

MARITIME LAW

Judicial review of finding by Transport Canada, Marine Policy Directorate, Seaway and Domestic Shipping Policy division that standby activities of applicant's vessel *Cable Innovator* considered marine activities of commercial nature as defined in *Coasting Trade Act*, S.C. 1992, c. 31, s. 2(1)(f) — *Cable Innovator* specialized cable ship based in Victoria Harbour in Victoria, British Columbia, used for installation, maintenance, repair of subsea fibre optic cables — Applicant providing these services pursuant to North American Submarine Cable Maintenance Service Contract (NAZ Contract) [2]— Applicant submitting Application for Vessel Temporary Admission to the Coasting Trade of Canada (C47 application) — Canadian Transportation Agency (CTA) determining that no suitable Canadian ship available to provide service or perform activity described in submitted C47 application — Authorizing applicant to temporarily import *Cable Innovator* into Canada on condition applicant obtain coasting trade licence (C48 licence) before vessel commenced its operations — Applicant asserting that its prior practice was to maintain annual C47 temporary admission, to seek C48 licence only when needed to undertake subsea cable maintenance or repairs in Canadian waters — Transport Canada advising applicant that *Cable Innovator* required to hold C48 licence while on standby in Victoria Harbour — Applicant of view that being on standby not marine activity of commercial nature, therefore C48 licence not required while vessel on standby — June 20, 2019, email from Transport Canada assessing that crewed ship, in port, being maintained in state of readiness to deploy to repair emergency cable break within 24 hours as per NAZ Contract under which ship operating, clearly engaged in marine activity — Whether June 20, 2019, email reviewable on judicial review; if so, whether Minister's decision reasonable — Transport Canada sought to compel applicant, "Cable Innovator", to comply with Transport Canada's interpretation of *Coasting Trade Act*, s. 2(1)(f) — Other than subjecting itself to prosecution, judicial review only way for applicant to challenge Transport Canada's interpretation — In these circumstances, June 20, 2019, email administrative action having direct negative effect on applicant's rights, interests; as such, reviewable — Cannot be properly analogized to courtesy letter — As to reasonableness of Minister's decision, Transport Canada's interpretation of s. 2(1)(f) consistent with ordinary meaning of words, contextual reading of phrase within *Coasting Trade Act*, with legislative history of *Coasting Trade Act* — Issue in this matter whether standby service of *Cable Innovator* falling within definition of "coasting trade" under s. 2(1)(f) — More specifically, question whether Transport Canada reasonably found that standby services falling within scope of phrase "in any other marine activity" — In view of description of services/activity described in C47 application, vessel's obligation under NAZ Contract to provide dedicated 24/7 service, clear that standby services inextricably linked to vessel's repair services — To be prepared to respond at all times, vessel having to assume standby posture — Vessel in active state of readiness — Not unreasonable, in these circumstances, for Transport Canada to find that ordinary meaning of "marine activity of a commercial nature" included standby service of *Cable Innovator* — Standby service, repair activities of *Cable Innovator* intrinsically linked — *Cable Innovator* fully manned seagoing vessel, maintained in 24/7 state of preparedness — Not unreasonable for Transport Canada to interpret this standby work as marine activity falling within s. 2(1)(f) — Transport Canada's interpretation not leading to absurd results — In sum, Transport Canada's finding that standby activity of *Cable Innovator* constituting "marine activity of a commercial nature" flowing logically from Global Marine's description of vessel's service, activity in its C47 application — Transport Canada not erring by misconstruing Global Marine's C47 application for temporary admission — Any suggestion that ship engaged in 24/7 standby operation not engaged in "marine" activity defying common sense — Transport Canada's decision reasonable — Application dismissed.

GLOBAL MARINE SYSTEMS LTD. V. CANADA (TRANSPORT) (T-1188-19, 2020 FC 414,
Strickland J., reasons for judgment dated March 25, 2020, 59 pp.)