

Citation: *M/V JOE CASEY v. Canada (Minister of Transport)*, 2017 TATCE 16 (Review)

Date: 2017-05-02

Docket: MA-0436-38

MoT File No.: A20160118-203-01307

IN THE MATTER OF the review hearing requested by Nova Scotia Department of Transportation and Infrastructure Renewal, with respect to the Minister of Transport's decision to issue a Notice of Violation, pursuant to section 229 of the *Canada Shipping Act, 2001* (S.C. 2001, c. 26).

BETWEEN:

THE MOTOR VESSEL "JOE CASEY", Applicant

and

MINISTER OF TRANSPORT, Respondent

Before: Sarah M. Kirby, Member

Heard in: Halifax, Nova Scotia, on November 1 and 30, 2016

For the Applicant: Mr. John Majchrowicz (self-represented)

For the Respondent: Mr. Martin Forget

REVIEW DETERMINATION AND REASONS

Held: The M/V JOE CASEY violated subsection 10(1) of the *Vessel Certificates Regulations* and did not satisfy the requirements of the defence of due diligence. Consequently, the monetary penalty imposed by the Minister is confirmed.

The assessed penalty of \$6,000 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

I. BACKGROUND

[1] The applicant, the Motor Vessel JOE CASEY (M/V JOE CASEY), is a passenger ferry owned and operated by the Nova Scotia Department of Transportation and Infrastructure Renewal (NSTIR), Official Number 836484. Its port of registry is Yarmouth, Nova Scotia.

[2] The M/V JOE CASEY was represented at the review hearing by Mr. John Majchrowicz, Manager, Marine Services, for the NSTIR.

[3] The Minister of Transport was represented by Mr. Martin Forget.

[4] On April 11, 2016, Transport Canada issued Notice of Violation (Notice) no. A20160118-203-01307 to the M/V JOE CASEY, pursuant to section 229 of the *Canada Shipping Act, 2001* (Act). Schedule “A” of the Notice states the following:

On or about January 18, 2016 at or near Freeport, Digby Neck in the province of Nova Scotia, the passenger ferry M.V. JOE CASEY Official Number 836484, engaged on a voyage without holding an inspection certificate required to be issued under subsection 10.(2) of the Vessel Certificate Regulations SOR/2007-31, contrary to subsection 10.(1) of the regulations aforesaid. The vessel JOE CASEY, is therefore liable to pay the Administrative Penalty according to item 9 of Part 7 of the Schedule to the Administrative Monetary Penalties and Notices (CSA2001) Regulations (SOR/2008-97).

[5] The associated penalty was \$6,000.

[6] On May 25, 2016, the NSTIR filed a request with the Transportation Appeal Tribunal of Canada (Tribunal) for a review of the Notice, and on July 22, 2016, confirmation of the review hearing was delivered to the NSTIR.

II. STATUTES AND REGULATIONS

[7] The relevant sections of the *Canada Shipping Act, 2001* (S.C. 2001, c. 26) are as follows:

229 (1) If the Minister has reasonable grounds to believe that a person or vessel has committed a violation, the Minister may

[...]

(b) issue, and cause to be served on the person or vessel, a notice of violation that names the person or vessel, identifies the violation and sets out

(i) the penalty, fixed by or within the range fixed by the regulations made under this Part, for the violation that the person or vessel is liable to pay,

(ii) the period, being thirty days after the notice is served, within which the penalty must be paid or a review of the notice requested, and

(iii) particulars of the manner in which, and the address at which, the penalty must be paid or a review requested.

232(1)(b) A person or vessel served with a notice of violation under paragraph 229(1)(b) must within thirty days after being served or any further time that the Tribunal on application allows, file with the Tribunal a written request for a review of the facts of the violation or the amount of the penalty.

232.1(4) The member may confirm the Minister's decision or, subject to any regulations made under paragraph 244(h), substitute his or her own determination.

244 The Governor in Council may, on the recommendation of the Minister, make regulations for carrying out the purposes and provisions of this Part, including regulations

[...]

(b) designating violations that may be proceeded with by issuing notices of violation and fixing a penalty or a range of penalties in respect of each such violation, up to a maximum of \$25,000 but in any event not greater than the maximum fine if the violation were proceeded with by way of summary conviction

[...]

[8] Paragraph 9(1)(b) and section 10 of the *Vessel Certificates Regulations* (SOR/2007-31) provide:

9 (1) Sections 10 and 11 apply in respect of the following Canadian vessels if they are not Safety Convention vessels:

[...]

(b) vessels of more than 15 gross tonnage;

[...]

10 (1) No vessel shall engage on a voyage unless it holds a certificate issued under subsection (2).

(2) On application by the authorized representative of a vessel, the Minister shall issue an inspection certificate to the vessel if the requirements under the Act that apply in respect of the vessel when engaged in its intended service are met.

[9] Subsection 15(1) and section 16 of the *Transportation Appeal Tribunal of Canada Act* (S.C. 2001, c. 29) provide:

15 (1) Subject to subsection (2), the Tribunal is not bound by any legal or technical rules of evidence in conducting any matter that comes before it, and all such matters shall be dealt with by it as informally and expeditiously as the circumstances and considerations of fairness and natural justice permit.

16 The Tribunal, and each of its members, has all the powers of a commissioner under Part I of the *Inquiries Act*.

[10] Subsection 4(b) of the *Inquiries Act* (R.S.C., 1985, c. I-11) provides:

4 The commissioners have the power of summoning before them any witnesses, and of requiring them to

[...]

(b) produce such documents and things as the commissioners deem requisite to the full investigation of the matters into which they are appointed to examine.

III. ELEMENTS TO BE PROVEN

[11] Based on the Notice, I identified the following elements to be proven by the Minister, on a balance of probabilities, to satisfy its case:

1. The M/V JOE CASEY engaged on a voyage on or about January 18, 2016.
2. The M/V JOE CASEY was a Canadian vessel of more than 15 gross tonnage.
3. The M/V JOE CASEY was required to, but did not, hold a valid vessel inspection certificate at the time of the voyage.

IV. PRELIMINARY ISSUES

[12] In its written request for a review dated May 18, 2016, the NSTIR did not dispute the violation, but instead asserted that the vessel had inadvertently operated without an inspection certificate.

[13] At the review hearing, Mr. Majchrowicz confirmed that the NSTIR's intention was not to challenge the fact of the violation, but rather to request leniency regarding the associated penalty of \$6,000. Mr. Majchrowicz also made submissions to the effect that the violation was the result of a simple mistake and not a flagrant disregard of the regulation.

[14] Mr. Majchrowicz was not represented by a lawyer and has no legal training. In the interest of fairness and a search for the truth, I explained to Mr. Majchrowicz that his initial submissions suggested that he was claiming a due diligence defence.

[15] It was agreed by both parties on the record that the Minister was not obligated to prove that there had been a violation; the focus of the review hearing was to be whether the NSTIR could satisfy the requirements of the defence of due diligence, and if not, whether the penalty could be reduced from \$6,000.

[16] Another preliminary issue that arose was that Mr. Majchrowicz realized he had neglected to bring a key document to tender as part of the applicant's evidence regarding due diligence, this being a spreadsheet relating to the safety certificates of vessels owned by the NSTIR.

[17] In accordance with my powers as per section 16 of the *Transportation Appeal Tribunal of Canada Act* and subsection 4(b) of the *Inquiries Act*, I ordered production of the aforementioned spreadsheet based on it being required for the full consideration of the matter.

[18] In accordance with subsection 15(1) of the *Transportation Appeal Tribunal of Canada Act*, the review hearing was adjourned until November 30, 2016 and the evidentiary record left open until resumption of the hearing.

[19] On November 2, 2016, the applicant provided the Tribunal and the Minister with an electronic copy of the spreadsheet titled, "NSTIR Transport Canada Fleet Certification Roster" (the "Fleet Certification Roster" or the "Roster").

[20] The review hearing was reconvened on November 30, 2016, at which time the applicant was permitted to further testify regarding the Fleet Certification Roster and to tender it as an exhibit. The Minister was given the opportunity to ask further questions on cross-examination.

V. EVIDENCE

A. Minister

[21] As noted above, the applicant admitted the violation. Accordingly, the Minister's burden to prove the violation was satisfied and the facts of the case were corroborated by the four exhibits entered into evidence during the cross-examination of Mr. Majchrowicz.

B. Applicant

[22] The applicant tendered evidence through the testimony of Mr. Majchrowicz and through the provision of the Fleet Certification Roster, tendered as Exhibit A-1.

[23] Mr. Majchrowicz testified that he is assisted in his responsibilities by, among others, shore captains who are NSTIR personnel managing NSTIR marine operations in the various regions of the province of Nova Scotia.

[24] Mr. Majchrowicz testified that one of his responsibilities as Manager, Marine Services is to track the inspection certificate expiration dates of all NSTIR vessels. He testified that when an NSTIR vessel is inspected, Transport Canada provides the original inspection certificate to the vessel's shore captain, whose responsibility it is to post the certificate on the vessel.

[25] Mr. Majchrowicz testified that a certified copy of the inspection certificate is sent to him by Transport Canada. He stated that he keeps track of inspection certificate expiration dates through the maintenance of the aforementioned Fleet Certification Roster entered into evidence as Exhibit A-1. Mr. Majchrowicz also uses the Roster to record outstanding safety requirements relating to each NSTIR vessel.

[26] Mr. Majchrowicz testified that he periodically updates the electronic version of the Fleet Certification Roster and posts a hard copy of the most recent version on the wall of his office. After each electronic update, he sends a copy of the Roster to the NSTIR shore captains. Mr. Majchrowicz stated that in between electronic updates of the Roster, he updates the hard copy by writing on it with pencil. He did not testify as to if, or how, he communicates these "penciled in" updates to the NSTIR shore captains.

[27] Mr. Majchrowicz testified that in recording the expiration date of the inspection certificate for the M/V JOE CASEY on the Fleet Certification Roster, he mistakenly recorded the wrong year, writing "July 2, 2016" instead of "July 2, 2015" (emphasis added). He asserted that this inadvertent mistake was the cause of the vessel operating without a certificate on January 18, 2016.

[28] Mr. Majchrowicz testified that he "compounded his error" by sending this wrongly updated Fleet Certification Roster to the vessel's shore captain.

[29] Mr. Majchrowicz testified that upon noticing this error, he immediately contacted Transport Canada for an inspection, and that upon inspection, it was determined that the vessel did not have any safety violations and an inspection certificate was issued. He did not provide details as to how the error was detected.

[30] On cross-examination, Mr. Majchrowicz agreed that the Fleet Certification Roster tendered as Exhibit A-1 was not a copy of the document that existed at the time of the violation. Instead, this exhibit represents the most recent version of the Roster dated October 14, 2016. Mr. Majchrowicz explained that prior to providing the document to the Minister and the Tribunal on November 2, 2016, he inserted an additional comment to show where he had made the expiry date recording error.

[31] Also on cross-examination, Mr. Majchrowicz testified that checking inspection certificate expiry dates and noting those dates on monthly inspection sheets is now a mandatory part of vessel captains' responsibilities. He testified that this new policy was put into place three to four months prior to the hearing, which was approximately six months after the January 2016 violation.

VI. ARGUMENTS

Minister

Defence of Due Diligence

[32] Mr. Forget argued that in the circumstances of this case, the applicant does not satisfy the requirements of the defence of due diligence. In so doing, he relied on the decision in *Campbell v. Canada (Minister of Transport)*, 2010 TATCE 7. Mr. Forget argued that the facts of *Campbell* were analogous to the case of the M/V JOE CASEY, relying on paragraph 40 in particular, where Member Keefe held:

[40] The Inspection Certificate contains a note that the certificate is required to "be posted in a conspicuous place accessible to all persons on board the vessel" (Exhibit M-3). In the section entitled "Limitations on Use of Certificate" an expiry date of April 21, 2009, is clearly indicated. Therefore, the fact that the certificate would expire on April 21, 2009, was not something that could easily be missed. It is my belief that a prudent and responsible ship owner would know the status (valid or expired) of his ship's Inspection Certificate. Oral evidence indicates that David Campbell is an experienced mariner, as is Joseph Campbell, the ship's Master. The belief that they were operating with a valid certificate does not satisfy the onus of taking all reasonable care to avoid committing the offence, as required for a due diligence defence.

[33] Mr. Forget argued that the defence of due diligence is not available to the applicant because although both Mr. Majchrowicz and the vessel's captain had the inspection certificate available to them for six full months between July 2, 2015 and the date of the violation, January 18, 2016, neither individual noticed that the inspection certificate had expired.

[34] In so arguing, Mr. Forget referenced the fact that the inspection certificate tendered as Exhibit M-1 states specifically in its terms and conditions that, "This certificate will be posted in a conspicuous place, accessible to all persons on board...".

[35] Mr. Forget also argued that Exhibit A-1, the Fleet Certification Roster, could not be relied on and should be given very little weight. The basis for this position was that the version of the Roster tendered by the applicant was not the version which existed at the time of the violation in January 2016. Instead, Exhibit A-1 was the most recent version, dated October 2016, with an additional comment inserted by Mr. Majchrowicz on November 1, 2016 to highlight where the error had been made.

[36] Mr. Forget commented that the new policy testified to by Mr. Majchrowicz, which dictates that one of the vessel captain's mandatory monthly duties is to check and record the inspection certificate expiration date, was a good routine. He suggested that had this policy been in place at the time the certificate had expired in July 2016, it could have served as a check and balance regarding Mr. Majchrowicz's recording error on the Fleet Certification Roster.

The \$6,000 Penalty

[37] Mr. Forget argued that the Tribunal has no authority or jurisdiction to reduce the \$6,000 penalty imposed on the vessel because that amount is the minimum fine for a violation of section 10 of the *Vessel Certificates Regulations*. In so arguing, Mr. Forget relied on item 9 in Part 7 of the schedule to the *Administrative Monetary Penalties and Notices (CSA 2001) Regulations (AMPRs)*, which dictates that the range of penalty for the violation is \$6,000 to \$25,000.

[38] Mr. Forget distinguished the case of *Campbell*, where Member Keefe did reduce the penalty from \$6,000 to \$1,250. Mr. Forget argued that Mr. Keefe had authority to do so because in that case, the penalty was imposed for a violation of paragraph 106(2)(a) of the *Canada Shipping Act, 2001*, which the *AMPRs* dictate is subject to a penalty range of \$1,250 to \$25,000.

[39] Mr. Forget argued that the \$6,000 “minimum” in the *Campbell* case was not a true minimum, as it was the minimum as per Transport Canada policy to impose greater penalties on corporate offenders than on individuals, and not the minimum penalty by regulation.

[40] Mr. Forget argued that in the case of the M/V JOE CASEY, unlike in *Campbell*, the \$6,000 minimum penalty is not imposed on the basis of a policy, but rather as the minimum penalty available for a violation of subsection 10(1) of the *Vessel Certificates Regulations*. When pressed by the applicant, Mr. Forget agreed that Transport Canada could have proceeded against the M/V JOE CASEY under subsection 106(2) of the Act instead, which would have meant a lower minimum penalty, but argued that it was not for the Tribunal to question the charging decision of the Minister.

Applicant

The Defence of Due Diligence

[41] Mr. Majchrowicz argued that through his actions in creating and maintaining the Fleet Certification Roster, the applicant had taken measures to ensure the currency of the inspection certificates relating to all NSTIR vessels.

[42] The applicant addressed the Minister’s argument regarding the reliability of the Fleet Certification Roster and the associated weight to be given the document by asserting that he tendered it to provide further insight into the system he uses. Mr. Majchrowicz pointed out that his intention was not to deceive or to represent that the document was the version that existed on the date of the violation, but rather was provided as an illustration of the system he relies on.

[43] In support of his argument of due diligence, Mr. Majchrowicz relied on his assertion that when the vessel was inspected post-violation, it was not put out of service. He argued that this shows that despite not having a valid inspection certificate at the time of the violation, the NSTIR was operating a safe vessel and not putting anyone at risk.

[44] In answer to Mr. Forget’s argument that the vessel’s captain should have noticed that the inspection certificate had expired, Mr. Majchrowicz argued that the inspection certificates are often repeatedly extended and the various stamps on the original certificate evidencing the extensions make them difficult to understand.

The \$6,000 Penalty

[45] Mr. Majchrowicz argued that the NSTIR should be given leniency regarding the \$6,000 penalty imposed for operating without an inspection certificate. The basis for this argument is the applicant's assertion that the violation was a result of a recording error and not a flagrant attempt to circumvent the regulatory requirements.

[46] Mr. Majchrowicz argued that a \$6,000 penalty for a simple mistake is not reasonable, and that the penalty does not fit the error that was made. He asserted that if the fine had been lower, the applicant might have chosen to simply pay it rather than request a review, and submitted that the applicable legislation should be reviewed.

[47] Mr. Majchrowicz also argued that it was unfair that there were different avenues by which the same violation could be prosecuted, with different associated minimum penalties. He suggested that perhaps the marine inspector who charged the vessel with the violation was unaware that the Notice could have been issued on the basis of subsection 106(2) of the *Canada Shipping Act, 2001* and that had he known, he might have proceeded differently.

VII. ANALYSIS

[48] The applicant appealed the issuance of the Notice as per paragraph 232(1)(b) of the *Canada Shipping Act, 2001*. At the review level, as per subsection 232.1(4) of the Act, the member may confirm the Minister's decision or, subject to any regulations made under paragraph 244(h), substitute his or her own determination.

[49] Pursuant to subsection 232.1(3) of the *Canada Shipping Act, 2001*, the Minister bears the burden of proof to establish that the M/V JOE CASEY committed the violation at issue. In this hearing however, the applicant admitted the violation and accordingly, the Minister's burden was discharged.

[50] The applicant's position can be summarized as follows: he asserts that the violation was a result of a simple mistake and that the applicant should not be penalized as it had a system in place to prevent these types of errors. In the alternative, the applicant takes the position that the \$6,000 penalty is too high, that leniency should be granted to the applicant, and that the penalty should be reduced.

Due Diligence Defence

Does this Defence Apply?

[51] Section 237 of the *Canada Shipping Act, 2001* provides:

237 Every rule and principle of the common law that renders any circumstance a justification or an excuse in relation to a charge for an offence under a relevant provision applies in respect of a violation to the extent that it is not inconsistent with this Act.

[52] On the authority of section 237, I hold that the common law defence of due diligence can be considered in this proceeding. In support of this conclusion, I note that such defence was

considered applicable, although not successful, in the cases of *Atlantic Towing Limited v. Canada (Minister of Transport)*, 2009 TATCE 31 and *McKeil Ships Limited v. Canada (Minister of Transport)*, 2010 TATCE 18. These cases concerned notices of violations under paragraphs 106(1)(a) and 106(2)(a) of the *Canada Shipping Act, 2001*.

What are the Requirements?

[53] The requirements for a successful due diligence defence were outlined by the Supreme Court of Canada in *R. v. Sault Ste. Marie*, [1978] 2 S.C.R. 1299, at p. 1326, where Mr. Justice Dickson said:

The defence will be available if the accused reasonably believed in a mistaken set of facts which, if true, would render the act or omission innocent, or if he took all reasonable steps to avoid the particular event.

[54] Justice Dickson (as he then was) further added at p. 1331, that in the case of a corporate accused, the question to be asked is:

...whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system., The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

[55] It is important to note that while due diligence is a high standard to meet, it is not a standard of perfection. This is illustrated by Judge Fitzpatrick's statement at page 313 in *R. v. Courtaulds Fibres Canada* (1992) 9 C.E.L.R. (N.S.) 304 (Ont. C.J.) that, "Reasonable care and due diligence do not mean superhuman efforts. They mean a high standard of awareness and decisive, prompt and continuing action".

Did the Applicant Exercise Due Diligence?

[56] The applicant bears the burden of proving the applicability of the defence of due diligence on a balance of probabilities. In arguing that it had been duly diligent, the applicant relied on its use of the Fleet Certification Roster as a system of tracking inspection certificate expiry dates and submitted that the error stemmed from reliance on an expiry date recorded in error by Mr. Majchrowicz.

[57] The Minister's representative argued that the Fleet Certification Roster was unreliable and should be given little weight because it could be changed at any time. I find that the specific information contained within the Roster was not important to my determination because the applicant had admitted the violation. Exhibit A-1 was tendered for the purpose of showing the applicant's system of tracking the inspection certificate expiration dates and not for its contents, per se. I therefore accept the Roster as evidence that the applicant had a system in place at the time of the violation to track vessel inspection certificate expiry dates.

[58] I found Mr. Majchrowicz to be a credible witness and I am convinced that he honestly relied on the Fleet Certification Roster, that he believed the inspection certificate to be valid until sometime in July 2016, and that he believed the vessel was operating with a valid certificate at the time of the violation.

[59] Mr. Majchrowicz testified that the violation was because of a mistake and not flagrant disregard. He also testified that he contacted Transport Canada as soon as he realized the inspection certificate was expired and that there were no safety problems identified at the time of inspection. This testimony was unchallenged and I accept it as fact.

[60] I accept Mr. Majchrowicz's evidence that he personally updated the Fleet Certification Roster either by hand on the hard copy posted on the wall of his office, or, periodically when he had time, into the document he had saved on his computer. I also accept that after updating the document on the computer, he would print a new copy to replace the one on his office wall, and send a copy of this updated document to the NSTIR shore captains. Mr. Majchrowicz did not provide any evidence as to whether or how he would provide the shore captains with new information regarding inspection certificates or outstanding safety issues in between the computer-generated copies of the Roster.

[61] I accept Mr. Majchrowicz's testimony that since the violation, a new policy has been instituted that requires the NSTIR vessel captains to check and record the inspection certificate expiry date as part of their monthly routine. While this improvement is to be lauded, this policy was not in place at the time of the violation and is therefore irrelevant to my determination of whether the Applicant was duly diligent at the time of the violation.

[62] The fact remains that the terms and conditions of the inspection certificate specifically stated that the certificate was to "be posted in a conspicuous place, accessible to all persons on board the vessel" (Exhibit M-1). The certificate clearly states that it is valid until an expiry date of 30-09-2014, and in red it is stamped, "Certificate Hereby Extended to Expire on 02-07-2015". If any of the NSTIR personnel responsible for the vessel, which include Mr. Majchrowicz, the shore captain and the captain, had looked at the inspection certificate during the six months that the vessel was invalidly operating, the expiry date of 02-07-2015 should not have been missed.

[63] Although the maintenance of the Fleet Certification Roster was a first step towards establishing a system to prevent commission of the offence, it cannot be said that at the time of the violation, reasonable steps had been taken to ensure the effective operation of such a system. Despite Mr. Majchrowicz's good intentions and honest belief, the applicant's singular reliance on the Fleet Certification Roster, without a system of checks and balances to catch errors such as Mr. Majchrowicz's mistaken recording of the expiry date, does not satisfy the onus of taking all reasonable care to avoid committing the offence, as required for a successful due diligence defence.

[64] The case law is clear that reasonable care and due diligence do not mean superhuman efforts. However, the facts of this case do not meet the standard of the high standard of awareness that is required. I therefore conclude that the applicant has not satisfied the requirements of the defence of due diligence, and the Notice of Violation is confirmed.

The \$6,000 Penalty

[65] The applicant has requested leniency regarding the penalty and a reduction of the \$6,000 amount. The applicant also suggested that the Transport Canada officer who issued the Notice

may not have known that he could have issued the violation under section 106 of the Act, as in *Campbell*, and that if he had, the range of penalty would have had a lower minimum.

[66] The Minister's position is that in my capacity as review member, I do not have the authority to impose a penalty that is less than the minimum for this offence, as set out in the *AMPRs*.

[67] I agree with the Minister's representative that *Campbell* can be distinguished on the basis that the violation in that case was issued in accordance with different legislation than in the instant case. I also agree that Transport Canada officers have the discretion to decide which legislation they issue notices of violations under, and that I, in my capacity as review member, do not have authority to look behind those decisions.

[68] My authority is provided under subsection 232.1(4) of the Act, which reads as follows:

232.1(4) The member may confirm the Minister's decision or, **subject to any regulations made under paragraph 244(h)**, substitute his or her own determination. (Emphasis added)

[69] Paragraph 244(h) of the Act dictates that the penalties associated with violations of these regulations are to be set by Parliament. The \$6,000 penalty imposed on the vessel by Transport Canada is the minimum penalty available for a violation of subsection 10(1) of the *Vessel Certificates Regulations*. This minimum is dictated by Item 9 of Part 7 of the Schedule to the *AMPRs*.

[70] As per subsection 232.1(4) of the Act, I do not have the authority to impose a penalty of less than the minimum stated in the *AMPRs* and I am therefore bound by that range. I cannot reduce the penalty below \$6,000.

[71] The applicant suggested that the Tribunal should review the levels of the administrative penalties and revise them. The Tribunal does not have jurisdiction to do so, and any changes must be made by Parliament. As a review member, I am restricted to interpreting and applying the relevant law, which includes both applicable legislation and relevant case precedent.

VII. DETERMINATION

[72] The M/V JOE CASEY violated subsection 10(1) of the *Vessel Certificates Regulations* and did not satisfy the requirements of the defence of due diligence. Consequently, the monetary penalty imposed by the Minister is confirmed.

The assessed penalty of \$6,000 is payable to the Receiver General for Canada and must be received by the Transportation Appeal Tribunal of Canada within 35 days of service of this determination.

May 2, 2017

(Original signed)

Sarah M. Kirby

Member