Transport Canada marine incident reporting obligations and rights

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This article provides general guidance on the rights and requirements for reporting to Transport Canada in the event of a shipping casualty, and responding to Transport Canada's request for a shipboard inspection. Readers are cautioned that each event is unique, and the extent to which any aspect of the below applies depends on the circumstances.

Requirements for reporting an incident to government authorities

The *Canada Shipping Act*[1] (the CSA) applies to all Canadian ships in any waters, and foreign ships in Canadian waters,[2] excluding military vessels.[3] Where a ship, whether proceeding under its own power or being towed, is involved in a casualty or other dangerous occurrence, the master or any other member of the crew, operator, pilot, or person responsible for the ship must report the incident without delay.[4] This report should be submitted to a Canadian ship reporting station via radio.[5]

This preliminary report must include:

- The identity of the ship from which the report is being made;
- The nature of the incident;
- The ship(s) involved in the incident;
- The date and time of the incident;
- The location of the incident;
- The number of casualties;
- Whether a pilot was on board the ship involved in the incident; and
- Whether the incident is likely to cause an obstruction, hazard or pollution to any waters.[6]

Reporting a marine accident, shipping casualty, or dangerous occurrence

Whenever a vessel is involved in an accident[7], a shipping casualty[8], or a dangerous occurrence[9], the master, certificated officer, operator, member of the crew, pilot, or

person responsible for the ship or towed vessel must submit a preliminary report of the incident without delay.

The preliminary report must be followed up within 24 hours, or as soon as possible thereafter, by a written report, including a statement of probable cause, submitted as Form 1(W.R)/2(A.R) to Chief, Marine Casualty Investigations, Department of Transport, Ottawa.[10]

Reporting a shipping collision

If vessels collide, the master or person in charge of each vessel shall, to the extent they can without endangering their vessel or crew, render to the other vessel the assistance necessary to save the crew and passengers from any danger caused by the collision, and stay by that other vessel until determining they do not need further assistance.[11] Once the situation is safe for all vessels involved, the masters or persons in charge of the vessels are to exchange names and addresses, or provide names and addresses of the vessels' authorized representatives.[12]

Reporting pollution or threats of pollution

If a Canadian vessel anywhere in the world or a non-Canadian vessel in Canadian waters suffers an incident that either involves the loss or likely loss of dangerous goods (hazardous materials) overboard into the sea, an event giving rise to pollution or the threat of pollution into a marine environment, or any oil pollution incident while loading or unloading oil from a vessel at an oil handling facility, the master or person in charge of the vessel must submit a report to a marine safety inspector or local equivalent as quickly as possible.[13] Whenever there is further information relating to the incident and essential for protecting the marine environment, a supplementary report must be submitted.[14]

Sanctions for failure to report

Penalties for failing to report mandatory items are severe. Failure to report accidents, dangerous occurrences, casualties or collisions may result in a penalty of up to $1 million, a prison sentence of up to 18 months, or both.[15]

Marine Safety Inspector investigations and your rights and obligations

Marine Safety Inspector powers

For the purpose of ensuring compliance with a relevant provision under the CSA, a Marine Safety Inspector or other authorized person has the power to direct the master of a vessel to stop the vessel or proceed to the place that the inspector may select, and to moor, anchor or remain there for any reasonable period that the inspector may specify.[16] In addition, Inspectors may go on board any vessel and inspect any part of it, enter any premises without warrant at any reasonable time, with the exception of living quarters.[17] Living quarters may only be accessed with a warrant or on consent of the

occupant.[18] Force may not be used unless accompanied by a peace officer, and the use of force is authorized in a warrant.[19]

Inspector warrants

Warrants may be obtained if a court is satisfied that entry is necessary, if entry has been refused, or there are reasonable grounds to believe entry will be refused.[20]

There is a requirement to answer questions and stop working

In carrying out an inspection, Marine Safety Inspectors may direct any person to answer reasonable questions, provide reasonable assistance, or put into operation or cease operating any machinery or equipment being inspected.[21] The master is required to muster the crew to answer questions or carry out emergency or safety procedures as required by regulations.[22]

Inspectors may prohibit or limit access to any part of the vessel

Inspectors may prevent access to any or all parts of the vessel for as long as specified during the course of an inspection.[23]

Inspectors can generally request and seize relevant physical evidence

Inspectors may direct any person at the place where an inspection is taking place to produce any documents they are required to have under relevant provisions.[24] Inspectors can also remove any substances, data, document, or equipment for analysis, but are required to take copies when appropriate.[25] Any original documents or equipment must be returned as soon as feasible once they are no longer required,[26] and any samples are to be disposed of in a manner the organization deems appropriate.[27]

Right to counsel

The Authorized Representative and any employee or passenger whose conduct is being investigated by any government representative, or in relation to a death on board under the *Inquiries Act*, has the right to be represented by counsel.[28] Inspectors should delay the investigation for a reasonable time to allow counsel to be present.

Co-operation as the best policy

Marine Safety Inspectors are appointed to complete the investigative task, but they are not police officers. Inspectors simply attempt to figure out the causes of marine incidents and may look more favourably toward a company or master and crew who are co-operative during an investigation. As the penalties for negligence in marine incidents have a defined range rather than hard caps, favourable assessment from investigators may manifest in reduced penalties. As such, limited co-operation, at minimum, is generally the best policy.

Because the reasons for the inspection may not always be clear, ship owners and their representatives should be careful not to offer too much information, and instead convey only what is necessary.

Deaths on board

If a person dies on board a vessel in Canadian jurisdiction, an inquiry may be held to ascertain the cause of death under the *Inquiries Act*.

If you have any questions about the *Canada Shipping Act* or for advice on a specific case, please contact BLG's Shipping Group at admiralty@blg.com.

[1] *Canada Shipping Act*, 2001 SC 2001, c 26 [CSA].

[2] CSA, s. 8.

[3] CSA, s. 7(1).

[4] *Shipping Casualties Reporting Regulations*, SOR 85-514, s 4 [SCRR].

[5] SCRR, s. 4(2.a).

[6] SCRR, s. 4(4)

[7] Accident is defined as follows: "includes an accident occurring on board a ship as a result of which a person or several persons (a) lose their lives, (b) are believed to be missing overboard from a ship, (c) sustain bodily injuries serious enough to prevent the resumption of normal duties within 24 hours after medical treatment, (d) suffer temporary asphyxiation, or (e) suffer electrocution that results in temporary loss of consciousness; in which at least one person loses their life, is believed to be missing, sustains bodily injury serious enough to prevent resumption of normal duties within 24 hours of medical treatment, suffers temporary asphyxiation, or suffers electrocution resulting in temporary loss of consciousness. (SCRR, s. 2).

[8] Shipping casualty is defined in the CSA as "(a) any accident or incident associated with a vessel; and (b) any situation or condition that the Minister has reasonable grounds to believe could, if left unattended, induce an accident or incident described in paragraph (a)." (SCRR, s. 2 and CSA, s. 219(3)).

[9] Dangerous occurrence includes "includes an event involving (a) the breakage or malfunction of any rigging, structure or machinery on a ship or belonging to a ship that could have caused serious injury or loss of life, or (b) a situation which could have resulted in a casualty or accident. (SCRR, s. 2).

[10] SCRR, s. 5.

[11] CSA, s. 148(a)

[12] CSA, s. 148(b)

[13] *Vessel Pollution and Dangerous Chemicals Regulations*, SOR/2012-69 (VPDCR), s. 132.

[14] VPDCR, s. 132(8).

[15] CSA, s. 37, 78, 101, 121, 137, 151, 183, 191, 208, 228, and 245.

[16] CSA, s. 211(3)

[17] CSA, s. 211(1)

[18] CSA, s. 211(2)

[19] CSA, s. 211(2.2)

[20] CSA, s. 211(2.1)

[21] CSA, s. 211 (4.a)

[22] CSA, s. 211(4.d)

[23] CSA,s. 211 (4.b)

[24] CSA, s. 411(4.e)

[25] CSA, s. 411(4.g-k)

[26] CSA, s. 411(5)

[27] CSA, s. 411(6)

[28] *Inquiries Act*, s. 12 and *Canadian Charter of Rights and Freedoms*, s. 10(b)

[29] CSA, s. 149.

By

Robin Squires

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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