

CIRCULAR

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TO MEMBERS OF THE ASSOCIATION

Dear Member:

POLLUTION IN CANADA: DEVELOPMENT OF NEW LEGISLATION INCORPORATING CRIMINAL SANCTIONS

Members should be aware that, on May 19, 2005, Canada enacted legislation (Bill C-15) amending its Migratory Birds Convention Act, 1994 and Canadian Environmental Protection Act, 1999.

The new law has brought about extensive changes to the pre-existing regime. Many of these changes are of a technical nature. However, there are three areas in which Members may in future be most affected and of which they are urged to take note. They are as follows.

Criminalization

The amended law adds new offenses including that of 'depositing' a substance harmful to birds on or in the water. Under the wide definition of the term 'deposit' an accidental discharge may result in prosecution not only of the person who physically performed the discharge but also of the master, chief engineer, owner or operator of a vessel.

Moreover, if the owner or operator is a corporation, the new law permits the prosecution of any director or officer of the corporation who is in a position to direct or influence its policies or activities relating to prohibited conduct, and who fails to take all reasonable care to ensure that the vessel and all persons on board the vessel do not cause the discharge. The law specifically provides that it is sufficient proof of the offense to establish that a substance was in fact deposited by the vessel. However, the law also provides that a person or vessel shall not be found liable where due diligence was exercised to prevent the commission of such an offense under the Act.

Other offenses introduced by the new law include knowingly making a false record or statement, knowingly giving wrong information, obstructing justice, and related malfeasances.

Increased penalties and minimum fines

The new legislation incorporates a set of increased penalties, as follows.

Every person (or vessel, as the case may be as appropriate) who or which is found to have committed an offence is liable:

- i) on conviction on indictment, to a fine of not more than C\$1,000,000 or to imprisonment for a term of not more than three years, or to both; and
- ii) on summary conviction, to a fine of not more than C\$300,000 or to imprisonment for a term of not more than six months, or to both.



In addition, the new legislation creates a system of minimum fines, a distinctly onerous departure from ordinary practice.

In the case of an offense for a discharge committed by a vessel of 5,000 tonnes deadweight or over:

- i) the fine imposed on conviction on indictment is not to be less than C\$500,000; and
- ii) the fine imposed on summary conviction is not to be less than C\$100,000.

Boarding, search, direction and detainment powers

The new legislation gives local authorities extensive powers to board, search, direct and detain a vessel suspected of committing an offense within Canada's exclusive economic zone (EEZ), albeit that such powers may not be exercised in relation to a foreign vessel, or to a foreign national on board a foreign vessel, without the consent of the Attorney General of Canada.

The effective date of the new law has yet to be fixed but is expected to be sometime later this year or in early 2006.

The new Canadian legislation further exemplifies the current trend of criminalizing cases of environmental pollution. Many industry bodies, including the International Group of P & I Clubs, raised objections to those aspects of Bill C-15 which sought to criminalise accidental spills, but it was passed without amendment. It remains to be seen whether grounds can be found to challenge the law in the Canadian courts in future.

Further information regarding the date from which the law takes effect will be provided when it is known. In the meantime, Members are urged to note this current legislative development. The text of the Bill and a legislative summary can be found at the following websites:

http://www.parl.gc.ca/38/1/parlbus/chambus/house/bills/government/C-15/C-15_3/C-15.html , and

http://www.parl.gc.ca/common/Bills_Is.asp?Parl=38&Ses=1&ls=C15

If any Member requires any further information on this specific subject, or generally, the Managers will, as always, be pleased to respond.

Yours faithfully,


Joseph E.M. Hughes, Chairman & CEO
Shipowners Claims Bureau, Inc., Managers for
THE AMERICAN CLUB