

# AMENDMENTS TO THE CANADA SHIPPING ACT, 2001 AND MARINE LIABILITY ACT

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On December 13, 2018, Bill C-86, *A second Act to implement certain provisions of the budget tabled in Parliament on February 27, 2018 and other measures*, otherwise known as the *Budget Implementation Act* was given royal assent. This Bill, which was first introduced on October 29, 2018, predominantly pertains to amendments of budget-related legislation, but also proposes significant amendments to both the *Canada Shipping Act, 2001* (“**CSA**”) and the *Marine Liability Act* (“**MLA**”). The amendments to the CSA were introduced to allow the federal government to regulate for environmental reasons and specifically “to deliver on commitments made under the Oceans Protection Plan to enable the Government to respond to marine pollution incidents faster and more effectively, and to better protect marine ecosystems and habitats”. The amendments provide significant new powers and authority that potentially change the marine safety and environmental protection framework in Canada.

## Canada Shipping Act, 2001

With a focus on marine environmental protection, environmental response, enhanced enforcement and support for marine research, the amendments to the CSA include the following:

- The amended Section 10(1)(c) sets out that the Minister of Transport or the Minister of Fisheries and Oceans may enter into agreements or arrangements respecting the administration or enforcement of any provision of this Act or the regulations **and** authorize any person or organization – including a provincial government, local authority, council or other entity authorized to act on behalf of an Indigenous group – with whom or which an agreement or arrangement is entered into to exercise the powers or perform the duties and functions under this Act that are specified in the agreement or arrangement.
- The new Section 10(2.1) provides that the Minister of Transport may exempt any person or vessel or class of persons or vessels from any provisions of the CSA or the regulations if the exemption would allow the undertaking of research and development to enhance marine safety or environmental protection.
- The new Section 10.1 provides that the Minister of Transport may make an interim order if he or she believes that immediate action is required to deal with a direct or indirect risk to marine safety or to the

marine environment. Such interim order has effect from the time that it is made and remains in effect for a period one year, or any shorter period that may be specified in the interim order. However, the interim order may be extended by the Governor in Council for a period of no more than two years after the end of the applicable period.

- The new Section 35.1 provides that the Governor in Council may, on the recommendation of the Minister of Transport, make regulations respecting the protection of the marine environment from the impacts of navigation and shipping activities, including regulations with respect to, among other things:
  - design, construction, manufacture and maintenance of vessels or classes of vessels and inspections and testing thereof;
  - specifying the machinery, equipment and supplies that are required or prohibited on board vessels or classes of vessels;
  - design, construction, manufacture, maintenance, storage, inspection, testing, approval, arrangement and use of the machinery, equipment and supplies of vessels or classes of vessels;
  - regulating or prohibiting the operation, navigation, anchoring, mooring or berthing of vessels or classes of vessels; and
  - regulating or prohibiting the loading or unloading of a vessel or a class of vessels.
- New penalties for non-compliance by the amendment in Section 40.1 which provides for a fine of not more than \$1,000,000 or to imprisonment for a term of not more than 18 months, or both.
- The amendments to Sections 168.3, 175(2) and 180(1) allow the Minister or the Minister of Fisheries and Oceans who believes on reasonable grounds that a vessel or an oil handling facility has discharged, is discharging or **may** discharge a pollutant, to take measures that he or she considers necessary to repair, remedy, minimize or prevent pollution damage from the vessel or oil handling facility.

## **Marine Liability Act**

With a focus on “modernizing Canada's Ship-Source Oil Pollution Fund”, the amendments to the MLA include the following:

- The amended Section 101(1.1) provides that the Ship-source Oil Pollution Fund is liable for the costs and expenses incurred by the Minister of Fisheries and Oceans or any other person in respect of measures taken under subsection 180(1) of the Canada Shipping Act, 2001 with respect to oil, or for loss or damage caused by those measures, for which neither the owner of a ship, the International Fund nor the Supplementary Fund is liable by reason of the fact that the occurrence or series of occurrences for which those costs and expenses were incurred did not create a grave and imminent threat of causing oil pollution damage.
- The addition of Section 114.1 imposes levies on receivers and exporters of oil to be used to replenish the

Ship-source Oil Pollution fund when depleted.

- New penalties for non-compliance by the addition of Section 130.01 which provides for a fine of \$50,000 per individual and, in the case of any other person, \$250,000.

### **Going Forward**

While these amendments are intended to improve maritime safety and environmental protection, it is not yet clear as to the impact these provisions will have upon the current Canadian marine and environmental framework. It seems that some of the provisions are ambiguous or will be challenging to apply. Without further guidance on how these new measures will be implemented, and clarity on who has the regulatory authority to enforce or take action provided thereunder, the uncertainty will ultimately lead to litigation with the courts left to determine the appropriate outcome. It will be interesting to see how the amendments to the CSA and the MLA will affect and bring about change to the maritime industry.

by Joanna Dawson

### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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