 31 October 2019. Much has been printed about the effects of Brexit on the enforcement of maritime contracts. However, the majority of shipping contracts globally will almost certainly continue to be governed by English law, as Brexit will not significantly effect enforceability. Arbitration awards will continue to be enforceable under the New York Convention and it seems likely reciprocal EU and UK enforcement of court judgments will be agreed.

We would like to thank all the contributors for their assistance in producing this edition of *The Shipping Law Review*. We hope this volume will continue to provide a useful source of information for those in the industry handling cross-jurisdictional shipping disputes.

George Eddings, Andrew Chamberlain and Holly Colaço
HFW
London
May 2019

Chapter 31

NEW ZEALAND

Simon Cartwright, Rob McStay, Charlotte Lewis and Zoe Pajot[1]

I COMMERCIAL OVERVIEW OF THE SHIPPING INDUSTRY

As the previous authors of this chapter have noted, New Zealand is essentially an importer and exporter. Other than recreational craft, it is not a ship-owning nation.[2]

Commercially, New Zealand is serviced by international shipping lines for container, bulk and car carriers. In recent years, there has also been a significant growth in cruise liners visiting our ports: 270,000 cruise passengers were expected during the 2017–2018 season.[3]

Domestic shipping largely comprises the local fishing fleet, several coastal tankers and bulk carriers (primarily for cement cargoes) and ferries (including the inter-island ferries operating between the North and South Islands).

Although the present government is considered to be 'pro' rail and coastal shipping, at present there has been little sign of support for the latter.

A national debate about clean seas and inland waters has brought our maritime environment into focus. The maritime regulator, Maritime New Zealand, has for several years had a 'clean seas' policy. Together with other government departments, a number of initiatives have been taken in this respect, including the introduction in May 2018 of a Craft Risk Management Standard to prevent bio-fouling from ship's hulls and the adoption of international regulations for ballast water. This has led to the detention in or rejection from New Zealand waters of a number of vessels.

New Zealand is not currently a signatory to Marpol Annex VI. The government recently called for submissions as to whether New Zealand should accede. We expect New Zealand will do so.

Looking ahead, New Zealand hosts the America's Cup regatta in Auckland in 2021. This is expected to give a substantial boost to the country's pleasure craft and superyacht industries, as well as the wider marine industry in New Zealand.

II GENERAL OVERVIEW OF THE LEGISLATIVE FRAMEWORK

New Zealand is a common law jurisdiction, meaning that its legal framework is based on both legislation and case law. In the maritime context, legislation provides the broader framework and is supplemented by international conventions, domestic regulations, rules and standards.

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1 Simon Cartwright is a partner, Rob McStay and Charlotte Lewis are solicitors, and Zoe Pajot is a maritime legal adviser at Hesketh Henry.

2 According to the Maritime New Zealand Annual Report 2016/2017, 1.45 million New Zealanders are involved in recreational boating in some way.

3 Tourism New Zealand: Cruise Sector 25 October 2017.

The principal legislation is the Maritime Transport Act 1994 (MTA). The MTA regulates maritime activity (safety), the marine environment (prevention of pollution etc), the protection of seafarers, the international carriage of goods by sea, and liability for civil maritime claims and maritime offences (including the incorporation of international conventions).

International conventions ratified by New Zealand are usually implemented through the MTA: these include the International Convention on Salvage 1989, the LLMC Convention 1976 (as amended by the 1996 Protocol) and the Hague-Visby Rules. Other conventions are given effect by subordinate regulations; for example, the Maritime Rules (discussed below) give force to the COLREGs and SOLAS.

Other legislation focuses on specific matters, such as admiralty jurisdiction,[4] domestic carriage of goods,[5] biosecurity,[6] non-sector-specific employee safety,[7] security measures around ships and ports,[8] criminal provisions relating to maritime matters,[9] rights and liability under shipping documents and the delivery of goods, liens for freight and warehousing of cargo,[10] formation of port companies and management and operation of the commercial aspects of ports,[11] discharge from ships and offshore installation within 12 nautical miles,[12] ship registration, transfer of ownership and mortgages,[13] and outward shipping policy.[14]

Several different pieces of legislation apply to the maritime environment both in internal waters and New Zealand's territorial seas and exclusive economic zone: the MTA, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 and the Resources Management Act 1991.[15]

In addition to primary legislation, New Zealand has subordinate regulations and orders, which contain administrative and mechanical provisions, and rules giving effect to technical standards and establishing a framework for compliance, such as the Maritime Rules[16] and the Marine Protection Rules.[17]

4 Admiralty Act 1973 (and Part 25 of the High Court Rules 2008).

5 Contract and Commercial Law Act 2017, Part 5, Subpart 1.

6 Biosecurity Act 1993.

7 Health and Safety at Work Act 2015.

8 Maritime Security Act 2004 and Maritime Security Regulations 2004, giving effect to aspects to the ISPS Code.

9 Maritime Crimes Act 1999.

10 Contract and Commercial Law Act 2017, Part 5, Subpart 2.

11 Port Companies Act 1988.

12 Resource Management Act 1991 (and Resource Management (Marine Pollution) Regulations 1998).

13 Ship Registration Act 1992.

14 Shipping Act 1987.

15 There is a further division in the safety context between local regulations of recreational boating and shipping under navigation safety bylaws, and national regulations under the MTA94 and Maritime Rules.

16 The Maritime Rules give effect to a number of conventions, including the STCW, the COLREGs and SOLAS.

17 The Marine Protection Rules give effect to a number of conventions, including MARPOL, the London Dumping Convention, OPRC and CLC.

III FORUM AND JURISDICTION

i Courts

Maritime claims will generally be heard in the High Court, which has an admiralty jurisdiction (pursuant to the Admiralty Act 1973) as well as a general jurisdiction.

If the amount in dispute is more than NZ$350,000 or is an *in rem* claim, it must be brought in the High Court. *In personam* claims of NZ$350,000 or less may be determined in the District Court.

The High Court has no specialist admiralty judges.

ii Arbitration and ADR

Arbitrations are conducted pursuant to the Arbitration Act 1996, under which there is wide scope for parties to agree their own procedure. The typical procedure (as set out in Schedule 1 of the Act) will involve the exchange of statements of claim and defence, disclosure of documents (on a more informal basis than is required in the High Court), briefs of evidence and submissions, and an arbitration hearing. The time frame for arbitration will vary but will typically last between six months and a year for a substantial arbitration.

There are two main domestic arbitral institutions, being the Arbitrators' and Mediators Institute of New Zealand and the Resolution Institute. Neither has specialist maritime expertise. The Maritime Law Association of Australia and New Zealand has issued arbitration rules that parties may decide to adopt, and has a panel of recommended arbitrators.

Mediation can also be used to resolve disputes and is largely unregulated in the commercial context.

It is not common for maritime arbitrations to be seated in New Zealand. Typically, however, parties to maritime contracts will choose arbitration in London or Singapore.

iii Enforcement of foreign judgments and arbitral awards

Foreign judgments can be enforced under common law or by statute. The Reciprocal Enforcement of Judgments Act 1934 (REJA) provides for the enforceability of judgments for a prescribed 27 countries on a reciprocal basis, including the United Kingdom, Hong Kong and France. A judgment registered under Part I of the REJA has the same effect as if the judgment had been originally given in the High Court on the date of registration. Australian judgments may be enforceable in New Zealand under the Trans Tasman Proceedings Act 2010.

Court judgments in British Commonwealth countries for the payment of money may be enforceable by filing the judgment with the High Court, requesting execution and sealed in accordance with Section 172 of the Senior Courts Act 2016.

In certain cases, a foreign judgment can be enforced under common law if (1) it is a money judgment and is not for a sum in respect of taxes or penalty; (2) the judgment is final and conclusive; and (3) the foreign court had jurisdiction to give the judgment against the judgment debtor.

Limitation periods for liability

Under the Limitation Act 2010 (LA), New Zealand has a generally applicable limitation period of six years after the date of the act or omission on which the claim is based. However, there are several exceptions, including:

a if the claim has a late knowledge date on which the claimant has gained all the relevant facts as specified by Section 14(1) of the LA;

b a one-year limit under the Hague-Visby Rules (HVR) for claims in respect of loss or damage to goods under a contract of carriage governed by the HVR;

c under the Contract and Commercial Law Act 2017, there is a one-year time limit for claims relating to domestic carriage of goods and the contracting carrier must be notified of any partial loss or damage within 30 days;

d under Section 361 of the Maritime Transport Act 1994 (MTA), no action may be brought in respect of discharge or escape of oil from a CLC Convention vessel, or in respect of discharge or escape of bunker oil from a Bunker Convention vessel, unless the proceedings have been commenced no later than three years after the date on which the claim arose, nor later than six years after the event by reason of which liability was incurred;

e a general one-year time limit for MTA defences, which does not run while a person who is charged with an offence is beyond the territorial sea, and a six-month time limit for offences under the Resource Management Act 1991;

f under Section 97 of the MTA, there is a two-year time limit on claims arising from collisions; however, the plaintiff can apply for an extension;

g salvage claims are subject to a two-year time limit under Article 23 of the International Convention on Salvage 1989; and

h in addition to these statutory limits, the admiralty jurisdiction draws on the equitable concept of laches in other instances of delay. When considering laches, the court may apply the LA by analogy with reference to the LA provisions.

The LA applies to arbitral and court proceedings.

IV SHIPPING CONTRACTS

i Shipbuilding

There is no specific statutory regime for shipbuilding contracts. General contract law principles apply (and any applicable statutory provisions relevant to the supply of parts).

The passing of legal title

Legal title in the ship will pass from the shipbuilder to the shipowner in accordance with the terms of the contract, or pursuant to the Contract and Commercial Law Act 2017 (CCLA).[18] Typically, title will pass on delivery.

ii Contracts of carriage

New Zealand is not a signatory to the Hamburg Rules or the Rotterdam Rules. Instead, the carriage of goods under New Zealand law is subject to:

a the MTA (which incorporates the Hague-Visby Rules for international carriage of goods by sea);[19] and

18 Contract and Commercial Law Act 2017, Part 2, Subpart 2. The CCLA repealed (and consolidated under one statute) various New Zealand statutes which formerly governed contract and commercial law. The CCLA is a revision Act and is not intended to change the effect of the law except for minor amendments.

19 MTA, Section 209(1). The Hague-Visby Rules are a combination of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading of 24 August 1924 (Hague Rules) as amended by the First (Visby Rules) Protocol of 23 February 1968 and the Second (SDR) Protocol of 21 December 1979.

b the CCLA, Part 5, Subpart 1 (which governs domestic carriage of goods by land, water or air or by more than one of those modes).

Cabotage

New Zealand has (partially) deregulated cabotage under the MTA,[20] under which no foreign ship may carry coastal cargo unless:[21]

a it is passing through New Zealand waters while on a continuous journey from a foreign port to another foreign port and is stopping in New Zealand to load or unload international cargo; and

b its carriage of coastal cargo is incidental to its carriage of international cargo.

In practice, this means that liner companies will call at several New Zealand ports as part of their rotation to and from foreign ports.

International carriage of goods by sea

The HVR apply to every bill of lading (BOL) relating to the international carriage of goods if:[22]

a the BOL is issued in a contracting state;[23]

b the carriage is from a port in a contracting state; or

c the contract contained in or evidenced by the BOL provides that the HVR or the MTA are to govern the contract.

Under the MTA, parties may not limit the New Zealand courts' jurisdiction in respect of a:[24]

a BOL (or similar) relating to the international carriage of goods; or

b non-negotiable document (other than a BOL or similar document of title) that contains express provision to the effect that the HVR are to govern the carriage as if the document were a BOL (as provided for in Section 209 of the MTA).

However, the provisions of the MTA do not effect the enforceability of arbitration agreements and foreign choice-of-law clauses.[25]

20 MTA, Section 198(1)(c).

21 A foreign ship on demise charter to a New Zealand-based operator may carry cargo if the operator who employs or engages crew to work on board the ship under an employment agreement or contract for services governed by New Zealand law. See MTA Section 198(1)(b).

22 MTA, Schedule 5, Article 10. Section 209 of the MTA also extends the application of the Hague-Visby Rules to carriage of goods by sea evidenced by a non-negotiable document (other than a bill of lading or similar document of title) that contains express provision to the effect that the Hague-Visby Rules are to govern the carriage as if the document were a bill of lading.

23 As to 'contracting states', see Section 211 of the MTA. Under that section, if the Secretary of Foreign Affairs and Trade to certifies that, for the purposes of the Rules, a state specified in the certificate is a contracting state, it will be presumed to be until the contrary is proven.

24 MTA, Section 210(1).

25 MTA, Section 210(2); *Mobil Oil New Zealand Ltd v. The Ship 'Stolt Sincerity' HC Auckland* AD628/93, 14 March 1995.

Domestic carriage of goods by sea

Domestic carriage of goods by sea is governed by Part 5, Subpart 1 of the CCLA.[26]The Act applies to all domestic carriage pursuant to a contract of carriage (even if the ship is simultaneously engaged in international carriage).[27]

The CCLA outlines the liability for all those involved in domestic carriage, including those who arrange carriage or provide incidental services to carriage.[28] The Act provides (subject to exceptions) for strict liability for carriers for loss or damage to goods. Loss caused by delay in delivery is not covered by the Act (common law principles apply).

The CCLA recognises four types of contracts of carriage:[29]

a 'at owner's risk': the carrier will be liable only where the loss or damage is intentionally caused by the carrier.

b 'at declared value risk': the carrier is liable for the loss or damage to the amount specified in the contract. If the contract is silent, Sections 256 to 260 will apply.

c 'on declared terms': the contracting parties may regulate the carrier's liability under the contract.

d 'at limited carrier's risk': the carrier is liable for the loss or damage to any goods in accordance with Sections 256 to 260. Section 259 caps the liability for carriers at NZ$2,000 for each unit of goods lost or damaged.[30]

Subject to limited defences,[31] the default rule is that the contracting carrier is liable to the contracting party for loss or damage to any goods, whereas the contracting carrier is responsible for them, whether caused by the contracting carrier or by an actual carrier.[32]

The right to sue for freight arises when a carrier ceases to be responsible for the goods.[33]

The right to sue is supported by a lien.[34] If the owner does not pay within two months' notice of the lien, the carrier may sell the goods by public auction.[35]

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26 It applies to the carriage of goods performed or to be performed by as carrier under a contract (whether the carriage is by land, water, air or multimodal) unless an exception in Section 243 applies (namely international carriage). See CCLA, Section 242.

27 CCLA, Section 243(2).

28 CCLA, Section 246. 'Carriage' includes any 'incidental service' undertaken to facilitate carriage. For example, stevedores.

29 CCLA, Section 248.

30 Liability is limited to NZ$2,000 for each unit of goods or to the declared value. Pursuant to Section 260, liability is not limited if the loss of or damage to goods is caused intentionally by the carrier; liability for damages other than loss of or damage to goods; liability for damages that are consequential on the loss of or damage to the goods: [CCLA, Section 259].

31 A carrier will avoid liability if he or she can prove that the loss or damage resulted directly, without fault on his or her part, from: an inherent vice; breach of the contracting party's statutorily implied warranties relating to the condition, packing and lawfulness of the consignment; seizure under legal process; or saving or attempting to save life or property in peril: CCLA, Section 260(2) and (3).

32 CCLA, Section 256.

33 CCLA, Section 283. An action for recovery of freight may be brought against the consignee if property in the goods has passed to the consignee: CCLA, Section 284.

34 CCLA, Section 285. The carrier's lien is active, which means there is a right to sell the goods in certain circumstances. The carrier's lien is also particular, which means that it is confined to the sum owing in relation to the goods held, and does not extend to a general balance of account.

35 CCLA, Section 288.

Cargo claims

The High Court has jurisdiction to hear cargo claims in the civil jurisdiction and admiralty (actions *in rem* and *in personam*).[36] However, the majority of cargo claims are settled on commercial terms.

The contracting carrier is liable to the contracting party for loss or damage to goods while under the carrier's responsibility.[37]

The CCLA confers a right to bring proceedings under a contract of carriage to the holder of the BOL or a person entitled to delivery of the goods.[38] However, where the consignee is not a party to the contract, it may still bring a claim against the contracting carrier once the goods are in the possession of the consignee.[39] In some circumstances, claims may also be brought in tort.

If a claim is commenced, it is likely to be against both the shipowner (or contracting carrier) and the vessel (*in rem*).

Jurisdiction

A defendant issued with proceedings from New Zealand may bring an action in *forum non conveniens* to protest jurisdiction and apply to the New Zealand court to dismiss (or, in the alternative, stay) the proceeding. A plaintiff opposing a stay or dismissal will carry the burden of convincing the New Zealand court that there is a strong case for maintaining the action under the New Zealand jurisdiction.

Commencing proceedings against overseas parties

Generally, the rules governing service of proceedings are set out in Part 6 of the High Court Rules 2016 (HCR). There are various exceptions to the standard rules for overseas service, which parties must take into account when serving proceedings on an overseas party.[40]

Damages

The measure of damages to be awarded differs depending on whether the HVR or the CCLA apply to the claim.

Under the HVR, the measure of damages is calculated by the reduction in value of the cargo at delivery,[41] whereas under the CCLA, the contractual measure of damages are recoverable (including consequential losses).[42]

36 Under Section 4(1)(g) of the Admiralty Act 1973, admiralty jurisdiction extends to any claim for loss of or damage to goods carried in a ship.

37 CCLA, Section 256.

38 CCLA, Section 314. The transferal of rights of suit and liabilities under bills of lading and similar documents is not dependent on property passing at a specific stage of the transaction.

39 CCLA, Section 281. Where the risk of loss or damage has already passed to the consignee, but property has not, the consignee will usually have to seek the help of the contracting consignor to bring a claim.

40 Overseas service is generally governed by Rules 6.32 of the High Court Rules 2016. There are various exceptions to Rule 6.32, including service in Australia (Rule 6.36) and service in convention countries (Rule 6.34).

41 MTA, Schedule 5, Article 5(b).

42 *Transtext Network New Zealand Ltd (In Liquidation) v. Greaney* [2001] 3 NZLR 378.

In addition to the damages available under the HVR or the CCLA, New Zealand courts have a discretionary power to award interest or legal costs (including increased or indemnity costs) and disbursements to successful claimants.[43]

iv Limitation of liability

Both the HVR and the CCLA limit a carrier's liability.[44] However, the benefit of the limitation of liability does not apply to loss or damage caused by the carrier, either intentionally or recklessly.[45]

Under the HVR, liability is limited in accordance with Article 4. Under the CCLA, liability is capped at NZ$2,000 for each unit of goods lost or damaged.[46]

In addition, a shipowner has to limit civil liability, save in 'exceptional cases'.[47]

Limitation of liability for ships under the MTA was reformed following the grounding of the MV *Rena*.[48] Part 7 of the MTA now gives direct force of law to the LLMC Convention (incorporated in Schedule 8) as amended by the LLMC Protocol (incorporated in Schedule 9).[49] By Order in Council, in May 2015, New Zealand adopted the increased 1996 Protocol limits, effective from 8 June 2015.

V REMEDIES

i Ship arrest

New Zealand is not a signatory to any international convention concerning the arrest of ships. Ship arrest is provided for in domestic legislation: the Admiralty Act 1973 and the HCR.

Ship arrest is available either in the case of admiralty claims that are maritime liens for the purpose of common law in New Zealand, or those cases otherwise falling within one of the 18 claims iterated in Section 4(1) of the Admiralty Act 1973.

Claims giving rise to maritime liens in New Zealand are those for (1) damage done by a ship, (2) salvage, (3) seafarers' wages, (4) master's wages and disbursements, and (5) bottomry and respondentia. As regards the claims listed in Section 4(1) of the Admiralty Act 1973, these include claims:

a for the possession or ownership of a ship;
b for any damage done or received by a ship;
c arising out of any agreement relating to the carriage of goods in a ship, or its use or hire;
d for loss of or damage to goods carried by a ship;
e in respect of the construction, repair or equipment of a ship; and
f for dock or port or harbour charges.

43 HCRs, Part 14.
44 HVR IV and CCLA, Section 259.
45 HVR IV 5(e) and CCLA, Section 259.
46 CCLA, Section 259.
47 *Daina Shipping Company v. Te Runanga O Ngati Awa* [2013] 2 NZLR 799 at [29].
48 MTA, Section 83.
49 MTA, Section 84A.

If a maritime lien exists in relation to a ship (or aircraft or other property), a party may initiate an *in rem* action against the ship concerned[50] and contemporaneously apply for that particular ship's arrest.

If the claim is one found in the list in Section 4(1), there may in limited circumstances be an opportunity to arrest instead a sister ship or associated ship:

a For claims listed in Sections 4(1)(a), (b), (c) and (s), an action *in rem* and warrant for arrest may only be brought against the particular ship or property that is the subject of the claim.[51] These claims include those in respect of ownership or possession of the subject ship, a mortgage on the subject ship, and the forfeiture or condemnation of the subject ship.

b For claims listed in Sections 4(1)(d) to (r) arising in connection with a ship, where the person who would attract liability on an *in personam* action was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, an action *in rem* may be invoked against:[52]

- the particular subject ship if, at the time the action is brought, that ship is beneficially owned as regards all the shares therein by, or is on charter by demise to, the person who would have liability *in personam*; or
- any other ship which, at the time the action is brought, is beneficially owned or on charter by demise as aforesaid.

By way of example, the claims listed in Sections 4(1)(d) to (r) include those (1) for damage done or received by a ship, (2) for loss of or damage to goods carried by a ship, (3) in the nature of towage or pilotage, and (4) in respect of goods, materials or services supplied to a ship in its operation or maintenance.

It is unlikely that bunkers may be arrested separately, as distinct from the ship herself; the High Court has suggested (*in obiter*) that a ship includes permanent structures, components and accessories, but not her bunkers.[53] As an alternative, a party may be able to apply for a freezing order in relation to the bunkers, which would restrain the respondent from removing the bunkers (or disposing of, dealing with or diminishing the value of them). Freezing orders are outside the scope of this chapter.

Arrest procedure

Prior to applying for an arrest warrant, the applicant should search the Admiralty Register to check that there is no current caveat against arrest.[54] This may be done with the assistance of the Admiralty Registrar. The existence of such a caveat does not *per se* prevent the applicant from obtaining a warrant, but the applicant runs the risk that it will be found liable for costs and damages if it is unable to show good and sufficient reason for the arrest.[55]

An applicant must have legitimate grounds for arrest. There are two types of cases of wrongful arrest that may attract liability for damages: bad faith or gross negligence on the

50 Section 5(1) of the Admiralty Act 1973.

51 Section 5(2)(a) of the Admiralty Act 1973.

52 Section 5(2)(b) of the Admiralty Act 1973.

53 *Mobil Oil NZ Ltd v. The Ship 'Rangiora' HC Auckland* AD 877, 10 August 1999.

54 HCR 25.34(3).

55 HCR 25.43(2).

part of the arresting party.[56] Bad faith may be found where, on a subjective assessment, the arresting party has no honest belief in its entitlement to arrest the ship. Liability may be founded on gross negligence where, on an objective assessment, the basis for arrest is so inadequate that it may be inferred that the arresting party did not believe in its entitlement to arrest – or acted without any serious regard as to whether it had adequate grounds to arrest the ship.[57]

An application for arrest may only be made after the issue of a notice of proceeding or counterclaim *in rem*.[58] That said, a notice of proceeding *in rem* is typically filed contemporaneously with the application for arrest papers, given the usual pressures of the subject vessel being in New Zealand waters for only a short time.

To apply for a warrant of arrest, an applicant files the following court papers:

a an application;

b an affidavit, stating:[59]
- the name and description of the applicant;
- the nature of the claim;
- the name or nature of the property to be arrested;
- the extent to which the claim has been satisfied, the amount claimed paid into court, or security for payment of the claim given to the Registrar;
- whether any caveat against the issue of a warrant of arrest has been filed and, if so, whether a copy of the notice of proceeding or a notice requiring payment or security has been served on the caveator; and
- any other relevant information known to the applicant;

c a warrant of arrest[60] and a notice by the Registrar of the arrest[61] (both of which the Registrar will sign if the application is accepted); and

d an indemnity to the Admiralty Registrar, with security to the Registrar's satisfaction for his or her fees, expenses and harbour dues (if any).[62] This security is likely to be significant (in our experience usually in the region of NZ$10,000 to NZ$20,000 as a minimum), as the Registrar will want sufficient funds in hand to cover anticipated costs of maintaining custody of the ship, such as for berthage. Note that the Registrar may later ask for more funds if the ship is arrested and the initial funds are depleted.

The filing fees at the time of writing are NZ$1,350 for initiating the *in rem* proceeding and NZ$1,500 for filing an application for the issue of a warrant of arrest.[63]

The court will require originals of the application, affidavit and signed indemnity, and a would-be applicant should allow at least 48 hours to prepare and file the papers, and for the Admiralty Registrar to put the arrest in motion. That said, in cases of urgency where the ship is due to leave, a request for urgency may be raised with the Admiralty Registrar at the time.

56 *Centro Latino Americano de Commercio Exterior S.A. v. Owners of the Ship 'Kommunar' (The 'Kommunar') (No. 3)* [1997] 1 Lloyds Law Reports 22; *Nalder & Biddle (Nelson) Ltd v. C & F Fishing Ltd* [2005] 3 NZLR 698 (HC).

57 Ibid.

58 HCR 25.34(1).

59 HCR 25.34(4)(a).

60 HCR 25.35.

61 HCR 25.38.

62 HCR 25.34(4)(b).

63 High Court Fees Regulations 2013.

If the papers are all in order, the Registrar will complete and issue the warrant of arrest and a notice by the Registrar of the arrest. To assist the Registrar, spare copies of the warrant of arrest and notice of the arrest are usually provided at the time of filing. The warrant must be served on the ship[64] by attaching a sealed copy to either a place adjacent to the bridge or some conspicuous part of the ship, or adjacent to an entrance to the superstructure or accommodation area of the ship, and leaving a copy with the person apparently in charge of the ship, if that person is available at the time.[65]

This is the same prescribed method of serving a notice of proceeding *in rem* on the ship and, in practice, the Admiralty Registrar may be prevailed upon to serve that document at the same time.

Ships may be arrested via helicopter or boat within New Zealand's territorial waters, by serving the warrant of arrest and by giving notice of the arrest of property.[66]

Upon arrest, the Admiralty Registrar effectively takes control (custody) of the ship.[67]

That will remain the position until the subject action is determined, the ship is released[68] or the ship is sold by court order.[69]

The Registrar may issue and action an instrument of release on payment into court either the actual costs, charges and expenses due in connection with the care and custody of the ship while under arrest, or, at the Registrar's election, upon a written undertaken from the party who asked for the release to pay those costs, charges and expenses.[70]

If a ship has been arrested and then released after security has been provided, generally it cannot then be re-arrested based on the same claim. That said, there may be exceptional circumstances for which the party may be able to re-arrest (for example the Registrar has released the ship for significantly inadequate security).[71]

Security

Arresting a ship, or threatening to do so, may prompt an agreement between the parties as regards security to prevent the ship's arrest, or to quickly release the arrested ship; for example, if a ship is arrested and the claim is covered by insurance, the insurer typically offers security. If the parties disagree on security, or it cannot be addressed by the Registrar in the first instance, an application may be made to the High Court.

The typical formula is that an arresting party is entitled to an amount as security, which may be paid into court, for a reasonably arguable best case, plus interest and costs.[72] There is no prescribed upper limit on what this amount may be, although it will not exceed the value of the ship. A common alternative security to payment of money is a P&I club guarantee.[73]

64 HCR 25.36.

65 HCR 25.10(1)(a) and (b).

66 HCR 25.38.

67 *Babcock Fitzroy Ltd v. The MV Southern Pasifika* [2012] 2 NZLR 652.

68 HCR 25.44.

69 HCR 25.51.

70 HCR 25.44.

71 *Det Norske Veritas AS v. The Ship 'Clarabelle'* [2002] 3 NZLR 52 (CA).

72 Ibid.

73 Which has been approved by the High Court. See *General Motors New Zealand Ltd v. The Ship 'Pacific Charger'* HC Wellington AD 135, 24 July 1981.

The arresting party does not have to provide counter-security (although it will have been required to give the Registrar an indemnity and security for the Registrar's costs for care of the arrested vessel as part of the arrest application).

However, when a ship has been arrested and other parties also have claims against it, one of those other parties may prevent the ship's release by filing a request for a caveat against release (or against the payment out of court of any money held representing the proceeds of sale of the ship).[74] The caveat is valid for six months.

Arrest of ship for security

The usual position is that a would-be arresting party will file substantive proceedings in New Zealand, arrest a ship, and then pursue those substantive proceedings here. A defendant may seek to stay the proceedings by raising *forum non conveniens* issues; although even if the defendant is successful on that point, the New Zealand court may still maintain security pending resolution of the dispute elsewhere.[75] There is nothing in theory to stop a foreign-based entity from tracking a vessel to New Zealand, arresting it, staying the New Zealand proceeding, and pursuing its claim in another jurisdiction.

Caveat against arrest

As an alternative position, a party may request a caveat to prevent a ship's arrest.[76] That request must encompass an undertaking to enter an appearance in any action that may be started against the ship, and within three working days of receiving notice that such an action has started, to give security to the satisfaction of the Registrar.

As noted earlier, the existence of such a caveat does not prevent an applicant from obtaining a warrant of arrest, but that applicant runs the risk that it will be found liable for costs and damages on an application to set aside the arrest if it is unable to show good and sufficient reason for the arrest.[77]

ii Court orders for sale of a vessel

Any party to the proceeding (not limited to the arresting party) may request a commission for the appraisal and sale of the ship, on provision of an undertaking to pay the Registrar's fees and expenses.[78] There are prescribed forms for the request and the commission itself.[79]

Typically the mode of sale is by tender through brokers appointed by the Registrar, and the sale may be with or without appraisement (though in the case of commercial or large ships, appraisement is usually required so ensure the ship is not sold too cheaply, to the detriment of the claimants in the proceeding). The gross proceeds of the sale are paid into the court with an account relating to the sale.[80]

74 HCR 25.46.

75 See *Raukura Moana Fisheries Ltd v. The Ship Irina Zharkikh* [2001] 2 NZLR 801 (HC); a stay was sought on the basis of an arbitration clause.

76 HCR 25.42.

77 HCR 25.43(2).

78 HCR 25.51.

79 Form AD15 and AD16 respectively.

80 HCR 25.51(7).

Sale of a ship by court order in an *in rem* action will be a sale free of all encumbrances (including maritime liens);[81] this would not be the case for a private sale. That said, the position taken by the New Zealand courts on a court-ordered sale (i.e., free of encumbrances) may not necessarily be the position of foreign courts, which cannot be compelled to take the same approach.

The ship may be sold before judgment is given, which may be appropriate if the ship is of deteriorating value and the costs of maintaining it under arrest are high. But where the plaintiff is yet to be awarded judgment demonstrating that its claim is meritorious, there must be strong reasons to order the sale, as it will deprive the shipowners of their property rights.[82] *Glencore Grain BV v. The Ship 'Lancelot V'*[83] is a recent example of a case where appraisal and sale was ordered prior to judgment, despite opposition.

The order of priority to the sale proceeds is not immutable, and depends on the particular circumstances, but generally falls as follows:[84]

a costs and expenses of the Registrar (highest priority);
b costs and expenses of the fund's producer (generally the arresting party);
c maritime liens;
d possessory liens;
e mortgages; and
f statutory claims under Section 4(1) of the Admiralty Act 1973.

A party who obtains judgment against the ship or its sale proceeds has the right to apply for orders determining the order of priority of claims to the sale proceeds.[85]

VI REGULATION

i Safety

The MTA is the principal maritime safety enactment. It is supplemented by the Maritime Rules. In addition, the Health and Safety at Work Act 2015 (HSWA) applies to New Zealand-flagged vessels and foreign-flagged vessels in particular circumstances.

The MTA sets out general requirements for participants in the maritime system, which are focused on:

a compliance with the conditions attached to relevant maritime documents (licences, permits, certificates);
b proper qualification of participants in the maritime industry; and
c compliance with prescribed safety standards and practices.

81 *The 'Acrux'* [1962] 1 Lloyd's Rep 405.
82 *URL Charters Ltd v. The Ship 'Malakhov Kurgan'* HC Christchurch CIV-2006-409-1370, 17 October 2006.
83 [2015] NZHC 2052.
84 See Perkins, 'The Ranking and Priority of *In Rem* Claims in New Zealand', (1986) 16 VUWLR 105; *ABC Shipbrokers v. The Ship 'Offi Gloria'* [1993] 3 NZLR 576 (HC) and *Fournier v. The Ship 'Margaret Z'* [1999] 3 NZLR 111 (HC).
85 HCR 25.52.

While participants in the maritime industry have to ensure that their operations are managed and carried out safely, the Director of Maritime New Zealand also has the role of maintaining an appropriate level of oversight over them by auditing their performance against prescribed safety standards and procedure.

In addition to general safety requirements, the MTA provides for other safety-related matters, such as safety offences,[86] regulation of alcohol consumption by seafarers[87] and hazards to navigators.[88]

The Maritime Rules cover everything from ship design to navigation but, importantly, they also implement some of the international conventions to which New Zealand is a party (SOLAS, the STCW Convention and the COLREGs, among others).

New Zealand's general health and safety legislation, the HSWA, applies to ships as a place of work. It applies to New Zealand-flagged vessels wherever they are located in the world and foreign-flagged vessels when on demise charter to a New Zealand-based operator and operating in New Zealand. The HSWA imposes a duty to eliminate risks to health and safety insofar as is reasonably practicable, with the primary duty being on 'persons conducting a business or undertaking' towards their workers or other persons who might be at risk from the work carried out.

ii Port state control

Port state control (PSC) is governed by the MTA and carried out in accordance with the Tokyo MOU (incorporating several international treaties).[89]

From 1 January 2014, the regulatory body, Maritime New Zealand, adopted the New Inspection Regime, targeting higher-risk ships for inspection. Utilising the Tokyo MOU database (and other resources), inspections are generally conducted depending on the risk profile of the vessel. For example, high-risk vessels are inspected every two to four months.[90]

Maritime New Zealand conducts inspections in accordance with the MTA and the approach agreed by Tokyo MOU members. This includes monitoring compliance with numerous international conventions and resolutions of the IMO and International Labour Organization.[91]

Where vessels fail to meet the requisite standards, Maritime New Zealand may impose conditions on the vessel or detain it until such time as it complies with the standard. A decision by Maritime New Zealand to detain a ship or impose conditions may be appealed to the District Court.

86 MTA 94, Part 6.

87 MTA 94, Part 4A.

88 MTA 94, 33J and 33K.

89 MTA, Section 54, 396 and 397.

90 There are three categories: high-risk ship, standard-risk ship and low-risk ship.

91 Conventions that New Zealand applies for port state control are, in particular: International Convention on Load Lines 1966, International Convention for the Safety of Life at Sea (SOLAS) 1974 as amended, International Convention for the Prevention of Pollution from Ships (MARPOL) 1973, as modified by the Protocol of 1978, International Convention on Standards for Training, Certification and Watchkeeping for Seafarers (STCW) 1978, as amended, International Convention on Tonnage Measurement of Ships 1969, Merchant Shipping (Minimum Standards) Convention 1976 (ILO Convention 147), Maritime Labour Convention, 2006 (MLC 2006), International Convention on the Control of Harmful Anti-Fouling Systems on Ships 2001.

In addition to the Tokyo MOU, New Zealand and Australia have signed a separate MOU in 1999, recognising each other's inspections and sharing data.

iii Registration and classification

Registration

The registration of commercial and pleasure ships is regulated by the Ship Registration Act 1992. Registrations are recorded on the New Zealand Register of Ships, by the office of the Registrar of Ships at Maritime New Zealand in Wellington.

The Register is divided into two parts:

a Part A confers nationality, provides evidence of ownership and enables registration of mortgage. Part A is aimed principally at larger commercial vessels and those ships that have mortgages. Registration under this Part is compulsory for New Zealand-owned ships of 24 metres and over, except for pleasure vessels, ships engaged solely on inland waters and barges that do not proceed on voyages beyond coastal waters.[92] To be registered under this Part, the ship must be surveyed and the owner must give very detailed information and documents, a declaration of ownership and nationality, the builder's certificate, a tonnage certificate and evidence of changes in ownership.[93]

b Part B only confers nationality. Registration is less expensive and easier to achieve. This Part is aimed primarily at pleasure vessels that require nationality for offshore cruising and racing purposes.

Commercial vessels on demise charter to a New Zealand-based operator and pleasure vessels owned by a foreign national entitled to reside in New Zealand indefinitely do not have to register, but are entitled to.[94]

Lastly, the Fisheries Act 1996 has separately established a Fishing Vessel Register for fishing vessels operating in New Zealand fisheries water.

Classification societies

Maritime New Zealand recognises the following classification societies: American Bureau of Shipping, Bureau Veritas, DNV GL, Class NK and Lloyd's Register International.

It is not likely that either surveyors or classification societies would be held to owe a duty of care capable of sustaining a negligence action. The leading authority on surveyors' liability is *Attorney General v. Carter*.[95] That case confirmed that no duty of care was owed by surveyors because survey certificates were issued as part of a statutory safety regime, not to protect commercial interests. Similarly, a classification society does not owe a duty of care to ship purchasers in circumstances where loss is purely economic.[96]

92 Ship Registration Act 1992 (SRA), Section 6(1).

93 SRA, Sections 14 and 15.

94 See ship registration flow chart on Maritime New Zealand website for more details on whether a ship needs to be registered.

95 [2003] 2 NZLR 160.

96 *Castlelight Maritime SA v. China Corporation Register of Shipping* HC Auckland CIV-2005-404-003423, 14 December 2005.

iv Environmental regulation

The regulation of pollution to New Zealand's marine environment from vessel activity is multi-layered. Comprehensive regulation is provided by a combination of primary legislation, regulations, rules, standards, guidelines and conventions.

The major international conventions implemented in New Zealand include:

a the Intervention Convention and the Intervention Protocol;
b the CLC Convention;
c the Oil Pollution Fund Convention;
d MARPOL;
e UNCLOS;
f the OPRC Convention; and
g the London Dumping Convention and 1996 Protocol.

New Zealand is currently considering whether to become a signatory to MARPOL Annex VI on air pollution.

Environmental framework

The primary environmental enactments in the marine context are the Resource Management Act 1991 (RMA) and the MTA. Many of the international conventions listed above are given the force of law (or paraphrased) by the enactments, or the regulations, rules and standards that are subordinate to the enactments.

The RMA and the MTA impose a mixture of civil and statutory liability:

a The dumping of waste and the discharge of contaminants and harmful substances from ships into water or air in New Zealand's coastal marine area (coastal marine area) is an offence under the RMA.[97]
b The dumping of waste and the discharge of harmful substances within New Zealand's exclusive economic zone (EEZ) or onto the continental shelf are offences under the MTA.[98]
c The cost of cleaning up harmful substances or pollution damage attracts civil liability under the MTA.[99]

In addition to the two primary maritime pollution statutes, the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 regulates exploratory and development activities in the EEZ and continental shelf. It is enforced by the Environmental Protection Agency. The Act prohibits harmful discharge and dumping of waste from structures, submarine pipelines and ships (where it is a mining discharge from a ship).

Beyond pollution, two other relevant environmental enactments are the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996.

In addition to providing a general regulatory framework for biosecurity, the Biosecurity Act 1993 enables the Ministry of Primary Industries (MPI) to create standards that are generally applicable to vessels entering New Zealand waters. The standards include

97 RMA, Sections 15A to 15C.
98 MTA, Sections 226 and 261.
99 MTA, Part 25.

requirements for the discharge of ships' ballast water[100] and biofouling requirements.[101] With regard to the latter, from May 2018, vessels arriving in New Zealand must arrive with a 'clean hull', as defined by the Craft Risk Management Standard on Biofouling (CRMS) or risk expulsion. Even prior to the CRMS coming into force, a firm stance by the MPI has resulted in several vessels being ordered to move to international waters to undertake hull cleaning, or take some other action at great expense to the vessel owner.

The importation and management of hazardous waste and products is governed by the Hazardous Substances and New Organisms Act 1996.

Penalties

Under both the RMA and the MTA, when an offence is committed, both the master and the owner (including the beneficial owner or charterer) commit a strict liability offence.

Under the RMA, non-natural persons may be fined up to NZ$600,000 plus up to NZ$10,000 per day for continuing offences. Natural persons may be imprisoned for up to two years or be fined up to NZ$300,000.[102] However, offenders on foreign ships (although a few exceptions exist) cannot be imprisoned in New Zealand for offences under the RMA.[103]

In addition to the times noted above, a penalty of up to three times the commercial gain (of the contravening action) can be imposed if the offence was committed during the course of producing that gain.[104] Further, general reparations for clean-up costs may be awarded.[105]

Under the MTA, the maximum penalty is imprisonment of no more than two years or a fine up to NZ$200,000 plus up to NZ$10,000 per day for continuing offences. In addition to the fines or imprisonment, a court may order that clean-up costs be paid.[106]

As with offences committed under the RMA, an additional penalty of three times the value of any commercial gain may be imposed if the offence was committed during the course of producing that gain.[107]

Civil remedies

The MTA imposes civil liability for pollution damage in the coastal marine area and the EEZ. Civil liability, though subject to overall limitation, extends to:

a the costs (including goods and services tax) reasonably incurred by the government in dealing with a harmful (or waste) substance, that has been discharged or is an imminent threat of being discharged;[108] and

b all pollution damage caused by a harmful substance or waste (or reasonable cost in preventing pollution damage).[109]

100 It does so via Import Health Standard for Ballast Water implemented under Section 22 of The Biosecurity Act 1993.

101 It does so via the Craft Risk Management Standard on Biofouling implemented under Section 24G of the Biosecurity Act 1993.

102 The penalties are contained in Section 339(1) and (1A) of the RMA.

103 RMA, Section 339A.

104 RMA, Section 339B.

105 Sentencing Act 2002, Section 12.

106 MTA, Section 244(1).

107 MTA, Sections 244(1)(c) and 409.

108 MTA, Section 344.

109 MTA, Section 345.

CLC convention ships are not liable for civil liability under point (a). However, damages may be sought for pollution under point (b).

In addition to the MTA provisions, an enforcement order may be sought against a shipowner for breach of certain RMA provisions.[110]

Limitation of liability for civil claims

Despite the MTA establishing civil liability for the discharge of harmful substances or waste (or cost of preventing the same), ship owners are entitled to limit their liability under the LLMC, or, in the case of CLC convention vessels, in accordance with that convention.[111]

v Collisions, salvage and wrecks

Collisions

Both the COLREGs and the IMO Traffic Separation Schemes have force in New Zealand by virtue of the Maritime Rules.[112] In line with international practice, liability for collisions is determined in accordance with normal tort law principles. Negligence will generally be established where the COLREGs have been contravened.

Under Section 6 of the Admiralty Act, no *in personam* claims may be brought in respect of damage, loss of life or personal injury arising from collisions between ships, manoeuvres to avoid a collision, or non-compliance with the COLREGs, unless:

a the defendant ordinarily resides in, or has a place of business within New Zealand;
b the collision took place within New Zealand's territorial waters;
c an action arising from the same incident or series of incidents is proceeding in, or has been decided by, a New Zealand court; or
d the defendant has submitted to a New Zealand court's jurisdiction.

Salvage

There is no mandatory local form of salvage agreement. However, it is common to use the Lloyd's standard form agreement.

The Salvage Convention is given force of law in New Zealand by Section 216 of the MTA (incorporated as Schedule 6).

Wrecks

The provisions of the MTA dealing with wrecks are primarily concerned with navigational hazards.

A regional council has the authority to order the owner of a vessel to make arrangements for the removal of the wreck or may itself take steps to remove and sell wrecks within its region that are posing a hazard to navigation.[113] Further, the Director of Maritime New Zealand has the power to order regional councils or the owner to remove wrecked ships that

110 MTA, Section 314.

111 MTA, Sections 344 and 345. These two sections are subject to Part 7 of the MTA, which provides for limitation.

112 Maritime Rules Part 22.

113 MTA, Section 33J.

are navigational hazards.[114] In the event that the owner has not made arrangements to secure and remove the hazard and the regional council has not taken steps to remove the wreck, the Director of Maritime New Zealand may remove and sell the wreck.[115]

vi Passengers' rights

New Zealand has no specific statutory regime related to the carriage of passengers by sea. Instead, the carriage of passengers by sea is regulated by the terms of the individual contract of carriage and overlaid with general statutes. For example: The Accident Compensation Act 2001 (which covers personal injury within (though not outside) New Zealand, and the Contract and Commercial Law Act 2017 (which covers damage to luggage).

vii Seafarers' rights

Seafarers' rights and responsibilities are subject to a comprehensive and multi-layered regulatory framework, including:

a the terms of the individual employment contract;
b the Employment Relations Act 2000;
c the Maritime Transport Act 1999;
d the Health and Safety at Work Act 2015;
e the Minimum Wage Act 1983;
f the Wages Protection Act 1983;
g the Holidays Act 1987;
h the Maritime Rules (incorporating the STCW and SOLAS conventions); and
i the Maritime Labour Convention.

Under the various statutes and international conventions, seafarers are guaranteed a range of fundamental rights; for example, minimum wage, obligations to seafarers if a vessel is lost (including food and water) and holidays.

If wages are unpaid, seafarers are able to seek a maritime lien in the Admiralty Jurisdiction.[116]

VII OUTLOOK

As noted in Section I, the maritime community in New Zealand will be monitoring developments in ports and infrastructure, coastal shipping and maritime environment regulation for the next several years. As expected, the implementation of the Craft Risk Management Standard for hull-fouling has already affected foreign-flagged vessels calling to New Zealand. MPI advised in March 2019 that they have taken action against 14 vessels that have fallen foul of new regulations to keep out potentially invasive marine organisms and devastating aquatic diseases. Those included foreign military ships, bulk carriers, container vessels and a tanker.

Maritime incidents are, fortunately, few and far between. The grounding of the MV *Rena* in 2011 was the most recent such event. When they do occur, however, they usually

114 MTA, Section 33J.
115 MTA, Section 33K.
116 Admiralty Act 73, Section 4.

have a significant impact on New Zealand's maritime regulation and case law. New Zealand is potentially 'due' another incident. Given the importance of shipping to the economy, there is a significant potential risk in the event of a cyber attack affecting vessel operations, or a natural disaster or vessel incident causing damage to port infrastructure.

Appendix 1

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Simon is a transport and trade law specialist, with expertise in shipping, insurance, logistics, trade finance and international debt recovery.

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He has extensive experience in advising on commercial contracts related to the international sale of goods and services and the transportation of goods. He has global litigation and arbitration experience, regularly handling disputes in international arbitration (including trade forums for commodities) and the English High Court, as well as managing claims in Europe, Asia, the Middle East, Africa and the Americas.

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Rob began working at Hesketh Henry as a law graduate in February 2016. He completed a BA/LLB (Hons) from the University of Auckland. He was admitted to the Bar in July 2016.

Rob has a keen interest in maritime law from his studies at law school. His maritime work includes the review and drafting of commercial marine contracts, such as charter parties.

Rob is also a member of the Maritime Law Association of Australia and New Zealand. Otherwise, he mainly assists with insurance and construction claims.

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Zoe Pajot was admitted to the French Bar in December 2014, after completing a master's degree in law and safety of maritime activities at Southampton (UK) and Nantes (France) universities (with honours). She joined Hesketh Henry in March 2018.

She has previously worked as a legal counsel at IMO (London) for the French delegation, in the Maritime Safety Division of the French Ministry in charge of the sea (Paris), and at the Mediterranean Shipping Company (Le Havre, France), on short-term contracts.

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