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Marine Administrative Monetary Penalties: 2010 - 2011 in Review

It is useful for mariners to be aware of the trends in administrative monetary penalties (“AMP”) that are being issued by Transport Canada. This knowledge allows mariners to better identify the most common mistakes made by other mariners, and highlights the types of contraventions that are being targeted by inspectors. In June of 2010 the *Legal Net* reviewed AMPs that had been issued in 2009, the first full year after the AMP system was implemented in 2008. In this *Legal Net* we will review the trend over 2010 and 2011, and explain why the imminent expansion of the AMP system will require mariners to become increasingly conscious of compliance with regulations like the *Collision Regulations*.

Refresher on the AMP System:

Most mariners should be familiar with the AMP system, but for those who are not, or those who forgot, here is a brief refresher. The AMP system was implemented in 2008 as a way of encouraging compliance with the *Canada Shipping Act 2001* (“*CSA 2001*”) and its regulations through the use of “Notices of Violation” that deem a mariner guilty of a contravention, without the use of the court system, unless the mariner appeals the notice within 30 days. While many contraventions of the *CSA 2001* and its regulations result in verbal or written warnings, repeat offenders and more serious contraventions can be issued Notices of Violation with penalties from \$250 to \$25,000 for each contravention. In some cases, Transport Canada will allow the mariner to enter into an *Assurance of Compliance*, which amounts to written promise to correct a contravention, without a Notice of Violation being issued and without paying a penalty. However, in doing so the mariner admits to committing the contravention, and if the mariner does not follow through and comply with the Assurance of Compliance, the penalty that was earlier avoided can be doubled.

Verbal warnings, Assurances of Compliance and Notices of Violation issued to each mariner and vessel are kept in Transport Canada’s *Marine Enforcement Management System* (“MEMS”) so that future compliance with the *CSA 2001* can be tracked. Despite the easier and more efficient nature of the AMP system, it is still open to the Crown to prosecute more serious contraventions in the court system (where higher penalties are available), so mariners should not rely on \$25,000 being the maximum penalty if they commit a more serious offence.

AMPS in 2009

Of the 109 cases brought by Transport Canada in 2009 under the AMP System, 47 were in the Atlantic region, 26 were in Quebec, 12 were in Ontario, and 24 were in the Pacific region. The most common violation (25 cases across Canada) was failing to ensure the vessel was inspected for the purposes of having appropriate marine safety certificates. The next most common violation (20 cases) was failing to operate a vessel with sufficient or competent crew. Discharging a pollutant, and failing to ensure the vessel and its machinery meet safety requirements were the next most common violations (16 and 13 cases respectively). Less common violations included: failing to ensure safety training is provided (5 cases), carrying an excess number of passengers (2 cases), cheating on an exam (1 case), providing false information to an inspector (3 cases), failing to make log entries (3 cases), and failing to mark a vessel with an official number (2 cases). These lesser cases provide a good perspective on just how broad the types of violations which can be pursued under the AMP system are. The largest penalty assessed and paid in 2009 for a single violation was \$25,000. The largest penalty assessed for multiple violations was approximately \$45,000.

The Trend in 2010 and 2011

In 2010 and 2011 there were 230 AMPs issued to mariners across Canada: 20 of these in the Pacific Region, 79 in the Atlantic Region, 77 in Quebec, and 46 in Ontario. The trend across the country is interesting. In the Atlantic Region, the most common contravention was for failing to have the vessel inspected for the purposes of having a Canadian Maritime Document, such as a minimum safe manning certificate. In Ontario, the most common contravention (by a factor of three) was for failing to register the vessel. In the Prairie and Northern Region, the most common failure (by a factor of 10) was to ensure the vessel's equipment met *CSA 2001* requirements. In Quebec, which reported by far the most activity in any region of inspectors recording contraventions, the most common mistakes by mariners were failing to have competent crew aboard, failure to have proper equipment aboard, providing false or misleading information to an inspector, and discharge of a pollutant.

Of the contraventions reported by Transport Canada in the Pacific Region in 2010 and 2011, failure to have the vessel inspected for, and obtain, required Canadian Maritime Documents was the most frequent breach, accounting for almost 50% of all reported contraventions. Discharge of pollutants was the next most common, representing 25% of all contraventions.

In the Pacific Region, there appears to have been a cooling-off since 2009, with 20 AMPs being issued in 2010 and 2011 combined, where 24 issued in 2009 alone. During this last two year

period only 8 written warnings and 3 Assurances of Compliance have been issued. Verbal warnings are far more common, but at the date of publication an accurate record of the number of verbal warnings could not be obtained. Whether this decline is because Western Mariners are simply better behaved than their marine colleagues east of the Rockies, or whether there is less enforcement activity in general is difficult to discern, but clearly the amount of shipping activity through the six combined eastern provinces plays a role in portraying B.C. as a relatively quiet region.

Why the Issuance of AMPS is Expected to Rise

The number of shipping contraventions that mariners can receive an AMP for will expand significantly when seven new regulations are added to the AMP system (these include the more commonly breached *Collision Regs*, and *Marine Personnel Regs*). While these additional AMPs were expected to be added in 2010 or 2011, Transport Canada's budgetary constraints have delayed the expansion of the AMP system until the summer or fall of 2012. Once they come into force mariners can expect a rise in the number of AMPs issued, particularly since the regulations being added apply to a broad variety of vessels. For example, some of the more common and significant penalties for violations under the *Collision Regs*, will be:

- \$6,000 to \$25,000 for failing to maintain a proper lookout by all available appropriate means;
- \$6,000 to \$25,000 for failing to maintain a safe speed;
- \$600 to \$12,000 for a sailing or fishing vessel impeding passage of another vessel within a narrow channel; and
- \$250 to \$5,000 for using the inshore traffic zone when the appropriate traffic separation scheme lane can safely be used (and when not returning to or leaving port).

Currently, the only means by which a mariner can be held accountable for breaches of regulations like the *Collision Regs* (other than by their employer, for example) is by prosecuting it as an offence through the courts. Because this process often takes years, prosecutions are rarely initiated, except in exceptional cases (such as significant property damage, injury or death). The expansion of the AMP system, and its streamlined process of penalizing mariners, means mariners should be increasingly vigilant about following marine safety regulations. This is, of course, what Transport Canada intended when it implemented the AMP system in 2008.

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