Mariner Life – Legal Desk

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"Get Off My Boat" – Vessel Searches and a Mariners Right to Privacy

A reader recently asked me to describe her right to deny an enforcement officer access to her vessel. The request highlights a common misconception that a mariner has the right to stop an enforcement officer from boarding their vessel without a search warrant.

There are numerous laws, both federal and provincial, that provide enforcement officers with authority to board and inspect vessels without a warrant. Most notably are the provincial liquor control laws, and the federal *Criminal Code*, *Fisheries Act*, *Environmental Protection Act*, and the recently passed amendments to the *Migratory Birds Convention Act* that prohibit "deposits" of oily bilge water.

Each of the laws allow a designated enforcement officer to board a vessel in order to ensure compliance with the legislation, and each contain a provision that makes denying such access an offence in itself. In other words, while you may avoid being charged with an offence by physically preventing a search of your vessel, you may be committing an equally punishable offence by preventing the search.

Take for example the scenario of a towboat operator carrying onboard an unregistered firearm without a permit. A Department of Fisheries patrol boat spots the towboat in the area of a recent oil spill, and stops the vessel to inspect it for compliance with oil pollution regulations. The master, nervous the enforcement officers may find his firearm if boarded, tells the officers they are not welcome aboard. While the punishment for depositing any bilge water is now $300,000 (under the new *Migratory Birds Convention Act*), the punishment for denying access to the vessel for purposes of confirming compliance with the Act is also $300,000. This being said, it is always best to allow the enforcement officer access, and deal with whether what they find can be used against you after the fact.

Since its introduction into the Canadian *Constitution* in 1982, the *Charter of Right and Freedoms* has spawned a great deal of cases law regarding an individual's right to privacy. Section 8 of the *Charter* provides that "everyone has the right to be secure from unreasonable search and seizure". Any state conduct which interferes with a reasonably held expectation of privacy will constitute a "search" and "seizure" for constitutional purposes. Section 24 of the *Charter* allows the court to 'throw out' evidence that would bring the administration of justice into disrepute – including evidence collected during an unreasonable search. "Reasonableness" of the search is therefore the test for whether evidence gathered can be used against the accused.

The standard of what is a "reasonable" search varies with the type of offence. Many of the cases that have contributed to the misconception that a warrantless search is illegal, relate to criminal offences. The standard of what is a reasonable search is higher for a criminal offence that for regulatory offences such those found under the *Fisheries Act* or the *Migratory Birds Convention Act.* Going back to the example of the towboat operator above, while it is reasonable for Fisheries Officers to board the towboat to inspect the engine spaces and logbooks for a possible evidence of an oil pollution offence, it is not reasonable for them to search areas unrelated to the subject of their visit, such as the master's clothes locker where his firearm is stored. If, however, RCMP board the vessel to ensure compliance with the *Firearms Act* after someone reported that the master was seen on the deck with the firearm, it is likely reasonable for the RCMP to search the locker space.

The "plain view doctrine" should be understood. This is the notion that while an officer may not make a search that is unrelated to purpose for him being on the vessel, if the officer discoveries anything in plain view (left out in the open) that relates to a different offence, even though unconnected to the reason they are on the vessel, this evidence can be used against the mariner. To this end, it is recommended that you not tempt fate by leaving out what should not be seen. It is also recommended that, when boarded, the mariner ask the officer to state the specific purpose of their search (compliance with what law). The Court will use this stated purposes in determining whether the search was reasonably conducted.

Even if a search is unreasonable, however, a mariner may waive his right to later claim it was unreasonable by consenting to the search. For example, while inspecting for compliance with oil pollution regulations the enforcement officers ask the master for his permission to search his stateroom. Granted permission, evidence of unrelated offences uncovered by the officer may be admissible in court against the master because he granted permission for the search. Consequently, while it is not advisable to refuse or physically prevent a search, it is advisable to be clear with the enforcement officer that they do not have your consent. The statement, "you do not have my consent for this search" will suffice.

In closing, it is not prudent for a mariner to deny an enforcement officer the ability to board a vessel. Whether what the officer finds on board vessel can be used to convict the mariner will depend on the reasonableness of the search, which in turn will depend on what purpose the search is conducted for. Do not deny access to your vessel, ask the officer the purpose of their visit, make clear when you do not consent to the search, and do not leave things out in the open.

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