



Marine Liability Act Amendments and Other Updates

Canadian Board of Marine Underwriters
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Overview

Marine Liability Act Amendments

- Liability limits for vessels under 300 GT
- Extension of the Bunkers Convention
- Air-cushioned vehicles
- Interim payments
- Economic losses related to fishing, hunting, harvesting, and trapping
- Public notice requirements
- Future losses of profit or income (Changes to the SOPF)

Review of Liability Limits

Review of Compulsory Insurance Requirements

- Wreck, Bunkers, Tankers, Passengers

Other Updates

- International Maritime Organization Work, Sanctions, Dark Fleet, Vessel Remediation Fund

Marine Liability Act Amendments

Liability limits for small vessels

- Section 29 of the *Marine Liability Act* was amended to increase the liability limits for small vessels by 50%

Type of claim	Repealed liability limit	Revised liability limit
Loss of life and personal injury	\$1,000,000	\$1,500,000
Any other claims (e.g. property damage or oil pollution damage)	\$500,000	\$750,000

Liability limits for small vessels (cont'd)

- Aligns with the 51% increase that came into effect in 2015 for larger vessels under the *International Convention on the Limitation of Liability for Maritime Claims*
- Reflects changes to CPI (43.49%) and the GDP deflator (42.6%) since 2001
- Reflects rate of incidents involving small vessels
- Reflects the broad category of losses covered by the “other claims” category, which can add up quickly
- Improves compensation for third parties

Extension of Bunkers Convention

- The *International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001* has been extended to non-seagoing vessels.
- Shipowners were already strictly liable for pollution damage from spills of bunker fuel.
- What changed?
 - ✓ Owners of ships above 1000 GT must carry insurance to cover their liabilities.
 - ✓ Claims can be made directly against the shipowner's insurer.

Air-cushioned Vehicles

- Air-cushioned vehicles (ACVs) are excluded from the *Convention on the Limitation of Liability for Maritime Claims* because the tonnage measurement rules do not apply to them.
- As a result, they could not limit their liability under the *Marine Liability Act* (MLA) for:
 - personal injury and loss of life claims;
 - other types of claims (e.g. pollution, property damage); and
 - claims for personal injury and loss of life to passengers not included in Part 4 (adventure tourism).
- Air cushioned vehicles were also excluded from the liability regime for passengers set out under Part 4 of the MLA.

Air-cushioned Vehicles (cont'd)

- What changed?
 - Air-cushioned vehicles are now subject to Part 4, meaning they are strictly liable for death and personal injury to their passengers.
 - They are also subject to the *Regulations Respecting Compulsory Insurance for Ships Carrying Passengers*
 - Air-cushioned vehicles can also now limit their liability for maritime claims.

Air-cushioned Vehicles (cont'd)

	All up weight not exceeding 8,000 kg	All up weight > 8,000 kg but not exceeding 13,000 kg	All up weight > 13,000 kg
Claims for loss of life and personal injury of a passenger	\$3.5 million plus \$300,000 multiplied by the # of passengers the ship is authorized to carry	N/A based on the limited likelihood that there are ACVs not covered by Part 4	N/A based on the limited likelihood that there are ACVs not covered by Part 4
Claims for loss of life and person injury	\$1.5 million	\$5 million	\$5 million plus \$40 per additional kg
Other claims	\$750,000	\$2.5 million	\$2.5 million plus \$20 per additional kg

Fishing, hunting, harvesting and trapping

- The shipowner is liable for economic losses related to fishing, hunting, harvesting and trapping activities related to ship-source oil pollution.
- What changed?
 - The shipowners liability **did not** change.
 - New provisions were added to Part 6 to clarify and highlight the availability of compensation for these economic losses to indigenous individuals and groups related to rights that have been recognized or affirmed by s.35 of the *Constitution Act, 1982*

Interim Payments

- A shipowner that wishes to assert their right to limit their liability can establish a limitation fund through the Federal Court.
- Sometimes, shipowners, and their insurers, will make payments, commonly referred to as interim payments, ahead of the limitation fund being created.
- What changed?
 - Judges can now reduce the amount of a limitation fund if the shipowner has paid out claims in advance.

Public Notice

- When a shipowner creates a limitation fund, the shipowner is required to give public notice of the limitation fund and the availability of compensation.
- What changed?
 - The requirement to give public notice was extended to a spill of any type of oil, not just persistent oil from a tanker.
 - The means of providing public notice were also modernized to include not just the Canada Gazette but a newspaper in general circulation in the affected area and any other manner appropriate for the affected communities.

Claims to the Ship-source Oil Pollution Fund – Future Losses

- Future losses are losses that have not yet occurred but that definitely will occur.
- Future losses were available from the Ship-source Oil Pollution Fund under the MLA for lost income from certain fisheries jobs or hunting and fishing for personal use.
- What changed?
 - All future losses of profit and income that can be directly linked to oil pollution damage
 - All types of fishing, hunting, harvesting or trapping for personal or household use including such activities covered by s.35 rights
 - Groups with s.35 rights can submit a communal claim

Other Updates

IMO Work to Address Insurance Problems

- At meetings of the IMO Legal Committee in 2018, 2019, and 2020, the IOPC Funds reported on problems involving insurers that are not members of the International Group of Protection and Indemnity Clubs (IGP&I), and provided recommendations for addressing the matter.
- In 2021, the Legal Committee discussed the matter and agreed to consider how to incorporate the recommended measures.
- In 2022, Canada submitted a proposal to LEG 109 for a new work output item to develop guidance for the proper implementation and application of IMO liability and compensation conventions including:
 - Developing pamphlets outlining the insurance requirements under each Convention; and
 - Revising the *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations* (Circular Letter No.3464)

Vessel Remediation Fund (VRF)

- Primarily funded through a regulatory charge levied on vessel owners
- The proposed Vessel Remediation Fund would:
 - Serve as a sustainable source of funding to assess and address VOCs
 - Allow for the use of monies collected through AMPs to address VOCs
 - Shift the financial burden for addressing VOCs away from taxpayers
 - Develop preventative actions to address key pathways that lead to vessel abandonment
 - Transport Canada will be undertaking nation-wide, public consultations on the proposed regulatory charge in the coming months.

Price Cap on Russian Oil

- In December 2022 and February 2023, Canada, along with the rest of the G7 and Australia implemented price caps on Russian crude oil products and petroleum products.
 - Price cap on Russian oil
 - Price cap on petroleum products
- The price caps prohibits the services which enable the marine transportation of Russian crude oil and petroleum products unless the oil is purchase at or below a price agreed to in consultation with our international partners.
- Transportation services include trading and commodities brokering, financing, financial assistance, shipping, insurance/re-insurance, protection and indemnity, flagging, and customs brokering.

Dark Fleet

- In October 2023, to respond to an increase in unsafe ship-to-ship transfers of crude oil and ships engaging in dark operations, the G7+ coalition published guidance to industry to promote responsible practices.

Sufficient Insurance

Sufficient insurance, from legitimate insurers to cover liabilities

Due diligence in verifying insurer's background

Best-practice use of Automatic Identification Systems (AIS)

Best-practice implementation of ship-to-ship transfers of oil

Classification from International Association of Classification Societies member

Breakdown of shipping and ancillary costs of oil shipments to confirm actual price of oil

Reporting ships that trigger concerns (suspicious ship-to-ship transfers, frequent reflagging, location tampering)

Due diligence in verifying ownership structures of companies involved in oil trade

Coalition guidance: https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/advisory-conseil-mondial-coalition.aspx?lang=eng

Dark Fleet (Cont'd)

- Canada has highlighted the risks these ships pose and urged member states to take steps to limit them in papers submitted to the following organizations:
 - International Oil Pollution Compensation Funds
 - International Maritime Organization Legal Committee
 - International Maritime Organization Marine Environmental Protection Committee
- Canada continues to work with its partners to consider other steps that can be taken to address these dangerous operations

Contact

- Thank you for your time!
- Should you want to discuss further, you can contact us at Caitlin.oboyle@tc.gc.ca and MarineLiability-ResponsabiliteMaritime@tc.gc.ca

