A New Compulsory Insurance Scheme for Vessels Carrying Passengers

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Right before the holidays, on December 24, 2016, the Government of Canada gave notice under Part 1 of the Canada Gazette of new proposed regulations dealing with compulsory insurance of passenger vessels under the Canadian *Marine Liability Act.* The *Regulations respecting compulsory insurance for ships carrying passengers* ("Regulations") introduce a new compulsory insurance scheme for vessels carrying passengers.

Background

Part 4 of the *Marine Liability Act* ("Act") already contains a liability regime for commercial and public-purpose ships engaged in the carriage of passengers. This regime is based on the 1974 *Athens Convention relating to the carriage of passengers and their luggage* as amended by the 1990 Protocol ("Athens Convention"). Under the Athens Convention, a carrier is presumed liable for loss of life and personal injury stemming from fire, explosions, collisions, or any other "defect" of the ship. In return for this presumption of liability, a carrier may limit his liability to the monetary equivalent of 175,000 Special Drawing Rights ("SDRs"); the value of 175,000 SDRs is equivalent to approximately C$320,000 at today's exchange rate. However, until now, vessels were not obligated to maintain compulsory insurance covering this potential liability towards passengers for loss of life or personal injury.

Proposed Regulations

Under the proposed Regulations, any commercial and public purpose vessel engaged in the domestic carriage of passengers will be required to maintain a minimum insurance coverage of C$250,000 per available passenger slot on the vessel (its passenger capacity). An operator who performs any part of the domestic carriage of passengers will be required to keep a corresponding insurance certificate on board or be able to produce a certificate within 24 hours after a designated officer requests it. Failure to provide proof of insurance may lead to detention of the vessel or a fine not exceeding C$100,000.

It should be noted that the Regulations will not apply to the circumstances prescribed by section 39(c) of the Act, including any international carriage and carriage by pleasure craft. "Domestic" carriage includes carriage of passengers between two places in Canada either directly or by way of a place outside of Canada (for instance, with a stop in an American port).

Benefits and Impact

Since 2010, Transport Canada has been consulting with the industry, seeking support of the stakeholders for the proposed Regulations. One difficulty that was identified by the industry is how passenger capacity is to be determined, especially for fishing vessels. Since all vessels used to carry passengers must comply with the regulations adopted under the *Canada Shipping Act, 2001* (c-10.15), including determining the number of passengers the vessel has been outfitted to carry (life vests and other safety measures), the passenger capacity should be determined that way — and the insurance policy requirements that flow from it.

A large majority of operators in Canada with vessels of over 15 gross tonnes already have sufficient insurance in place. Consequently, for those operators with existing P&I coverage as part of their normal course of operations, the introduction of these Regulations will likely have limited impact. However, smaller operators with vessels carrying passengers often do not have sufficient insurance coverage in place, or have no coverage at all. Transport Canada estimates that 1,756 ship operators will be affected by these Regulations, at an annualized cost of about C$3.44 million.

The benefits of these Regulations are straightforward for passengers aboard insured vessels, especially the smaller vessels in operation in Canadian waters. However, the associated cost of these Regulations is significant for the vessel operators — especially the smaller carriers active in the Canadian market.

Interference with Provincial Regulations

It should be noted that the proposed Regulations are federal in nature and would apply to all commercial and public purpose vessels active in Canadian waters. However, several provinces already have compulsory insurance schemes in place. For instance, Québec prescribes a permit system for the carriage of passengers for remuneration.[1] A permit will only be granted to those carriers that show that they have a marine insurance policy in place of minimum C$1 million for vessels with a capacity of 12 passengers or fewer, and C$5 million for larger vessels. Other provinces have licencing requirements for outfitters of hunting, fishing and other outdoor activities which may include carriage of passengers across water. The proposed insurance coverage by these new Regulations appears to be broader in scope in terms of vessels covered. For instance, the Regulations would encompass outfitters operating a canoe-rental service. However, they will not require additional dedicated marine insurance, but will be able to use their existing general liability insurance as long as the liability insurance reaches the threshold of C$250,000 per passenger.

Further Consultations and Entry into Force

Once adopted, the Regulations will enter into force gradually. Carriers who hold no insurance policy will be required to comply within 60 days after the Regulations come into force. Carriers who hold an insurance policy will need to comply with the Regulations when their current insurance policy expires, is altered or cancelled.

[1] *Regulation respecting the transport of passengers by water*, 1998 (chapter T-12, r.15), adopted under the Québec *Transport Act* (chapter T-12).

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