

Court File No:  
Vancouver Registry

FORM 301

**IN THE FEDERAL COURT OF CANADA**

IN THE MATTER OF THE *CANADA SHIPPING ACT*, 2001 S.C. 2001, C. 26,  
THE *MARINE PERSONNEL REGULATIONS* (SOR/ 2007-115),

Between:

BRITISH COLUMBIA FERRY AND MARINE WORKER'S UNION

Applicant

and

CANADA (MINISTER OF TRANSPORT)

Respondent

and

BRITISH COLUMBIA FERRY SERVICES INC.

Respondent

APPLICATION UNDER FEDERAL COURTS ACT

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**NOTICE OF APPLICATION**

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**TO THE RESPONDENTS**

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at Vancouver, British Columbia.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor, or where the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: \_\_\_\_\_ Issued by: \_\_\_\_\_  
(Registry Officer)

**ADDRESS OF LOCAL OFFICE:**  
FEDERAL COURT OF CANADA  
Pacific Centre, P.O. Box 10065  
701 West Georgia Street  
Vancouver, BC, V7Y1B6

**TO:**  
ATTORNEY GENERAL OF CANADA  
Department of Justice Canada  
(BC Regional Office)  
900 - 840 Howe Street  
Vancouver, BC, V6Z 2S9

**AND TO:**  
MINISTER OF TRANSPORT  
330 Sparks Street  
Ottawa, Ontario, K1A 0N5

**AND TO:**  
BRITISH COLUMBIA FERRY SERVICES INC.  
Suite 500 - 1321 Blanshard Street  
Victoria, BC, V8W 0B7

## APPLICATION

1. This is an application for judicial review of the May 22, 2020 decision of the Respondent Minister of Transport to accept the Minimum Safe Manning (MSM) level submitted by the Respondent BC Ferry Services Inc (BC Ferries) Island Class vessels at five crew for up to 145 passengers.
2. Pursuant to the Minister's decision under s. 202(3)(b) of the *Marine Personnel Regulations* (SOR/2007-115) (*MPR*), of the *Canada Shipping Act, 2001* (S.C. 2001, c. 26), the Minister's delegate issued MSM Documents on May 22, 2020 for the *M.V. Island Aurora* and the *M.V. Island Discovery*.
3. The Applicant BC Ferry and Marine Workers' Union (BCFMWU) is the certified bargaining agent for BC Ferries employees including seafarers and officers operating the *MV Island Aurora* and *MV Island Discovery* who are directly impacted by the MSM levels for the vessel.
4. The Respondent BC Ferry Corporation took possession of the *MV Island Aurora* and *MV Island Discovery* in or about February 2020 and have a capacity of 300 passengers and crew.
5. These two new Island Class vessels replaced the *North Island Princess* which regularly sailed with a minimum complement of seven crew and the *Quadra Queen II*, which regularly sailed with a minimum complement of six crew on their respective runs on June 8, 2020.
6. BC Ferries applied to Transport Canada for an MSM level of five crew on or about March 8, 2020.
7. The Minister of Transport delegated his authority to Transport Canada's National Safer Manning Team and Marine Safety Inspector(s) (the Minister's Delegate).
8. The MSM application was made without notice to the BCFMWU and the MSM was set by the Minister's Delegate without providing any notice to the BCFMWU of the application or process.

9. The Island Class MSM was set pursuant to a revised application process in which the authorized representative of a vessel proposes the MSM to Transport Canada rather than the Minister's Delegate setting the MSM through an empirical process.
10. BCFMWU has a real and substantial interest in the MSM levels for the Island Class Vessels and the process used by the Minister's Delegate.
11. The Minister's Delegate is required by the *MPR* to issue MSM which allow the crew to meet all the requirements of Canadian regulations and meet the requirements of the international instructions such as the International Maritime Organization.
12. The Island Class vessel cannot meet the requirements of the *MPR* with a crew of five.
13. The Island Class vessel cannot meet the requirements of the *Fire and Boat Drills Regulations* (SOR/2010-83), with a crew of five.
14. The Island Class vessels cannot meet several of the BC Ferries Fleet and Vessel Safety Operations Policies including bridge watch, passenger control, rescue operations, and fire fighting with a crew of five.
15. BC Ferries cannot meet the requirements of the *Safety Management Regulations* (SOR/98-348).

**THE APPLICANT MAKES APPLICATION FOR:**

1. An order in the nature of certiorari that the MSM Documents issued to the *M.V. Island Aurora* and the *M.V. Island Discovery* be quashed.
2. An order that the BC Ferries Island Class Vessels operate with an MSM of seven crew for up to 145 passengers until such time as the Minister sets a new MSM.
3. Costs of the Application.
4. Such other relief as the court deems just.

**THE GROUNDS FOR THE APPLICATION ARE:**

1. The Minister's Delegate erred in law and made an unreasonable decision in accepting an MSM level for the Island Class vessels which do not meet the requirements of the Marine Personnel Regulations.
2. The Minister's Delegate erred in law and made an unreasonable decision in accepting an MSM level for the Island Class vessels which do not meet the requirements of the *Fire and Boat Drills Regulations*
3. The Minister's Delegate erred in law and made an unreasonable decision in accepting an MSM level for the Island Class vessels which are in breach of the *Safety Management Regulations*.
4. The Minister's Delegate erred in law and made an unreasonable decision in accepting a MSM level for the Island Class vessels which did not meet the standards of IMO Resolution A.1047(27) Adopted on 30 November 2011 PRINCIPLES OF MINIMUM SAFE MANNING.
5. The Minister's Delegate erred in law and made an unreasonable decision in failing to follow a process to set the MSM level for the Island Class vessel which met the standards of IMO Resolution A.1047(27) Adopted on 30 November 2011 PRINCIPLES OF MINIMUM SAFE MANNING.
6. The Minister's Delegate improperly fettered their discretion and made an unreasonable decision by accepting BC Ferries proposed MSM level for the Island Class vessels which violated its own fleet and vessel safety policies.
7. The Minister's delegate improperly fettered their discretion and made an unreasonable decision in accepting an MSM level for the Island Class vessels without obtaining any information from the crew of the vessels or their representative the BCFMWU about the implementation of the MSM levels.

8. The Minister's Delegate erred in law and made an unreasonable decision in failing to make the primary consideration in accepting an MSM level for the Island Class vessels the safety and interest of the travelling public.

**THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:**

1. The Affidavit of Dan Kimmerly dated June 22, 2020.
2. The Affidavit of Graeme Johnston dated June 22, 2020.
3. The Record of the Minister's Delegate.
4. The *Canada Shipping Act* and regulations thereunder including the *MPR, Fire and Boat Drills Regulations* (SOR/2010-83), and *Safety Management Regulations* (SOR/98-348).
5. Such other material as counsel may advise.

**THE APPLICANT REQUESTS TRANSPORT CANADA SEND A CERTIFIED COPY OF THE FOLLOWING MATERIAL THAT IS NOT IN THE POSSESSION OF THE APPLICANT BUT IS IN THE POSSESSION OF THE MINISTER'S DELEGATE TO THE APPLICANT AND TO THE REGISTRY:**

1. All materials and information submitted by BC Ferries in support of or relating to the MSM levels for the Island Class Vessels.
2. All materials and information considered by Transport Canada relating to the MSM levels for the Island Class Vessels.
3. All records of discussions and deliberations by Transport Canada relating to the MSM levels for the Island Class Vessels.
4. All policies, procedures, directions, and instructions issued by Transport Canada for reviewing and determining MSM applications.

Date: JUL 22, 2020

Issued by: \_\_\_\_\_

  
(Signature of solicitor)

Solicitor for the Applicant

**Craig D Bavis**  
VICTORY SQUARE LAW OFFICE LLP  
710 - 777 Hornby Street  
Vancouver, BC V6Z 1S4

P: 604-602-7988  
F: 604-648-8973  
E: [cbavis@vslo.bc.ca](mailto:cbavis@vslo.bc.ca)

