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A Master's Obligation to Render Assistance at Sea: *Canada Shipping Act 2001*

A significant moment in Canadian maritime industry has come as the *Canada Shipping Act 2001* ("CSA 2001") came into force on July 1, 2007. With a somewhat misleading name, the *CSA 2001* is, in fact, fresh law for mariners. Passed by Parliament in 2001, it took six years to review and revise regulations and consult industry stakeholders before the new *CSA 2001* could be brought into force. While it will be years before the all the regulations under the new shipping legislation will be in place (and they will never be "final" because they will continually evolve), this is the first of many *Legal Desks* that will address various changes between the old and the new shipping legislation that ought to be of interest mariners.

To begin with, \$999,500 is one difference between the former *Canada Shipping Act* and the *CSA 2001*. That is the difference, between the old and the new legislation, in permitted penalties that a master of a Canadian vessel, or any vessel in Canada, suffers as a result of a breach of their duty to render assistance at sea. Formerly \$500, the maximum fine is now \$1,000,000. In this month's legal desk, we will discuss the mariner's legislated duty to render assistance at sea under the *CSA 2001*.

Duty to Assist at Sea: A Moral and International Obligation

Life as a mariner involves obligations that are unlike almost any other occupation - most notably is the obligation to render assistance at sea. While other hazardous occupations, such as logging, mining, and trucking often include circumstances where a worker comes cross another party in need of assistance, none of these occupations include a *legal obligation* to render assistance. In most cases, a person reacts to save another person as result of compassion or instinct, or both. While mariners will have the same compassion and instinct as other professionals, mariners have a *legislated* obligation to render assistance.

The obligation to render assistance at sea comes from various legal sources, most notably Canada's involvement in the United Nations ("UN") and the International Maritime Organization ("IMO"), and the international conventions that flow from our country's membership in these organizations. For example, the *United Nations Convention on Law of the Sea* ("UNCLOS") says that every signatory to the convention must require the master of a ship flying its flag to render assistance to any person found at sea in danger of being lost and to proceed to the rescue of persons in distress.

Simultaneously, the *Safety of Life at Sea Convention* ("SOLAS") sets out the obligation on ships' masters to render assistance. The SOLAS Convention states, "*the master of a ship at sea which is in a position to be able to provide assistance, on receiving a signal*

from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so." Moreover, the *Salvage Convention of 1989*, although primarily directed at addressing the salvage of property and the prevention of marine pollution, nonetheless repeats the *SOLAS* obligation on the master to render assistance to any person in danger of being lost at sea.

As a result of its membership in these organizations and its obligation to enforce such noble objectives, Canada has legislated the following requirements of masters of Canadian vessels, as well as any vessel operating in Canadian waters (such as transient vessels):

- Upon receiving a distress signal, the master of a ship shall proceed with all speed to the assistance of the vessel making the distress call, but if the master is unable, or considers it unreasonable or unnecessary to respond, he shall enter the reason in his official log book (section 131 of the *CSA 2001*);
- A ship in distress may, after all possible consultation with vessels answering a distress call, *requisition* one or more of the responding ships best fit, and it is the duty of the master of the vessel requisitioned to proceed with all speed to render assistance;
- The master is only released from his obligation to respond to a vessel in distress when he learns that another vessel that has been requisitioned is complying with the requisition;
- A master is released from a requisition *only* if he is advised by the person in distress or by another master that has reached those persons that assistance is no longer needed;

The former *Canada Shipping Act* (in force until June 30, 2007) contained similar provisions regarding the master's obligation to provide assistance at sea, and the mandatory action of a vessel that is *requisitioned* by a vessel in distress. However, under the old law a master who contravened their obligation was guilty of an offence and punishable by either a fine of not more than \$500, *or* imprisonment of one year. Under the new *CSA 2001*, the master may be punished by a \$1,000,000 fine, or imprisonment of not more than 18 months, *or both*.

While the *CSA 2001* provides for a mariner's obligation to respond to persons in need of assistance at sea however the cause, the *Canada Criminal Code* speaks to the master's obligation to render assistance when the master is "involved" in an accident. Section 252 of the *Criminal Code* provides that:

Every person commits an offence who has the care, charge or control of a vessel that is involved in an accident with another vessel and with intent to escape civil or criminal liability fails to stop the vessel, give his or her name and address and, where any person has been injured or appears to require

assistance, offer assistance. Every person who commits such an offence is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years or is guilty of an offence punishable on summary conviction.

For interest, a “summary conviction” is an offence that is punishable by less than 2 years imprisonment and is typically prosecuted by the Provincial Crown, whereas an “indictable offence” is punishable by 2 years of imprisonment or more and is typically prosecuted by the Federal Crown. More severe examples of failing to lend assistance when involved in an accident will draw prosecution by indictment.

Having been a mariner for many years, I appreciate the dangers that pitching decks and green walls of water can bring to the task of responding to a call for assistance at sea. Indeed, a master that incorrectly responds to a call for assistance may, in a matter of seconds, multiply the number of lives that require saving, putting at risk his own life and those of his crew. Presumably legislators appreciated this as well, and that is why the past and present shipping legislation provide that where a master deems in the circumstances that responding to a call for assistance may be *unreasonable*, the obligation on them is forgiven. However, given the significant penalties associated with the new *CSA 2001*, no master or vessel owner can afford not to ensure that accurate, rational, and detailed reasons for choosing not to respond to a call for assistance are recorded in their official log books, as required by the legislation. In a future *Legal Desk* we will discuss the “rescuer doctrine”, and whether a mariner that is injured at sea in the process of providing assistance can sue for injuries they may have sustained in performing the rescue.

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